

alternative. Therefore, in accordance with Executive Order 13132, this rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally recognized Indian tribes.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 20 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

■ 2. Revise paragraphs (b)(2) and (g)(2) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) * * *

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire,

New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

* * * * *

(g) * * *

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

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Dated: October 16, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0809241260–81401–02]

RIN 0648–XK78

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 temporary rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles. The previous 30-day exemption from TED requirements was effective September 26 through October 26, 2008. This action is necessary because environmental conditions resulting from Hurricanes Gustav and Ike persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

DATES: Effective from October 29, 2008 through November 28, 2008.

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 5 and 15, 2008, the NMFS Southeast Regional Administrator received requests from the Louisiana Department of Wildlife and Fisheries (LDWF) and the Mississippi Department of Marine Resources (MDMR), respectively, to allow the use of 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 Gustav and Ike. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and the states' resource agency staffs confirmed there were problems with debris in state and Federal waters off Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary) extending offshore 20 nautical miles, which were likely to affect the effectiveness of TEDs; discussions between NMFS staff, fishermen, and the states' resource agency staffs, and a survey of Mississippi waters found no significant remaining issues stemming from storm-related debris on the shrimp fishing grounds. Subsequent to these requests, NMFS issued a 30-day exemption to the TED requirements from September 26 through October 26, 2008, for waters off of Louisiana affected by Hurricanes Gustav and Ike (73 FR 57010, October 1, 2008).

On September 29, 2008, the NMFS Southeast Regional Administrator received a request from the Texas Parks and Wildlife Department (TPWD) to allow the use of 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 Hurricane Ike. Subsequent to this request, NMFS issued a 30-day exemption to the TED requirements from October 8 through November 7, 2008, for waters off of Texas affected by Hurricane Ike (73 FR 60638, October 14, 2008). Specifically, the affected waters extend from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties (approximately 95° 32' W. long.), and offshore 20 nautical miles.

On October 20, 2008, the NMFS Southeast Regional Administrator received a request from the LADWF 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 Gustav and Ike. Louisiana has stated that their marine enforcement agents will enforce the tow time restrictions.

Field investigations and interviews conducted by NMFS Gear Technicians and phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and state resource agency staff confirm there are problems with debris in state and Federal waters off Louisiana from the

western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles. Investigations conducted by NMFS indicate some shrimp fishermen continue to use TEDs in these areas as the TED is able to exclude debris from the trawl; however, these investigations also indicated there are still significant amounts of large debris that can render TEDs ineffective at releasing turtles. These investigations 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 hurricane-affected state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles, has created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles, for a period of 30 days. Tow times must be limited to no more than 55 minutes through October 31, and no more than 75 minutes thereafter, as measured from the time that the trawl doors enter the water until they are removed 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 the above 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.

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 hurricane-affected state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15

nautical miles, for a period of 30 days. 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 on November 28, 2008, 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 an environmental situation to allow more efficient fishing for shrimp, while providing effective 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 post-hurricane debris are creating special environmental conditions that make trawling with TED-equipped nets impractical. Prior notice and the opportunity to receive public 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 timely relief from the effects of Hurricanes Gustav and Ike, while providing effective protection for sea turtles.

Many shrimp fishermen in Louisiana may be unable to operate under the special environmental conditions created by Hurricanes Gustav and Ike without an alternative to the use of TEDs. Therefore, 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. For the reasons 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.

Dated: October 29, 2008.

Samuel D. Rauch III,

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

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