

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73****[MM Docket No. 95-121; RM-8660]****Radio Broadcasting Services; Dearing, KS****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of William Bruce Wachter, allots Channel 251A to Dearing, Kansas, as the community's first local aural transmission service. See 60 FR 38785, July 28, 1995. Channel 251A can be allotted to Dearing in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 251A at Dearing are 37-03-31 and 95-42-47. With this action, this proceeding is terminated.

**DATES:** Effective August 3, 1996. The window period for filing applications will open on August 3, 1996, and close on September 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-121, adopted May 9, 1996, and released June 19, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Dearing Channel 251A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-16345 Filed 6-26-96; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 217 and 227**

**[Docket No. 950427119-6179-07; I.D. 061496A]**

**RIN 0648-AH98****Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawling Activities; Additional Turtle Excluder Device Requirements Within Certain Fishery Statistical Zones**

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

**ACTION:** Temporary additional restrictions on fishing by shrimp trawlers in the nearshore waters off Georgia to protect sea turtles; request for comments.

**SUMMARY:** NMFS is imposing, for a 30-day period, additional restrictions on shrimp trawlers fishing in the Atlantic Area in inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) from the COLREGS line, between the Georgia-Florida border and the Georgia-South Carolina border. This area includes inshore and nearshore waters in NMFS fishery statistical Zone 31, a small part of the southern portion of statistical Zone 32, and approximately 18 miles (29.0 km) of the northern portion of statistical Zone 30.

The restrictions include prohibitions on the use of soft turtle excluder devices (TEDs) and try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft TEDs. This action is necessary to ensure protection for sea turtles and to prevent the continuation of high levels of mortality and strandings of threatened and endangered sea turtles.

**DATES:** This action is effective June 24, 1996 through 11:59 p.m. (local time) July 24, 1996.

Comments on this action must be submitted by July 24, 1996.

**ADDRESSES:** Comments on this action and requests for a copy of the environmental assessment (EA) or

biological opinion (BO) prepared for this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, 813-570-5312, or Therese A. Conant, 301-713-1401.

**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 sea turtles as a result of shrimp trawling activities have 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 set forth at 50 CFR 227.72. The incidental taking of turtles during shrimp trawling in the Gulf and Atlantic Areas (as defined in 50 CFR 217.12) is excepted from the taking prohibition, if the sea turtle conservation measures specified in the sea turtle conservation regulations (50 CFR part 227, subpart D) are employed. The regulations require most shrimp trawlers operating in the Gulf and Atlantic Areas to have a NMFS-approved TED installed in each net rigged for fishing, year round.

The conservation regulations provide a mechanism to implement further restrictions of fishing activities, if necessary to avoid unauthorized takings of sea turtles that may be likely to jeopardize the continued existence of listed species or that would violate the terms and conditions of an incidental take statement (ITS) or incidental take permit. Upon a determination that incidental takings of sea turtles during fishing activities are not authorized, additional restrictions may be imposed to conserve listed species and to avoid unauthorized takings. Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each (50 CFR 227.72(e)(6)).

Under NMFS' regulatory authority to implement further restrictions to fishing activities in order to prevent

unauthorized takings, temporary additional restrictions were imposed on shrimp fishing several times during 1995. Sea turtle stranding events and related shrimping activities in 1995 are discussed in detail in the temporary requirements implemented in nearshore waters along two sections of the Texas and Louisiana coast on April 30, 1995 (60 FR 21741, May 3, 1995), along the Georgia coast on June 21, 1995 (60 FR 32121, June 20, 1995), along the entire Texas coast and the western portion of Louisiana pursuant to a court order on August 3, 1995 (60 FR 44780, August 29, 1995), and along Georgia and the southern portion of South Carolina on August 11, 1995 (60 FR 42809, August 17, 1995). Descriptions of these rules, restrictions, and reasons therefor, are provided in the preamble to the rules and are not repeated here.

On September 13, 1995 (60 FR 47544), NMFS published an Advance Notice of Proposed Rulemaking (ANPR), which announced that it was considering proposing regulations that would identify special sea turtle management areas in the southeastern Atlantic and Gulf of Mexico and impose additional conservation measures to protect sea turtles in those areas. After reviewing over 900 comments, including two industry proposals, NMFS published a proposed rule (61 FR 18102, April 24, 1996) that would impose permanent measures to more effectively protect sea turtles from incidental capture and mortality in the shrimp trawl fishery. Measures contained in the proposed rule to strengthen the sea turtle conservation measures are: Removing the approval of the use of all soft turtle excluder devices (TEDs) effective December 31, 1996; requiring by December 31, 1996, the use of NMFS-approved hard TEDs in try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m); establishing Shrimp Fishery Sea Turtle Conservation Areas (SFSTCAs) in the northwestern Gulf of Mexico consisting of the offshore waters out to 10 nm (18.5 km) along the coasts of Louisiana and Texas from the Mississippi River South Pass (west of 89°08.5' W. long.) to the U.S.-Mexican border, and in the Atlantic consisting of the inshore waters and offshore waters out to 10 nm (18.5 km) along the coasts of Georgia and South Carolina from the Georgia-Florida border to the North Carolina-South Carolina border; and, within the SFSTCAs, removing the approval of the use of all soft TEDs, imposing the new try net restrictions, and prohibiting the use of bottom-opening hard TEDs, effective 30 days

after publication of the final rule. The comment period on the proposed rule originally extended through June 10, 1996, during which time 10 public hearings were held throughout the southeastern United States. In response to several requests for an extension of the comment period, NMFS has reopened the comment period on the proposed rule through July 15 to provide further opportunity to submit comments and review additional analyses, including the preliminary report scheduled to be submitted by June 28, 1996, by the sea turtle expert working group. The formation of this group of scientists to analyze existing databases to determine sea turtle population abundance, population trends, and sustainable take levels was a requirement of the November 14, 1994, biological opinion.

#### Recent Events

Reports of increased turtle strandings in Georgia began during May of 1996. By the end of the month, turtle strandings in Georgia had risen to the highest levels for the month of May since 1987, when TEDs were not required. In May 1996, 60 turtles were reported stranded in Georgia. The level of reported turtle strandings in Georgia had been averaging only 28 turtles during the month of May since the implementation of TED requirements in 1988. Not only did the total of 60 stranded turtles in May 1996 more than double the previous average, but 10 of the stranded animals were the highly endangered Kemp's ridley sea turtle. High strandings have continued in Georgia in the beginning of June, with a total of 15 strandings reported between June 1 and June 7.

Georgia state waters generally open to shrimping on June 1 each year. Prior to the opening of state waters, shrimping only occurs in the Federal waters beyond 3 nm (5.6 km) from shore. Early season shrimp resource surveys conducted by the Georgia Department of Natural Resources in 1996 revealed extremely low shrimp abundance in the sounds north of St. Simon's Sound. The harsh winter was likely responsible for the poor shrimp abundances in the north. The poor shrimp recruitment rates have caused the opening of Georgia waters to be delayed until June 24, to provide additional time for shrimp to mature. Shrimp fishing effort off of the southern portion of Georgia has been high, even before the opening of state waters, and effort has been concentrated off of a few particular areas. Vessels from North and South Carolina have also been fishing off of Georgia due to poor shrimp abundances

in their more northerly home states. Trawlers are concentrated just outside state waters, generally in a narrow strip 3 to 4 nm (5.6 km to 7.4 km) from shore.

The overall level of fishing effort off Georgia has been steadily increasing since late April, in concert with rising stranding levels. A series of aerial surveys for natural resource purposes has documented the increasing number of boats fishing in Federal waters off of Georgia with the following boat counts: On April 4, 0 trawlers; on April 11, 0 trawlers; on April 23, 2 trawlers; on April 29, 13 trawlers; on May 7, 63 trawlers; On May 14, 99 trawlers; on May 21, 81 trawlers; on May 30, 84 trawlers; and on June 4, 158 trawlers. Most of the vessels seen were concentrated off the openings of Georgia's southerly sounds: Cumberland Sound, St. Simons Sound, and St. Andrew Sound. The turtle strandings in May have also been concentrated on Georgia's southerly islands: Cumberland, Little Cumberland, Jekyll, and St. Simons Islands. Onshore winds have created favorable conditions for turtles to strand, even if they may have died outside of state waters, and the strandings have been distributed downwind of the shrimping concentrations.

NMFS is concerned that the opening of Georgia state waters to shrimping on June 24 will result in very high levels of fishing effort and pose a threat to sea turtles. Trawling along the beaches will commence around the time of peak nesting for female loggerheads in Georgia. The pulse of fishing effort immediately following the opening will likely be very heavy. Not only Georgia-based fishers, but many Florida, North Carolina, and South Carolina fishers will work Georgia waters. The numbers of North and South Carolina boats operating in Georgia this year may be greater than usual, because the shrimp abundance will likely be better in Georgia than in their home state waters. NMFS has held discussions with shrimp industry and managers in Georgia and South Carolina regarding coordinating the opening dates of each state's waters to shrimping, which would prevent successive pulses of high effort in each state. Due to this year's shrimp stock status, however, a coordinated date was not agreed upon. South Carolina state waters opened to shrimping on June 6, 1996, and approximately 125 boats were observed working in state and Federal waters off South Carolina on June 7. This relatively low effort level is indicative of unfavorable shrimping conditions in South Carolina and the probability for a large shift of effort to Georgia when state waters open there.

### Analysis of Other Factors

Examination of the strandings in Georgia does not indicate any significant sources of mortality other than shrimp trawling. The carcasses have primarily been coming ashore directly downwind of areas in which 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 Georgia, including other fisheries and environmental factors.

### Comments on the Proposed Rule

NMFS has been receiving comments on the proposed rule to revise the sea turtle conservation requirements and has also held 10 public hearings on the proposed rule. NMFS will make a complete response to all of the comments received on the proposed rule when the comment period closes and before taking any final action on the proposed rule. Many of the comments received to date, and in particular the statements presented at the public hearing in Brunswick, GA on May 24, 1996, are germane to the recent events, the measures being taken in this action, and the area and the shrimpers being affected by this action. Therefore, NMFS believes it is useful to address briefly some of those comments at this time as they relate to the present action. The discussion that follows provides NMFS' preliminary views and responses to the comments, and will be more fully addressed in the final decision regarding the proposed rule.

The proposed reduction of the size of try nets that are exempt from TED requirement drew numerous comments, ranging from total support to total opposition. Most fishers who commented on this proposal indicated that requiring TEDs in large try nets with 20 ft (6.1 m) headrope lengths would not be inappropriate, but that the 12 ft (3.7 m) headrope length and 15 ft (4.6 m) footrope length of the proposed rule was too small. Many of these fishers indicated that they preferred to use try nets of 15 or 16 ft (4.6 or 4.9 m) headrope lengths and that reducing the size of TED-exempt try nets, but still allowing the use of 15 or 16 ft (4.6 or 4.9 m) try nets without TEDs, would be acceptable to them. Objections to requirements for TEDs in try nets smaller than 15 ft (4.6 m) headrope length included alleged difficulty in handling the try net with a TED installed, the need to use a large try net in order to sample for white shrimp, and impossibility of installing TEDs in try nets. Many of the comments revealed

the misconception that the proposed rule would completely prohibit the use of try nets greater than 12 ft (3.7 m) headrope length or 15 ft (4.6 m) footrope length. Under the proposed rule, fishers would be able to use any try net larger than 12 ft (3.7 m) headrope length or 15 ft (4.6 m) footrope length so long as a TED was installed. Fishers who felt that a large try net—20 ft (6.1 m) headrope length, for example—was necessary for sampling white shrimp could still use that try net, but a TED would have to be installed to exclude any turtles captured by the try net.

NMFS gear experts have examined TED installations in various sizes of try nets. Successful installations of NMFS-approved TEDs, were made in try nets with headrope lengths of 20, 15, 12, and 10 ft (6.1, 4.6, 3.7, and 3.0 m). The effectiveness of the TEDs did not appear to be reduced by installation in the try nets, when a small sample of juvenile turtles were introduced into the TED-equipped try nets. All of the try nets tested were bib trawls, a net type that opens high off the bottom and is preferred for sampling white shrimp. The TED-equipped try nets exhibited no problems with gear deployment or retrieval at any of the tested try net sizes. The only observed problem with TED installation in the try nets was a slight loss of net spread in the smaller net sizes due to the restriction of net stretching at the throat of the net where the TED is attached. The observed loss of net spread could be compensated with the installation of slightly larger trawl doors on the try net.

As discussed in the proposed rule, NMFS has conducted an additional study to clarify the relationship between try net headrope length and the rate of sea turtle captures. In March 1996, NMFS examined the sea turtle capture rates of three sizes of try net (12, 15, and 20 ft (3.7, 4.6, 6.1 m) headrope length) in Canaveral Channel, FL, an area of high sea turtle abundance. In 100 simultaneous, short-duration tows of the three try nets, 35 turtles were caught: 17 in the 20 ft (6.1 m) net, 10 in the 15 ft (4.6 m) net, and 8 in the 12 ft (3.7 m) net. Thus, the number of turtles captured increased as net size increased. The catch per unit effort (CPUE), which standardizes catch rates by 100 ft (30.5 m) of headrope length hours fished for the three net sizes were 1.70, 1.33, and 1.33 for the 20 ft, 15 ft, and 12 ft (6.1, 4.6, 3.7 m) headrope length try nets, respectively. These adjusted CPUEs were not significantly different and indicate that all try nets capture turtles at approximately the same rate, proportional to headrope length.

In summary, TEDs can be effectively installed in large and small try nets, with very minor or no operational changes, and they should be effective in excluding captured turtles. The TEDs are compatible with large try nets and bib-type try nets that can be used for sampling white shrimp. NMFS believes that allowing 15 or 16 ft (4.6 or 4.9 m) headrope length try nets to remain exempt from TED requirements, as proposed by some commenters, would result in sea turtles being provided with little additional protection, as many shrimpers would continue to use the larger try nets and to capture turtles at the same rate without the possibility of escape through TEDs. The proposed exemption of try nets with a 12 ft (3.7 m) headrope length and 15 ft (4.6 m) footrope length or less would provide greater sea turtle protection, in that fishers will be able to either use TEDs in larger try nets or use try nets of a smaller size, that are readily commercially available and that will reduce the rate of turtle capture due solely to its size. Smaller size try nets also have only a small tail bag to accumulate shrimp catch. Thus, there would be little incentive to use a small try net longer than necessary to monitor shrimp catch rates.

The proposal to remove the approval of soft TEDs also drew numerous comments, again ranging from opposition to support. Fishers and other commenters from the Southeast Atlantic area generally concurred that soft TEDs were not as effective as hard TEDs in excluding turtles. Many commenters from this area believe that banning soft TEDs is a reasonable measure to attempt to reduce sea turtle mortality and strandings. Some commenters from the Gulf of Mexico shrimp fishery objected to the removal of the approval of all soft TEDs, however. While agreeing that the Morrison, Taylor, and Parrish soft TEDs may not be effective and should be disapproved, many commenters stated that the evidence regarding the performance of the Andrews soft TED was not sufficient to justify disapproving it, and that the Andrews TED had many positive qualities justifying its continued use. In response to these comments, NMFS has undertaken additional studies, including observations of Andrews TED performance versus hard TED performance on the commercial shrimping grounds and is in the process of examining the turtle exclusion abilities of commercially available Andrews soft TEDs. NMFS will make a complete response, including the results of the additional studies regarding the

Andrews soft TED, once all studies are completed and before taking any final action on the proposed rule. The Andrews TED is believed to be used only rarely in the Atlantic shrimping grounds, where the Morrison is the preferred soft TED.

The measure of the proposed rule that was most vigorously and frequently opposed by commenting fishers and other shrimp industry representatives in the Southeastern Atlantic Area was the prohibition on the use of bottom-opening hard TEDs in the proposed Atlantic SFSTCA. One conservation organization—Earth Island Institute—and the state departments of natural resources in both Georgia and South Carolina also objected to the proposed bottom-opening TED ban. Commenters stated that bottom-opening hard TEDs are necessary to exclude the large amounts of bottom debris that occur in their fishing areas. They also stated that top-opening hard TEDs are more likely than bottom-openers to twist, which would lose shrimp and entangle turtles and also that top-opening TEDs were likely to bog down and cause the entire TED and tailbag to be torn off. Some commenters stated that the longer escape times of turtles in bottom-opening hard TEDs versus top-opening hard TEDs and prolonged submergences resulting from repeated captures were not sufficiently convincing reasons for restricting the use of bottom-opening hard TEDs. Many commenters asked that restrictions on the use of bottom-opening TEDs not be implemented before other sea turtle protective measures are implemented and evaluated for their effectiveness.

NMFS has repeatedly tried to verify the reported problems of twisting, clogging, and torn off top-opening TEDs but has generally been unable to do so. The preference of Louisiana shrimpers for top-opening hard TEDs in areas with extremely trashy bottoms does not support a systematic operational problem with top-opening hard TEDs. Nonetheless, NMFS recognizes that fishers in the Atlantic have predominantly used bottom-opening hard TEDs, were among the first to begin widespread use of TEDs, and have experience and a strong preference for this gear type. NMFS remains concerned that bottom-opening hard TEDs that are not properly floated or weighed down with debris will prevent turtle escape because the escape opening is blocked by the sea floor, and that bottom-opening hard TEDs are less efficient than top-opening hard TEDs in releasing turtles, with turtles taking approximately twice as long to escape, even under ideal conditions. In

controlled testing of TEDs, however, properly floated bottom-opening hard TEDs have always shown excellent success at sea turtle exclusion, albeit at a somewhat slower rate than for top-opening hard TEDs. NMFS is currently conducting additional testing on the relative effectiveness and advantages of top- and bottom-opening hard TEDs. Pending the results of this testing, NMFS believes that capture in try nets and ineffective soft TEDs poses a greater threat to sea turtles than bottom-opening hard TEDs, due to a lesser likelihood of escape from soft TEDs and the longer forced submergences in try nets. For this reason, NMFS is not including restrictions on the use of bottom-opening TEDs in this temporary rule, although it is a component of the proposed rule. However, continued elevated strandings following the implementation of the conservation measures in this action may result in increased gear restrictions or area closures.

Some Georgia fishers offered a proposal that they felt would address the problem of the adverse effects of heavy shrimping effort. These fishers advocated a nighttime closure of Federal waters to shrimping, at least during the early part of the shrimping season. The recommended nighttime closure would be compatible with Georgia state laws that prohibit trawling between 8 p.m. and 5 a.m. eastern standard time. Enforcement of closures in state waters would be greatly enhanced by cooperating Federal action and a coordinated state-Federal closure may also be a boon to local, primarily daytime, shrimpers by reducing the pressure to fish around the clock. Traditionally, white shrimp are primarily caught during the day, while brown shrimp are primarily pursued at night. Unfortunately commenters have not provided NMFS with any data that would allow an assessment of the possible impacts of a nighttime closure in Federal waters on shrimp catch, catch allocation, or effort reduction and the possible benefits to sea turtles. If NMFS can determine that the benefits to sea turtles from nighttime closures of Federal waters off Georgia would be significant and would be compatible with other resource management goals, nighttime closures may be pursued through a future rulemaking action. NMFS requests the public to submit any relevant information on the impacts of nighttime closures of Federal waters off of Georgia.

#### Restrictions on Fishing by Shrimp Trawlers

Pursuant to 50 CFR 227.72(e)(6), the exemption for incidental taking of sea turtles in 50 CFR 227.72(e)(1) does not authorize incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an ITS or incidental take permit, or may be likely to jeopardize the continued existence of a species listed under the ESA. The June 11, 1996 biological opinion includes a condition under the ITS that specifies that NMFS must respond to stranding events the reach unacceptable levels based on historical events. If investigations suggest that management action is necessary in areas of high shrimping effort, temporary additional restrictions will be required pursuant to 50 CFR 227.72(e)(6). Historically, Georgia fishers have exhibited a high degree of cooperation with existing regulations. Therefore, it does not appear that the recent high level of strandings along the Georgia coast are a result of non-compliance with existing sea turtle conservation measures. Based on the foregoing analysis of relevant factors and the biological opinion prepared in conjunction with this action pursuant to Section 7 of the ESA, the AA has determined that continued takings of sea turtles by shrimp fishing off Georgia are unauthorized, are likely to continue if no action is taken, and would violate the terms and conditions of the incidental take statement of the June 11, 1996 biological opinion and therefore takes this action.

The measures that NMFS is implementing include:

1. Prohibition of the use of soft TEDs; and
2. Prohibition of the use of try nets, with a headrope length greater than 12 ft (3.7 m) or a footrope length greater than 15 ft (4.6 m), unless the try nets are equipped with NMFS-approved hard or special hard TEDs.

These restrictions are being applied in inshore waters and offshore waters seaward to 10 nm (18.5 km) along the Georgia coast, between the Georgia-Florida border and the Georgia-South Carolina border. This area includes inshore and nearshore waters in NMFS fishery statistical Zone 31, a small part of the southern portion of statistical Zone 32, and approximately 18 miles (29.0 km) of the northern portion of statistical Zone 30. Under 50 CFR 217.12, offshore waters are defined as 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 NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80; inshore waters are those marine and tidal waters shoreward of the COLREGS line. For the purpose of this rule only, notwithstanding any other definitions that may exist, the Georgia-South Carolina border in the Atlantic Ocean is defined to be the line segment connecting the points 32°02'30.6" N. lat., 080°51'03.0" W. long. (the seaward tip of the jetty protecting the north side of the mouth of the Savannah River) and 31°58'46.8" N. lat., 080°38'21.0" W. long. (a point exactly 10 nm (approximately 18.5 km) seaward of the nearest land at Tybee Island and located on the line extending in a direction of 109° from true north from the previous point), and the Georgia-Florida border in the Atlantic Ocean is defined as the line along 30°42'45.6" N. lat.

Pursuant to 50 CFR 227.72(e)(4)(iii) soft TEDs have been certified and approved for use. However, the use of soft TEDs by the shrimping fleet has been associated with elevated sea turtle strandings. Because of the inherent properties of synthetic webbing, soft TEDs are difficult to install properly and once installed, their actual in-water configuration, shape, and performance cannot be determined even by professional net makers. Furthermore, changes made by a trawler captain to the fishing configuration of a net to match fishing conditions—such as changing door sizes or angles, adding flotation to the headrope, or adjusting center bridle tension on tongue or bib trawls—and the accumulation of catch and debris in the trawl will all affect the shape of the soft TED and thus its effectiveness at releasing turtles. A more complete explanation for the prohibition of soft TEDs is provided in the temporary rulemakings implemented by NMFS last year and in the proposed rule, and is not repeated here.

Pursuant to 50 CFR 227.72(e)(2)(ii)(B)(1), try nets up to 20 ft (6.1 m) headrope length have been exempted from the TED requirements, because they are only intended for use in brief sampling tows not likely to result in turtle mortality. Turtles are, however, caught in try nets, and either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including two mortalities, have been documented by NMFS, and anecdotal accounts suggest multiple sea turtle captures in try nets are occurring in Georgia waters. The original assumption by NMFS that try nets are

only towed for short periods of time now appears to be invalid. In addition to numerous anecdotal reports from shrimpers to this effect, NMFS gear specialists have observed shrimpers regularly towing try nets for periods well over an hour. Since long try net tows defeat the purpose of assessing catch rates, the apparent intention of these long tows is to use the try nets as auxiliary nets to increase the overall shrimp capture, using a TED-less net. Such use of try nets may be seriously contributing to turtle capture, mortality, and strandings.

#### Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12 are applicable to this action, as well as all relevant provisions in 50 CFR parts 217 and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e)(3) or (e)(6).

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that for a 30-day period, starting on June 24, 1996 through 11:59 p.m. (local time) July 24, 1996, fishing by shrimp trawlers in inshore waters and offshore waters seaward to 10 nm (18.5 km) from the COLREGS line along the coast of Georgia, between the Georgia-South Carolina border and the Georgia-Florida border, is prohibited unless the shrimp trawler is in compliance with all applicable provisions in 50 CFR 227.72(e) and the following prohibitions:

1. The use of soft TEDs described in 50 CFR 227.72(e)(4)(iii) is prohibited.
2. The use of try nets with a headrope length greater than 12 ft (3.7 m) or a footrope length greater than 15 ft (4.6 m) is prohibited unless a NMFS-approved hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.7 m) or less and a footrope length 15 ft (4.6 m) or less remain exempt from the requirement to have a TED installed in accordance with 50 CFR 227.72(e)(2)(ii)(B)(1). For the purpose of this rule only, notwithstanding any other definitions that may exist, the Georgia-South Carolina border in the Atlantic Ocean is defined to be the line segment connecting the points 32°02'30.6" N. lat., 080°51'03.0" W. long. (the seaward tip of the jetty protecting the north side of the mouth of the Savannah River) and 31°58'46.8" N. lat., 080°38'21.0" W. long. (a point exactly 10 nm (approximately 18.5 km) seaward of the

nearest land at Tybee Island and located on the line extending in a direction of 109° from true north from the previous point), and the Georgia-Florida border in the Atlantic Ocean is defined as the line along 30°42'45.6" N. lat.

All provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(1) (use of try nets), and 50 CFR 227.72(e)(4)(iii) (Soft TEDs), that are inconsistent with these prohibitions are hereby suspended for the duration of this action.

NMFS hereby notifies owners and operators of shrimp trawlers in the area subject to restrictions that they are required to carry a NMFS-approved observer aboard such vessel(s) if directed to do so by the Regional Director, upon written notification sent to either the address specified for the vessel registration for documentation purposes, or otherwise served on the owner or operator of the vessel. Owners and operators and their crew must comply with the terms and conditions specified in such written notification.

#### Additional Conservation Measures

The AA may withdraw or modify a determination concerning unauthorized takings or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the Federal Register pursuant to 50 CFR 227.72(e)(6).

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

#### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because neither section 553 of the Administrative Procedure Act (APA), nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

Pursuant to section 553(b)(B) of the APA, the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable and contrary to the public interest to provide prior notice and opportunity for comment, because unusually high levels of turtle strandings have been reported in shrimp fishery statistical Zone 30 (northern portion) and 31, and continue to occur as shrimping continues. Any delay in this action will likely result in

additional fatal takings of listed sea turtles. In addition, good cause exists because NMFS has addressed comments or similar provisions in the proposed rule in the context of this temporary action.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the 30-day delay in effective date. In addition to the immediate need to protect listed sea turtles, these restrictions are expected to impose only a minor burden on shrimp fishers. The predominant TED designs in use in the affected area are single-grid hard TEDs, which will not require any modifications. Trawlers equipped with only soft TEDs may be required to move out of the affected area, or to equip their nets with hard TEDs. However, these trawlers are expected to be few in number given that many may have already equipped their nets with hard TEDs in response to the previous rules requiring the use of such TEDs in waters off Georgia in 1995. For those trawlers who have yet to equip their nets with hard TEDs, single-grid hard TEDs are available for \$75.00 to \$350.00 and take only several hours to install. While some fishers may not elect to equip their larger try nets with hard grid TEDs, and thus, would be unable to monitor their catch rate during long tows, they could monitor their catch rate with smaller try nets not required to have an NMFS-approved hard TED installed. The burden of this action on shrimp fishers is expected to be minimized by the fact that fishers in most of the affected areas have previously modified or acquired gear to comply with earlier restrictions that were identical or more stringent than the present action.

The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and establishing the 30-day notice procedures. An EA has been prepared for this action. Copies of the EA are available (see **ADDRESSES**).

Dated: June 21, 1996.

Charles Karnella,  
*Acting Director, Office of Management Information, National Marine Fisheries Service.*

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BILLING CODE 3510-22-F

## 50 CFR Part 625

[Docket No. 960314074-6074-01; I.D. 061896B]

### Summer Flounder Fishery; Extension of Scup Fishery Emergency

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Emergency interim rule; extension.

**SUMMARY:** NMFS issues an extension to an emergency interim rule that implements minimum fish size and minimum mesh requirements for the scup fishery north of Cape Hatteras. Emergency implementation of the measures is necessary because of the overexploited status of the stock. The emergency interim rule for scup that is effective from March 22, 1996, through June 25, 1996, is extended another 90 days by this action.

**EFFECTIVE DATE:** The emergency interim rule published on March 27, 1996 at 61 FR 13452 is extended through September 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Regina Spallone, Fishery Policy Analyst, (508) 281-9221.

**SUPPLEMENTARY INFORMATION:** In November 1995, the Mid-Atlantic Fishery Management Council (Council) initially requested emergency action to implement management measures for the scup fishery, which include a minimum fish size of 9 inches (22.9 cm) total length (TL) for the commercial scup fishery and 7 inches (17.8 cm) TL for the recreational fishery, and a mesh restriction for any vessel fishing in the Exclusive Economic Zone (EEZ) and possessing 4,000 lb (1,814 kg) or more of scup. An emergency rule to implement immediately these measures was published in the Federal Register on March 27, 1996 (61 FR 13452), with effective dates of March 22, 1996, through June 25, 1996. A full discussion of the status of the scup stock and the need for emergency action is found in the preamble to that emergency interim rule and is not repeated here.

In November 1995, the Council adopted the same measures contained in the emergency rule in Amendment 8 to the Fishery Management Plan for the Summer Flounder Fishery (FMP), which it has submitted for Secretarial review. Amendment 8 also contains many additional provisions not contained in the emergency rule. A proposed rule to implement Amendment 8 to the FMP was published in the Federal Register on June 3, 1996 (61 FR 27851), with an ending date for public comments of July 18, 1996. Therefore, if Amendment 8 is approved, the final rule to implement it will not be published prior to end of the first 90-day effective period of this emergency rule (June 25, 1996), thus leaving a gap between the ending date of the emergency interim rule and the final rule implementing Amendment 8.

This would leave the already overfished scup stock unprotected from increased exploitation. Therefore, an extension to the emergency rule is needed. The Council, at its April 1996 meeting requested an extension of the emergency interim rule implementing management measures for the scup fishery. This extension of the emergency rule is in effect from June 26, 1996, through September 23, 1996, or until regulations implementing Amendment 8 become effective.

## Classification

The Assistant Administrator for Fisheries (AA) has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

Extension of the emergency rule is intended to prevent the possible collapse of the scup fishery. The AA finds good cause to extend the emergency rule in accordance with section 305(c)(3)(B) of the Magnuson Act. It would be contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of this emergency rule under the provisions of sections 553(b) and (d) of the Administrative Procedure Act. Failure to implement an extension of the emergency measures would leave the overfished scup stock unprotected.

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

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

Dated: June 20, 1996.

Henry R. Beasley,  
*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 96-16372 Filed 6-24-96; 4:13 pm]

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## 50 CFR Part 679

[Docket No. 960321089-6175-02; I.D. 031396B]

RIN 0648-AG41

### Fisheries of the Exclusive Economic Zone off Alaska; Allow Processing of Non-Individual Fishing Quota Species

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