

than cost or pricing data in the solicitation where a competitive firm-fixed-price acquisition is involved. However, FAR 22.1103 requires the provision at 52.222-46, Evaluation of Compensation for Professional Employees, be inserted in solicitations for negotiated service contracts when the contract amount is expected to exceed \$500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires offerors to provide certain information that is considered to be information other than cost or pricing data, and it applies to competitive firm-fixed-price acquisitions. The result is an inconsistency between the FAR and the NFS coverage.

The final rule eliminates this inconsistency by recognizing the FAR 22.1103 requirement as an exception.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this does not impose any new requirements beyond those already required by the FAR.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1815

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1815 is amended as follows:

1. The authority citation for 48 CFR part 1815 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. Section 1815.403-3 is revised to read as follows:

1815.403-3 Requiring information other than cost or pricing data.

* * * * *

(b) As indicated in 1815.403-1(b)(1), the adequate price competition exception applies to all competitive acquisitions. For other than firm-fixed price competitions, only the minimum

information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed price competitions, the contracting officer shall not request any cost information, except as required by FAR 22.1103, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.99120 7322-9322-01; I.D.120399A]

RIN 0648-AN30

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, an additional restriction on shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, operating in Atlantic offshore waters out to 10 nautical miles (nm)(18.3 km) from the coast of Florida between 28° N. latitude and the Georgia-Florida border. Shrimp vessels operating in this area must use a TED with an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from December 8, 1999 through January 7, 2000. Comments on this action are requested, and must be received by January 7, 2000.

ADDRESSES: Comments on 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, 727-570-5312, or Barbara A. Schroeder, 301-713-1401. For assistance in modifying TED escape openings to exclude leatherback sea

turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228)-762 4591 or by fax (228) 769-8699.

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 populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species as a result of shrimp trawling activities has been documented in the Gulf of Mexico and in the Atlantic Ocean. Under the Endangered Species Act (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 part 223, subpart B) 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 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 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 223.206(d)(4)).

Leatherback Sea Turtles

Leatherback sea turtles are the largest species of sea turtle. They weigh between 600 and 1300 pounds (272 and 590 Kg) and have carapaces 5 to 6 ft (1.5 to 1.8 m) in length. Leatherbacks are widely distributed and can range from the tropics to sub-Arctic waters during their feeding migrations. They nest in low numbers on U.S. beaches and are primarily seen in coastal waters of the southeast U.S. during their northern springtime migration, especially when high abundances of jellyfish occur nearshore. However, they can be found in U.S. waters throughout the year.

Because of their size, leatherbacks are not likely to escape from trawls, even when equipped with approved TEDs. The sea turtle conservation regulations specify a minimum TED opening size in the Atlantic of 35 inches (89 cm) horizontally and 12 inches (30.5 cm) vertically. When the regulations requiring TEDs in shrimp trawls year-round were adopted (57 FR 57348, December 4, 1992), NMFS recognized that the then-existing TEDs would not protect leatherbacks, and the biological opinion on the regulations concluded that leatherback mortality would remain a problem that must be addressed to avoid jeopardizing the recovery of this species. Consequently, the August 19, 1992, biological opinion's incidental take statement included as a term and condition which specified that the episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated. This could be accomplished by temporary area closures, by requiring an increase in size of TED openings to allow leatherbacks to escape at times when their abundance is high, by limiting tow times, or by implementing some other protective measure. In part, to address this problem, the 1992 sea turtle conservation regulations included the provisions of 50 CFR 223.206(d)(4), to provide "a mechanism to prevent sea turtle mortalities * * * when existing restrictions on the shrimp fishery are found to be ineffective (57 FR 18453)."

Recent Events

NMFS has been notified by the Florida Fish and Wildlife Conservation Commission that extraordinarily high numbers of endangered leatherback sea turtles stranded along northeast Florida beaches in November 1999. From October 28 to November 29, a total of 15 leatherback turtles have washed ashore from Nassau through Brevard counties in shrimp zones 28, 29, and 30. By comparison, the total annual number of leatherbacks stranding statewide has averaged 23 over the past 10 years, and has averaged only 3 in zones 28–30 in November. Considering the rarity of leatherbacks—an average of only 45–50 females nest in Florida each year—and the fact that strandings are only a minimum estimate of actual mortality, these strandings represent a serious impact to the recovery and survival of the local population.

The late fall and early winter is traditionally a major shrimping season along northeast Florida, when shrimp leave the estuaries to the north and migrate southward along the coast as waters cool. Shrimp fishing along the coast is currently active. The Florida

Marine Patrol has been responding to citizen complaints about shrimp trawlers fishing too near the beach or at night, in violation of state fishing requirements. The trawlers have been reported in the same areas as the leatherback strandings. The minimum size for TED openings specified in the sea turtle conservation regulations is not large enough to release leatherback turtles, and capture and drowning in shrimp trawls is the likely cause of the leatherback strandings. Even if shrimp trawling were not the cause of the strandings observed thus far, the high leatherback mortality level indicates that leatherbacks are present in unexpectedly high abundance on and near the shrimping grounds. Shrimp trawling with TEDs with openings that are not large enough to release leatherbacks would be expected to continue to unnecessarily take leatherbacks.

Analysis of Other Factors

Examination of the strandings in northeast Florida does not indicate any significant sources of mortality other than shrimp trawling. The carcasses have primarily been coming ashore in the vicinity of areas where shrimping effort has been concentrated. NMFS and state personnel will continue to investigate factors other than shrimping that may contribute to leatherback sea turtle mortality in Florida, including other fisheries and environmental factors.

Restrictions on Fishing by Shrimp Trawlers

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d) 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 August 19, 1992, biological opinion includes a condition under the ITS that specifies that NMFS must eliminate the episodic take of leatherback turtles by shrimp trawlers through area closures, requirements for large TED opening sizes, limitations on tow times, or some other protective measure. Failure by NMFS to take action to address the significant and ongoing level of mortality seen in northeast Florida over the past month clearly would violate the ITS and result in unauthorized takings. Therefore, the Assistant Administrator for Fisheries, NOAA (AA) issues this determination that further takings of leatherback turtles in Atlantic Ocean

waters off northeast Florida by shrimp trawlers using TEDs with small escape openings are unauthorized and imposes this additional restriction to shrimp trawling activities to conserve endangered leatherback sea turtles. Specifically, the AA closes all Atlantic offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded on the south by 28° N. lat. and on the north by 30°42'45.6" N. lat. (the Georgia-Florida border), to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. This restriction is effective from December 8, 1999 through 11:59 p.m. (local time) January 7, 2000.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570-5312 for updated area closure information.

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 223.206(d)(4).

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.

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered leatherback sea turtles pursuant to the ESA and other applicable law.

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 action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect endangered leatherback sea turtles. Notice and

opportunity to comment was provided on the proposed rule (57 FR 18446, April 30, 1992) for the final rule establishing the procedures to take this action. Furthermore, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. Such delay would also prevent the agency from implementing this action in a timely manner to protect endangered leatherback sea turtles. Accordingly, the AA is making the rule

effective December 8, 1999 through January 7, 2000. Also as stated above, this restriction has been announced on the NOAA weather channel, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification 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 the final rule (57

FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notifications such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: December 8, 1999.

Penelope D. Dalton,

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

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