

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

Dated: May 3, 2001.

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Acting Executive Associate, Director for Mitigation.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 010409084-1084-01; I.D. 030601A]

RIN 0648-AP16

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Interim final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) issues an interim final rule to add the double cover flap Turtle Excluder Device (TED) to the list of hard TEDs approved for use by shrimp trawlers operating in the Atlantic Ocean off the southeastern United States and in the Gulf of Mexico and as a TED approved for use without modification in a closed portion of the leatherback conservation zone. NMFS is adding this TED to these lists because upon completion of the testing protocols the TED has been found to meet all criteria for approval. The intent of this rule is to provide an additional option by which fishermen can comply with the requirement that all nets rigged for fishing in the Atlantic or Gulf Areas have an approved TED installed for use.

DATES: This interim final rule is effective May 14, 2001. Comments on this interim final rule are requested, and must be received by June 13, 2001. Comments sent by email or the internet will not be accepted.

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: Robert Hoffman, 727-570-5312.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or

threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtle (*Chelonia mydas*) 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 trawling activities has been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. 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 part 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) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED—the Parker soft TED.

TEDs incorporate an escape opening, usually covered by a webbing flap, that 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 experimental TED testing. 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. In the Atlantic Area, the opening must be at least 35 inches (89 cm) in width and 12 inches (30 cm) in height. In the Gulf Area, the opening must be at least 32 inches (81 cm) in width and 10 inches (25 cm) in height.

Leatherback Contingency Plan

NMFS, in cooperation with the U.S. Fish and Wildlife Service, South Carolina Wildlife & Marine Resources Department, Georgia Department of Natural Resources, and Florida

Department of Environmental Protection developed the Leatherback Contingency Plan to reduce leatherback mortality in shrimp trawls and, in 1995, NMFS established the leatherback conservation zone regulations to implement the Leatherback Contingency Plan (60 FR 25620, May 12, 1995). Leatherback turtles are too large to fit through the standard size TED opening; when mature they can weigh between 600 and 1300 pounds (273 and 591 kg). The Leatherback Contingency Plan includes procedures to identify when and where TEDs with larger escape openings should be used to protect leatherbacks during their annual, spring migration along the Atlantic seaboard. The leatherback conservation zone is the waters north of Cape Canaveral, FL, to the North Carolina-Virginia border. Within this zone, weekly aerial surveys for leatherback sightings are conducted from January 1 through June 30 of each year. If sightings, in replicate surveys, exceed 10 leatherback turtles per 50 nautical miles (nm)(92.6 km) of trackline, NMFS closes, for a 2-week period, waters within 1° lat. of the trackline to shrimp trawlers unless they use a TED modified with the leatherback exit opening. There is currently one approved leatherback modification for hard TEDs and one for the Parker soft TED.

Double Cover Flap TED

In June 2000 NMFS tested the new double cover flap TED design. This design includes the use of a split flap. This TED has an escape opening with a width of 56 inches (142 cm), covered with a split flap composed of two equal size rectangular panels. Each panel must be no less than 58 inches (147 cm) wide and must not overlap each other by more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The edge of the panels may be attached 6 inches (15 cm) behind the posterior edge of grid, and the end of each panel must not extend more than 6 inches (15 cm) past the center of the bottom of the grid.

Double Cover Flap TED Testing

A total of ten turtles were exposed to a double cover flap TED in the bottom opening configuration. Five of these turtles were exposed to a double cover flap TED with the flap extending 24 inches (61 cm) past the grid and the other five were exposed to a TED with the flap extending 3 inches (8 cm) past the grid frame. All ten turtles escaped, but escape from the short flap TED was faster by an average of 33 seconds. The long flap in this configuration also had trouble maintaining its integrity during

use. After disturbances (i.e., debris or an animal going through the opening) the flaps sometimes became caught in the grid causing large gaps which could lead to shrimp loss. Shorter flaps (6 inches (15 cm) or less) did not have this problem.

During the evaluation of the flaps, gear specialists paid particular attention to the overlap-split flap and whether it was capable of re-closing correctly and repeatedly. Due to the fact that the individual flap-pieces overlap, once opened, the bottom flap must fold back in place before the top flap. During dives, efforts to distort the two flap pieces did not affect the manner in which the flap closed. No matter how much the diver opened and distorted the flap, it always closed in the correct sequence.

This TED was also tested to see if a large object could easily pass through. NMFS obtained the carapace measurements of 15 nesting female leatherback turtles and used these measurements to construct a pipe framed model of a leatherback turtle. This model measured 40 inches wide by 21 inches deep (102 cm by 53 cm). The test was performed by a diver swimming through the trawl with the model and pushing it through the TED opening. During this test, the diver was able to push the model through the opening with ease. When the model was inverted (simulating the dorsal surface of the turtle being against the TED frame), the diver was still able to push the model through the opening with ease.

The double cover flap TED was tested to determine its ability to retain shrimp when compared to a currently available commercial TED with a standard flap. Twenty-four comparative tows were made. The double cover flap TED gained 0.00257 pounds of shrimp per tow when compared to the TED with the standard flap.

Provisions of the Interim Final Rule

This interim final rule allows the use of the double cover flap TED in all trawls required to use a TED in the Atlantic off the southeastern United States and the Gulf of Mexico, including during times when the leatherback contingency plan has been implemented due to high concentrations of leatherback turtles in a specific area. The double cover flap TED is a modification of a standard, single-grid hard TED with the escape opening enlarged to at least 56 inches (142 cm) wide and 20 inches (51 cm) forward and aft, covered with a split flap composed of two equal size rectangular panels. Each panel must be no less than 58 inches (147 cm) wide and must not

overlap each other by more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The edge of the panels may be attached 6 inches (15 cm) behind the posterior edge of the grid, and the end of each panel must not extend more than 6 inches (15 cm) past the center of the posterior edge of the grid. Chafing webbing must not be used with this TED, as such use would defeat the center-opening design of this TED. Use of accelerator funnels with this TED is prohibited. NMFS is concerned that the amount of webbing that would have to be used to construct an accelerator funnel that is large enough to exclude leatherback turtles could result in slack webbing in the throat of the net and potentially hinder the escape of sea turtles of all sizes. Although the regulations for hard TEDs modified to have an escape opening large enough to exclude leatherback turtles (227.207(a)(7)(ii)(B) (1)) currently allow the use of an accelerator funnel NMFS is considering proposing a rule which would prohibit the use of an accelerator funnel.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. This interim final rule will not have significant economic impact on a substantial number of small entities because the provisions of the interim final rule would allow fishermen an additional TED option. As a result, a regulatory flexibility analysis was not prepared.

This interim final rule adds a new TED to the list of TEDs approved for use, thus helping the fishermen by giving them one more TED option from which to choose. Fishermen do not have to use this new TED (they can continue to use existing ones if they so choose.) Accordingly, the agency determined to permit use of the TED immediately, but will receive and consider comments prior to making the interim rule a final rule.

Because this interim final rule does not create any new regulatory burden, but instead relieves regulatory restrictions by adding an option for complying with existing sea turtle conservation requirements, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date.

List of Subjects in 50 CFR Part 223

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

Dated: May 8, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.207, paragraph (a)(7)(ii)(B) is revised to read as follows:

§ 223.207 Approved TEDs

* * * * *

(a) * * *

(7) * * *

(ii) * * *

(B) *Escape opening for leatherback turtles—* (1) *Standard leatherback opening.* A single-grid hard TED escape opening shall be enlarged to allow leatherback turtles to escape by cutting an exit hole in the extension forward of the TED frame 26 inches (66 cm) deep, on each side, by 83 inches (211 cm) across (Figures 12a and 12b to this part). Excess webbing is removed by cutting across ½ mesh forward of the TED frame. The exit hole cover is made by cutting a 133-inch (338 cm) by 58-inch (148 cm) piece of webbing no smaller than 1½ inch (4 cm) stretch mesh and no larger than 1 ⅝ inch (4.2 cm) stretch mesh. The 133-inch (338 cm) edge of the cover is attached to the forward edge of the opening (83-inch (211 cm) edge) with a sewing sequence of 3:2. The cover must overlap 5 inches (13 cm) of the exit hole on each side. The side of the cover is attached, maintaining the 5-inch (13 cm) overlap, to the side of the opening by sewing 28 inches (71 cm) of the cover to 26 inches (66 cm) of the opening forward of the TED frame and by sewing 15 inches (38 cm) of the extension behind the TED frame. The cover may extend no more than 24 inches (61 cm) behind the posterior edge of the TED frame. The circumference of the exit opening must be 142 inches (361 cm) when stretched. If an accelerator funnel is used with a single-grid hard TED, modified as above, it must have a minimum circumference of 142 inches (361 cm).

(2) *Double cover flap TED opening.* A single-grid hard TED escape opening

shall be enlarged to allow leatherback turtles to escape by cutting an exit hole in the extension forward of the TED frame 20 inches (51 cm) deep, on each side, by 56 inches (142 cm) across. Excess webbing is removed by cutting across $\frac{1}{2}$ mesh forward of the TED frame. The exit hole cover is made by cutting two equal size rectangular panels of webbing with mesh sizes no smaller than $1\frac{1}{2}$ inch (4 cm) stretch mesh and no larger than $1\frac{5}{8}$ inch (4.2 cm) stretch mesh. Each panel must be no less than 58 inches (147 cm) wide. The 58-inch

(147 cm) edges of each panel are attached to the forward edge of the opening (56-inch (142 cm) edge) with a sewing sequence of 3:2. When both panels are attached, they may overlap each other by no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The panels may not overlap the escape hole cut by more than 3 meshes on either side. The outer edges of the panels may be attached in the same row of meshes forward and aft. The end of each panel may not extend more than 6

inches (15 cm) past the posterior edge of the grid. Accelerator funnels and chafing webbing may not be used with this TED. (Figure 16 of this part illustrates the escape opening and flap dimensions for the double cover flap TED.)

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3. Figure 16 to part 223-Escape Opening and Flap Dimensions for the Double Cover Flap TED is added to read as follows:

BILLING CODE 3510-22-S

FIGURE 16 TO PART 223—Escape Opening and Flap Dimensions for the Double Cover Flap TED

