

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Lioplax, cylindrical ...	* <i>Lioplax cyclostomaformis</i> .	* U.S.A. (AL)	* NA	* E	* 651	* NA	* NA
* Pebblesnail, flat	* <i>Lepyrium showalteri</i>	* U.S.A. (AL)	* NA	* E	* 651	* NA	* NA
* Rocksnnail, painted ...	* <i>Leptoxis taeniata</i>	* U.S.A. (AL)	* NA	* T	* 651	* NA	* NA
* Rocksnnail, plicate	* <i>Leptoxis plicata</i>	* U.S.A. (AL)	* NA	* E	* 651	* NA	* NA
* Rocksnnail, round	* <i>Leptoxis ampla</i>	* U.S.A. (AL)	* NA	* T	* 651	* NA	* NA
*	*	*	*	*	*	*	*

Dated: October 16, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[I.D. 102098A]

RIN 0648-AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Notification of an exemption and request for comments.

SUMMARY: NMFS issues this rule to allow the use of limited tow times by shrimp trawlers in the inshore waters of Mississippi and in the inshore waters of Louisiana, north and east of the Mississippi River to its terminus at the South Pass, as an alternative to the requirement to use Turtle Excluder Devices (TEDs). This area was affected by Hurricane Georges on and about September 27 to 29, 1998. NMFS has been notified by the Director of the Mississippi Department of Marine Resources that large amounts of debris in Mississippi Sound in the aftermath of the hurricane are causing difficulty with the performance of TEDs. NMFS has been notified by the Secretary of the Louisiana Department of Wildlife and Fisheries that his department had

received documentation that hurricane-related debris was interfering with TED performance in their shrimping grounds east of the river. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricane continue to make TED use impracticable.

DATES: This rule is effective from October 23, 1998, through October 31, 1998, when tow times must be limited to no more than 55 minutes measured from the time trawl doors enter the water until they are retrieved from the water, and from November 1, 1998, until November 23, 1998, when tow times must be limited to no more than 75 minutes. Comments on this rule are requested, and must be received by November 23, 1998.

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, 813-570-5312, or Barbara A. Schroeder, 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 kempi*), 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, have been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) 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 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 227.72 (e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize "compliance with tow time restrictions as an alternative to the TED requirement, if [he] 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 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times 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. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets that are not equipped with TEDs.

Recent Events

On September 27, Hurricane Georges made landfall on the Mississippi coast.

The hurricane remained stationary over the Mississippi coast for over 24 hours and deposited as much as 30 inches (76 cm) of rain on some areas. The combination of heavy rains and 10–12 foot (3.0 m–3.7 m) hurricane storm surge produced severe flooding in all three Mississippi coastal counties. The Director of the Mississippi Department of Marine Resources (Mississippi Director) sent an October 13 letter to the NMFS Southeast Regional Administrator stating, "Most of the coastal rivers in Mississippi exceeded flood stage and deposited large amounts of debris into [Mississippi Sound], which has resulted in problems for shrimpers." He further stated that the "debris...is having a negative impact on trawl and TED performance" and that "[w]hen TEDs become clogged they can no longer effectively exclude sea turtles, possibly increasing the chance of mortality to these endangered animals." His letter requested that NMFS use its authority to allow the use of 55-minute tow times as an alternative to TEDs for a 30-day period in Mississippi's inshore waters.

Flooding, high winds, and storm surge also affected areas in eastern Louisiana. The Secretary of the Louisiana Department of Wildlife and Fisheries (Louisiana Secretary) sent an October 20 letter to the NMFS Southeast Regional Administrator stating, "We have acquired documentation that debris caused by Hurricane Georges is interfering with TED performance in [Louisiana waters east of the Mississippi River]." His letter requested that an exemption from the required use of TEDs be granted immediately in the affected area.

Coastal areas of Alabama were also affected by Hurricane Georges. NMFS has already authorized the use of limited tow times, as an alternative to the required use of TEDs, in Alabama inshore waters (63 FR 55053; October 14, 1998).

Special Environmental Conditions

The Assistant Administrator finds that the impacts of Hurricane Georges have created special environmental conditions in some areas that may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator issues this rule to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of Mississippi, and in the inshore waters of Louisiana, north and east of the Mississippi River to its terminus at South Pass. The States of Mississippi and Louisiana are continuing to monitor the situation and are cooperating with NMFS in

determining the ongoing extent of the debris problem. Moreover, the Mississippi Director has stated that Marine Enforcement Division of the Mississippi Department of Wildlife, Fisheries, and Parks has agreed to assist with the enforcement of the restricted tow times, and the Louisiana Secretary has pledged that his department will enforce tow time restrictions for the duration of any exemption period. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitments from the Mississippi Director and the Louisiana Secretary to provide additional enforcement of the tow time restrictions is an important factor enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Mississippi and Louisiana inshore waters who are authorized under this rule to use restricted tow times to continue to use TEDs if possible. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts provide several 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. NMFS has had good experience with hard TEDs made of either solid rod or hollow pipe that incorporate a bent angle at the escape opening and recommends use of this type of TED, in a bottom-opening configuration, to help exclude debris. 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 result in debris clogging 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.

All of the preceding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Mississippi and eastern Louisiana (not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation area). This rule authorizes the use of restricted tow times as an alternative to the required use of TEDs. This rule 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 227.72(e)(2) who are operating in all inshore waters of the State of Mississippi and in the inshore waters of the State of Louisiana, north and east of the Mississippi River to its terminus at South Pass, in areas which the states have opened to shrimping. "Inshore waters", as defined at 50 CFR 217.12, means the marine and tidal waters landward 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. Instead of the required use of TEDs, shrimp trawlers may comply with the sea turtle conservation regulations by using restricted tow times. Through October 31, 1998, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are retrieved from the water. From November 1, 1998 until November 23, 1998, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

Additional Conditions

NMFS expects that shrimp trawlers operating in Mississippi or eastern Louisiana inshore waters without TEDs in accordance with this authorization will retrieve debris that is caught in their nets and return it to shore for disposal or to other locations defined by

the Mississippi Director or the Louisiana Secretary, rather than simply disposing of the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricane. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution From Ships) may apply to disposal at sea.

Alternative to Required Use of TEDs; Termination

The Assistant Administrator, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that the alternative authorized by this rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The Assistant Administrator may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. The Assistant Administrator may modify or terminate this authorization, as appropriate, at any time. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in Mississippi inshore waters. This authorization will expire automatically on November 23, 1998, unless it is explicitly extended through another notification to be published in the **Federal Register**.

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 allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to section 553(b)(B) of the Administrative Procedures Act (APA), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable, unnecessary,

and contrary to the public interest to provide prior notice and opportunity for comment. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane George, creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The Assistant Administrator has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing relief within the necessary timeframe. Furthermore, the public had notice and an opportunity to comment on 50 CFR 227.72(e)(3)(ii) when that regulation was finalized.

Pursuant to section 553(d)(1) of the APA, for the reasons cited above, and because this action relieves a restriction, this rule is effective immediately. As prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The Assistant Administrator 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 actions such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: October 22, 1998.

Gary C. Matlock,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246-7293-02; I.D. 102298A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 1998 unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective 0001 hours October 27, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 849,680 lb (385,408 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In calendar year 1997, a total of 815,741 lb (370,014 kg) were landed in New York, creating a 61,398 lb (27,850 kg) overage that was deducted from the amount allocated for landings in the state during 1998 (63 FR 23227, April 28, 1998). The resulting quota for New York is 788,282 lb (357,559 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional