

the clause at 252.232–7003) fulfills the requirement for a material inspection and receiving report (DD Form 250).

(End of clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223 and 224

[Docket No. 000320077–2302–03; I.D. 062501B]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

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

ACTION: Final rule.

SUMMARY: NMFS is amending the turtle excluder device (TED) regulations to enhance their effectiveness in reducing sea turtle mortality resulting from trawling in the southeastern United States. NMFS has determined that: some current approved TED designs do not adequately exclude leatherback turtles and large, immature and sexually mature loggerhead and green turtles; several approved TED designs are structurally weak and do not function properly under normal fishing conditions; and modifications to the trynet and bait shrimp exemptions to the TED requirements are necessary to decrease lethal take of sea turtles. These amendments are necessary to protect endangered and threatened sea turtles in the Atlantic Area (all waters of the Atlantic Ocean south of the North Carolina/Virginia border and adjacent seas, other than the Gulf Area, and all waters shoreward thereof) and Gulf Area (all waters of the Gulf of Mexico west of 81° W. long. and all waters shoreward thereof).

DATES: This final rule will take effect April 15, 2003, however it is not applicable in the Gulf Area until August 21, 2003.

ADDRESSES: Copies of: Epperly, S. P. and W.G. Teas. 2002. Turtle excluder devices - Are the escape openings large enough? Fish. Bull. 100:466–474, can be obtained through the following Web site: <http://fishbull.noaa.gov/fcontent.htm>, or can be requested, along with copies of an Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis,

from the Protected Resources Division, Southeast Regional Office, 9721 Executive Center Drive, North, Suite 102 St. Petersburg, FL, 33702.

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SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities have been documented in the Gulf of Mexico and along the Atlantic Ocean seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206 and 50 CFR 224.104. 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, all as defined in 50 CFR 222.102) 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).

The 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 at least 97 percent effective in excluding sea turtles during experimental TED testing (50 CFR 223.207(e)). The TED must meet 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, these requirements are currently ≥35 inches (≥89 cm) in width and ≥12

inches (≥30 cm) in height. In the Gulf Area, the requirements are ≥32 inches (81 cm) in width and ≥10 inches (≥25 cm) in height (these measurements are taken simultaneously).

The use of TEDs has contributed to population increases documented for Kemp's ridley turtles. Kemp's ridleys are the smallest sea turtle species, and adults can easily pass through the current TED opening dimensions. Once the most critically endangered sea turtle, Kemp's ridley nesting levels have increased from 700–800 per year in the mid-1980's to over 6,000 nests in 2000. Since 1990, corresponding with the more widespread use of TEDs in U.S. waters, the total annual mortality of Kemp's ridley turtles has been reduced by 44–50 percent (TEWG, 2000). NMFS believes that the use of TEDs has had a significant beneficial impact on the survival and recovery of sea turtle species.

NMFS is concerned that TEDs are not adequately protecting all species and size classes of turtles. There is new information showing that 33–47 percent of stranded loggerheads and 1–7 percent of stranded green turtles are too large to fit through the current TED openings. Comprehensive scientific data on the body depths of these turtles were not available when the original TED sizes were specified. The original TED sizes were also much too small to allow leatherback sea turtles the largest species to escape. Instead, NMFS has attempted to address the incidental catch of leatherbacks through a regime of reactive closures that has proven ineffective. There is also concern about the status of loggerhead and leatherback turtle populations: the northern nesting population of loggerheads appears to be stable or declining (TEWG, 2000) and nesting of leatherbacks is declining on several main nesting beaches in the western North Atlantic (NMFS SEFSC, 2001).

NMFS completed a biological opinion (Opinion) in December 2002, on Shrimp Trawling in the Southeastern United States, under the Sea Turtle Conservation Regulations and as managed by the Fishery Management Plans for Shrimp in the South Atlantic and Gulf of Mexico. Based on information in a NOAA technical memorandum completed in November 2002, (NOAA Technical Memorandum NMFS-SEFSC-490) the Opinion estimated that 62,000 loggerhead turtles and 2,300 leatherback turtles are killed as a result of an interaction with a shrimp trawl. Information in this Opinion also indicate that up to 75 percent of the loggerhead turtles in the Gulf of Mexico and about 2.5 percent of