

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2006 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2006—Continued

Manufacturer	Make/model (line)	Thefts 2006	Production (Mfr's) 2006	2006 Theft rate (per 1,000 vehicles produced)
203. ASTON MARTIN	VANTAGE	0	161	0.0000
204. AUDI	TT	0	1199	0.0000
205. BENTLEY MOTORS	ARNAGE	0	228	0.0000
206. BUGATTI	VEYRON	0	17	0.0000
207. FERRARI	MARANELLO/F1	0	1392	0.0000
208. FORD MOTOR CO	FORD GT	0	1729	0.0000
209. GENERAL MOTORS	CADILLAC LIMOUSINE	0	922	0.0000
210. HONDA	HONDA INSIGHT	0	803	0.0000
211. JAGUAR	VANDEN PLAS/SUPER V8	0	1761	0.0000
212. JAGUAR	XJR	0	307	0.0000
213. LAMBORGHINI	GALLARDO	0	392	0.0000
214. MASERATI	GRANSPORT	0	51	0.0000
215. MASERATI	QUATTROPORTE	0	1609	0.0000
216. MASERATI	SPYDER/F1	0	777	0.0000
217. NISSAN	INFINITI Q45	0	140	0.0000
218. SAAB	9-5	0	11620	0.0000
219. SAAB	9-7X	0	5484	0.0000
220. SALEN	S7	0	16	0.0000
221. SPYKER	C8	0	13	0.0000
222. TOYOTA	TOYOTA YARIS	0	2571	0.0000
223. VOLKSWAGEN	PHAETON	0	259	0.0000

Issued on: October 7, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0810061316-81321-01]

RIN 0648-XL11

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state and Federal waters offshore of Texas (from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32'W. long.) extending offshore 20 nautical miles. This action is necessary because environmental conditions resulting from

Hurricane Ike are preventing some fishermen from using TEDs effectively.

DATES: Effective from October 8, 2008 through November 7, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-551-5794.

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.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. 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 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, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, which 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 testing based upon specific testing protocols (50 CFR 223.207(e)(1)). 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.

The regulations governing sea turtle take prohibitions and exemptions 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 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA 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 223.206(d)(3)(i) specify the maximum tow times that may be used when tow time limits are authorized as an alternative to the use of TEDs. Each tow 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, as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 29, 2008, the NMFS Southeast Regional Administrator received a request from the Texas Parks and Wildlife Department (TPWD) to allow the use of tow times as an alternative to TEDs in state and federal waters because of excessive storm-related debris on the fishing grounds as a result of Hurricane Ike. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and the state's resource agency staff confirm there are problems with debris in state and Federal waters off Texas (from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32'W. long.) extending offshore 20 nautical miles, which are likely to affect the effectiveness of TEDs. Texas has stated that their marine enforcement agents will enforce the tow time restrictions.

Special Environmental Conditions

The AA finds that debris washed into hurricane-affected state and Federal waters off of Texas (from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32'W. long.), extending offshore 20 nautical miles, has created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of

restricted tow times as an alternative to the use of TEDs in state and Federal waters off of Texas (from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32'W. long.) extending offshore 20 nautical miles, for a period of 30 days. Tow times must be limited to no more than 55 minutes until October 31, and no more than 75 minutes thereafter, as measured from the time that the trawl doors enter the water until they are removed from the water.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times.

NMFS' gear experts have provided several general 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. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. 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 trap debris either on or in front of the bars of the TED; NMFS recommends an installation angle of 45E, 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. The use of the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action 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 223.206(d)(2) who are operating in hurricane-affected state and Federal waters off Texas (from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32'W. long.), extending offshore 20 nautical miles, for a period of 30 days. Through this temporary rule, shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, as prescribed above.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on November 7, 2008, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

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

The AA has determined that this action is necessary to respond to an environmental situation to allow more efficient fishing for shrimp, while providing effective protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

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 rule. The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Prior

notice and opportunity to comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry relief from the effects of Hurricane Ike in a timely manner, while continuing to provide effective protection for sea turtles.

Many fishermen may be unable to operate under the special environmental conditions created by Hurricane Ike without an alternative to the use of TEDs. Therefore, the AA finds that there is good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) to provide alternatives to comply with the sea turtle regulations in a timely manner. For the reasons above, the AA finds that this temporary rule should not be subject to a 30-day delay in effective date, pursuant to 5 U.S.C. 553(d)(1).

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

Dated: October 7, 2008.

James W. Balsiger,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 0810071323-81326-01]

RIN 0648-XL09

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,445 nm² (4,956 km²), southeast of Portland, Maine for 15 days. The purpose of this

action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours October 16, 2008, through 2400 hours November 1, 2008.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in order to protect right whales and is applicable to areas north of 42°30' N.

lat. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (257 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (3.43 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On October 6, 2008, an aerial survey reported an aggregation of four right whales in the proximity of 43° 00' N. lat. and 69° 58' W. long. The position lies approximately 40 nm southeast of Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and