

**253.215-70 DD Form 1547, Record of Weighted Guidelines Application.**

(a) Use the DD Form 1547 as prescribed in 215.404-70.

(b) \* \* \*

(4) If the contracting office is exempt from reporting to the DoD management information system on profit and fee statistics (see 215.404-75), do not complete Block 1, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

\* \* \* \* \*

(c) \* \* \*

(12) *Block 12—use code.* Enter the appropriate code for use of the weighted guidelines method—

Description	Code
Standard weighted guidelines method (215.404-71) .....	2
Alternate performance risk, no facilities employed (215.404-71-2(c)(2)) .....	1
Alternate facilities capital employed (215.404-71-4(c)(2)) .....	3
Alternate structure approach (215.404-73) .....	4
Modified weighted guidelines approach, (215.404-72) .....	5

\* \* \* \* \*

(14) *Blocks 21 through 29—weighted guidelines profit factors.* Enter the amounts determined in 215.404-71 or 215.404-72. This section is not required to be completed when using an alternate structured approach (215.404-73).

(15) \* \* \* This section is not required to be completed when using an alternate structured approach (215.404-73).

(16) \* \* \* When using an alternate structured approach, see 215.404-73(b)(2) for offsets.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 217 and 227**

[I.D.100598B]

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 inshore waters in Alabama 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 Marine Resources Division of the Alabama Department of Conservation and Natural Resources that large amounts of debris in Alabama's bays in the aftermath of the hurricane are causing extraordinary difficulty with the performance of TEDs. 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 7, 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 6, 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 6, 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 hit the Mississippi and Alabama coasts. The hurricane remained nearly stationary over the coastal area and South Alabama for about two days and deposited as much as 36 inches of rain on some areas. The combination of heavy rains and hurricane storm surge produced severe flooding in south Mississippi and South Alabama rivers. The Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director) stated in a September 30 letter to the NMFS Southeast Regional Administrator that the flooding "has deposited a tremendous amount of debris in Alabama's bays." He further stated that the "inordinate amount of debris is causing extraordinary difficulty with the performance of TEDs in these areas" and that "the debris clogs the TEDs making them inoperable for the exclusion of turtles and reduces the catch of shrimp." 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 Alabama's inshore waters that are open to shrimping.

Coastal areas in Louisiana and Mississippi were also affected by Hurricane Georges. NMFS has been consulting with the Louisiana

Department of Wildlife and Fisheries and the Mississippi Department of Marine Resources to determine the extent of debris problems that may have resulted from the storm's passage. At this time, no requests for exemption have been submitted from these states and the temporary TED exemption is only for inshore waters of Alabama.

#### **Special Environmental Conditions**

The Assistant Administrator finds that the impacts of Hurricane Georges have created special environmental conditions 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 Alabama. The State of Alabama is continuing to monitor the situation and is cooperating with NMFS in determining the ongoing extent of the debris problem in Alabama inshore waters. Moreover, the Alabama Director has stated that Alabama's enforcement officers would assist with the enforcement of the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the Alabama Director 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 Alabama 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 preceeding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Alabama (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 inshore waters of the State of Alabama, in areas which the State has 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 opt to 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

6, 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 Alabama 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 Alabama Director, rather than simply disposing 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 Alabama inshore waters. This authorization will expire automatically on November 6, 1998, unless it is explicitly extended through another notice 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 7, 1998.

**Andrew A. Rosenberg,**

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

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