

procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We normally provide a delay of 30 days in the effective date of a final rule. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. We find that a 30-day delay in the effective date of this regulation would be both impracticable and contrary to the public interest. In addition, although this is an ongoing final rule proceeding, we nevertheless have good cause to waive notice and comment. As we have discussed above, the rates that are scheduled to go into effect on January 1, 2002 reflect inadvertent technical errors that have major consequences. We, therefore, do not believe it is appropriate to implement the new rates on January 1, 2002. To proceed with making payments on the basis of significantly incorrect rates would be imprudent and contrary to the public interest. These errors were discovered within 30 days of the January 1, 2002 effective date. Therefore, there is an urgent need to proceed with a delay in the effective date of the 2002 rates, and there is not sufficient time to provide notice of proposed rulemaking and a 30-day notice of the delay.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 18, 2001.

Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

Approved: December 21, 2001.

Tommy G. Thompson,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No.010607150–1264–02;
I.D.091200F]

RIN 0648–AN64

Sea Turtle Conservation; Restrictions Applicable to Fishing and Scientific Research Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is amending the sea turtle handling and resuscitation regulation. Recent scientific and technical information indicates that the current procedures need to be updated. This measure is necessary to improve the handling of sea turtles that are incidentally captured during scientific research or fishing activities.

DATES: This rule is effective December 31, 2001.

ADDRESSES:

FOR FURTHER INFORMATION CONTACT:
Therese A. Conant (301) 713–1401.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp and summer flounder fishing in areas of the Atlantic Ocean and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement to have a NMFS-approved turtle excluder device (TED) installed in each net rigged for fishing. Other exceptions to the taking prohibition include incidental take that is authorized for ESA scientific research permits, incidental take permits, and section 7 incidental take statements. All take excepted from the prohibitions requires safe handling and resuscitation of incidentally caught sea turtles as specified at 50 CFR 223.206 (d)(1).

Sea turtles are air breathers and may drown under conditions of forced submergence. To minimize the impact of forced submergence, NMFS developed protocols to handle comatose turtles (FR 43 32801, July 28, 1978) and subsequently updated the protocols (57 FR 57354, December 4, 1992). New scientific and technical information has been collected since the last update. For example, the practice of stepping on the plastron to revive the turtle may actually do more harm than good. Plastral pumping may cause the airway to block, thus prohibiting air from entering the lungs. Pumping the plastron while a turtle is on its back also causes the viscera to compress the lungs which are located dorsally, thereby hindering lung ventilation. Recent physiological studies on the effects of trawl capture on small sea turtles show that high stress levels are developed during short-duration forced

submergences and that the turtles may require from 3.5 up to 24 hours to recover from the stress effects. Resuscitation techniques have been refined over the years as biologists have developed effective ways to test for reflexes in order to determine the status of the turtle.

NMFS published a proposed rule (66 FR 32787, June 18, 2001) requesting comment on the following proposed changes: Eliminate stepping on the plastron as a method for resuscitation; provide a more defined criteria to determine dead versus comatose turtles; increase the minimum elevation of the hindquarters; add carapace movement and a reflex test to the resuscitation methods; and add several minor changes to clarify the guidance for keeping a turtle moist. No comments were received. The proposed changes are adopted as final.

Classification

The AA has determined that this final rule is consistent with the ESA and with other applicable law.

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

The AA prepared an environmental impact statement (EIS) for the 1978 listing determination, establishing the handling and resuscitation requirements and prepared an environmental assessment (EA) for the 1992 updated of the requirements. The proposed rule was determined to be a Categorical Exclusion under the National Environmental Policy Act since the changes did not constitute a new action and individually or cumulatively have a significant impact on the quality of the human environment.

A memorandum was prepared for the Chief Counsel for Regulation of the Department of Commerce who certified to the Chief Counsel for Advocacy of the Small Business Administration stating that the proposed rule would not have significant economic impact on a substantial number of small entities. None of the changes will result in additional economic effects, since NMFS already requires fishermen and scientific researchers to safely handle and attempt resuscitation on sea turtles as necessary. The changes are limited to protocols for monitoring the turtle and make minor changes to the treatment that would require no additional material beyond what is already generally available onboard a vessel (e.g. elevating the sea turtles' hindquarters can be done with a tackle box or bumper). No comments were received regarding this certification. Thus, the

factual basis for the certification has not changed. As such, a final regulatory flexibility analysis is not required, and none has been prepared.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

List of Subjects

50 CFR Part 223

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

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are 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; 16 U.S.C. 1361 *et seq.*

2. In § 223.206, paragraph (d)(1) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles

* * * * *

(d) * * *

(1) *Handling and resuscitation requirements.* (i) Any specimen taken

incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead as described in paragraph (d)(1)(i)(C) of this section must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose, or inactive, as determined in paragraph (d)(1) of this section, by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(3) Sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and

in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(C) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

(ii) Notwithstanding the provisions of paragraph (d)(1)(i) of this section, a person aboard a pelagic longline vessel in the Atlantic issued an Atlantic permit for highly pelagic species under 50 CFR 635.4, must follow the handling and resuscitation requirements in 50 CFR 635.21.

(iii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

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PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. Section 224.104 is revised by adding a new paragraph (d) to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(d) Special handling and resuscitation requirements are specified at § 223.206 (d)(1).

[FR Doc. 01–31976 Filed 12–28–01; 8:45 am]

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