

NOTICE OF PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION: Marine Fisheries

RULE NO.:	RULE TITLE:
68B-31.004	Trawl Gear Specifications: Turtle Excluder Devices Required; Exceptions; Definitions
68B-31.0045	Otter Trawl Gear Specifications: Bycatch Reduction Devices

PURPOSE AND EFFECT: The purpose of these rule amendments is to modify the Commission's Shrimp Rule 1) to clarify federal requirements for Turtle Excluder Devices (TEDs) in state waters and 2) to adopt mostly consistent regulations in state waters with recently amended regulations regarding Bycatch Reduction Devices (BRDs) in federal waters. TEDs are required by the National Marine Fisheries Service (NMFS) in all waters of the South Atlantic and the Gulf of Mexico, including state waters of Florida. These federal regulations apply in state waters because they are protecting endangered and threatened species. Even though TEDs are required in state waters by NMFS they are included in 68B-31 F.A.C. for clarity and ease of compliance. Florida's requirement for TEDs was last updated in 1999. Since that time, federal regulations regarding TEDs have changed and these changes are not reflected in current state regulations. The Commission is considering changes to state regulations that would remove the list of TEDs from 68B-31 F.A.C. and would update the reference that refers to the Code of Federal Regulations regarding TED requirements.

The National Marine Fisheries Service recently changed the list of allowable BRDs for use in the South Atlantic and the Gulf of Mexico. These changes were made to include new BRD designs in the list of allowable BRDs and to remove designs that were not reducing bycatch of finfish in shrimp trawls by 30%. The Commission is considering changes to state regulations that would allow all currently certified federal BRDs in state waters, remove language regarding the Extended Funnel BRD which would eliminate its use in state waters, and restrict the use of the Florida Finfish Excluder to inshore and nearshore waters.

The effect of these rule amendments is that federal regulations regarding TEDs will be clearer and compliance should be easier for the commercial fishery because state rules will match federal rules and that federal and state regulations can be applied more consistently to all fishing activity in the South Atlantic Ocean and Gulf of Mexico regarding BRDs. The overall effect is to more consistently apply regulations to minimize confusion for the public and aid in enforcement of both state and federal fishery regulations. By adopting these regulations the State of Florida will also be contributing to the South Atlantic effort to reduce fishing pressure on species that interact with the shrimp trawl industry and will help populations of these species expand. This should help ensure a shrimp fishery with less finfish bycatch and turtle mortalities.

SUMMARY: 68B-31.004 F.A.C. (Trawl Gear Specifications: Turtle Excluder Devices Required; Exceptions; Definitions) would be amended to remove the list of TEDs from rule and refer to the list in the U.S. Code of Federal Regulations for allowable TEDs. This section would also be amended to correct the reference to TEDs in the Code of Federal Regulations. 68B-31.0045 F.A.C. (Otter Trawl Gear Specifications: Bycatch Reduction Devices) would be amended to state all federally-certified BRDs would meet the state requirements for a BRD. Additionally, language regarding the Florida Finfish Excluder would be modified to state that it would only meet the state BRD requirements in inshore and nearshore waters and the language regarding the Extended Funnel BRD would be removed so that it is no longer allowed in state waters.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: *The agency has determined that this rule will ___ or will not X have an impact on small business. A SERC has ___ or has not X been prepared by the agency.*

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution
LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: During the regular meeting of the Commission, December 9-10, 2009, 8:30 a.m. to 5:00 p.m.,

each day.

PLACE: John Boy Auditorium, 1200 South W.C. Owen Avenue, Clewiston, FL 33440

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting the ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, and (850) 487-0554.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

68B-31.004 Trawl Gear Specifications: Turtle Excluder Devices Required; Exceptions; Definitions.

(1) through (3) No Change

(4) For purposes of this rule:

(a) No Change

(b) "Qualified turtle excluder device" or "TED" means:

~~1. Any one of six devices approved and described by the National Marine Fisheries Service in 50 C.F.R. Section 227.72(e)(4)(ii)(A) (F), Oct. 1, 1987 (as amended by Vol. 52 Fed. Reg. No. 192, p. 37154, Oct. 5, 1987, and by Vol. 53 Fed. Reg. No. 170, p. 33821, Sept. 1, 1988). The devices are commonly known as the NMFS TED, Cameron TED, Matagorda TED, Georgia TED, Morrison TED, and Parrish TED.~~

~~2. Any additional device currently certified and approved by the National Marine Fisheries Service as demonstrating a turtle exclusion rate of at least 97% pursuant to 50 C.F.R. § 223.207 Section 227.72(e)(4)(iii), Oct. 1, 1987.~~

(c) through (d) No Change

PROPOSED EFFECTIVE DATE: As soon as possible after adoption.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 6-11-90, Amended 1-1-92, 3-16-93, 1-1-96, 3-1-99, Formerly 46-31.004, Amended _____.

68B-31.0045 Otter Trawl Gear Specifications: Bycatch Reduction Devices.

(1) Where required on a regional basis by rule of this chapter, no person shall operate or fish any ~~otter~~ trawl, or possess any ~~otter~~ trawl that is rigged for fishing aboard any vessel, which trawl does not have a bycatch reduction device (BRD) installed therein meeting the requirements of this rule.

(2) No person shall rig or alter the ~~bycatch reduction device (BRD)~~ installed in any trawl in any manner so as to render the BRD nonfunctioning or ineffective in excluding species other than shrimp from the trawl.

(3) One of the following types of BRDs must be used to comply with the requirements of this subsection: A BRD shall be deemed to meet the requirements of this subsection if it is one of two types specified herein:

(a) BRDs currently certified or currently provisionally certified by the National Marine Fisheries Service as defined in 50 C.F.R § 622 Appendix D and pursuant to 50 C.F.R. § 622.41 (g).

(b) ~~(a)~~ The Florida Finfish Excluder meets the BRD requirements of this subsection only when fishing in nearshore or inshore Florida waters. The Florida Finfish Excluder —This device shall consist of at least one rigid exit opening frame made of no smaller than 1/4-inch steel or aluminum rod sewn into each trawl. Each exit opening frame shall be at least 12 inches in length and have an apex of three bars pointing forward to orient the exit opening in the direction of the mouth of the trawl. The opening thus created shall be in the shape of a parallelogram or oval and no smaller than 36 square inches in area and 5 inches across the opening in the shortest dimension. The opening formed by each frame shall be no further forward in the cod end than 70% of the distance between the draw string (tie-off rings) and the beginning of the tail bag (excluding any extension). The frame shall be installed on the top side of the cod end, no more than 15 meshes to the side of the centerline.

~~(b) Extended Funnel BRD—This device consists of a funnel of small mesh netting within a cylinder of large mesh netting, held open by at least one semi rigid hoop, which trawl section is located behind the turtle excluder device (TED). One side of the funnel is extended vertically to provide a passage for shrimp to the cod end and create an area of reduced waterflow to allow for fish escapement through the larger mesh outer netting. This BRD shall meet the following specifications:~~

~~1. The small mesh funnel and large mesh section shall be positioned within an extension section constructed of no smaller than 1 5/8 inch stretched mesh nylon netting, no less than 120 meshes in circumference. The portion of the extension in front of the large mesh section shall be no less than 6 1/2 meshes long, and the section behind the large mesh section shall be no shorter than 23 meshes in length.~~

~~2. The small mesh funnel shall be constructed of no less than 1 3/8 inch stretched mesh netting. This component shall have a circumference of no less than 120 meshes at the leading edge and no less than 104 meshes at the trailing edge. The short side of the funnel shall be at least 36 inches long, while approximately 1/2 of the opposite side of the funnel shall extend at least 22 inches further toward the trailing edge of the funnel. The leading edge of the funnel shall be attached no less than 3 meshes forward of the large mesh leading edge. At least 7 meshes of the short side of the funnel shall be attached to the back section of extension webbing on the top and bottom at least 8 meshes back from the trailing edge of the large mesh section.~~

~~3. The larger mesh outer section shall consist of no smaller than 8 inch stretched mesh netting cut on the bar. The section shall have a circumference no smaller than 19 meshes and a length of at least 3 meshes.~~

~~4. The leading edge of the large mesh section shall be attached to one semi rigid hoop with a minimum diameter of 24 inches constructed of plastic coated trawl cable. It shall be installed at least 5 meshes behind the trailing edge of the large mesh section. If a soft TED is used, a second hoop of identical construction shall be installed at the leading edge of the funnel.~~

~~(c) It is the intention of the Fish and Wildlife Conservation Commission that additional Bycatch Reduction Devices certified as allowable by the National Marine Fisheries Service will be added by amendment to this subsection pursuant to the procedures afforded by Section 120.54(6), Florida Statutes.~~

PROPOSED EFFECTIVE DATE: As soon as possible after adoption.

~~Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 6-3-96, Amended 8-17-98, Formerly 46-31.0045, Amended _____.~~

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON(S) ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850) 487-0554.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN F.A.W.: February 6, 2009

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION

RULE CHAPTER TITLE: Shrimp

RULE NO.:

68B-31.004

68B-31.0045

RULE TITLES:

Trawl Gear Specifications: Turtle Excluder Devices Required;
Exceptions; Definitions

Otter Trawl Gear Specifications: Bycatch Reduction Devices

The purpose of these rule amendments is to modify the Commission's Shrimp Rule 1) to clarify federal requirements for Turtle Excluder Devices (TEDs) in state waters and 2) to adopt mostly consistent regulations in state waters with recently amended regulations regarding Bycatch Reduction Devices (BRDs) in federal waters. TEDs are required by the National Marine Fisheries Service (NMFS) in all waters of the South Atlantic and the Gulf of Mexico, including state waters of Florida. These federal regulations apply in state waters because they are protecting endangered and threatened species. Even though TEDs are required in state waters by NMFS they are included in 68B-31 F.A.C. for clarity and ease of compliance. Florida's requirement for TEDs was last updated in 1999. Since that time, federal regulations regarding TEDs have changed and these changes are not reflected in current state regulations. The Commission is considering changes to state regulations that would remove the list of TEDs from 68B-31 F.A.C. and would update the reference that refers to the Code of Federal Regulations regarding TED requirements.

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FEDERAL COMPARISON STATEMENT FOR PROPOSED RULE
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: Shrimp

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68B-31.004

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Exceptions; Definitions

68B-31.0045

Otter Trawl Gear Specifications: Bycatch Reduction Devices

The proposed rule would modify the Commission's Shrimp Rule to become consistent with the federal rules regarding TEDs. It would also allow all federally certified BRDs to be used in state waters of Florida. This proposed rule amendment creates consistency between Florida's shrimp regulations regarding marine turtle interactions and creates consistent regulations for finfish bycatch reduction and the federal requirements. The Florida Finfish Excluder would still be allowed in inshore and nearshore waters where shrimp trawls are required to be 500 square foot or less in size even if decertified in federal waters.

SUMMARY OF PUBLIC HEARINGS FOR PROPOSED RULES
FISH AND WILDLIFE CONSERVATION COMMISSION

RULE CHAPTER TITLE: Shrimp

RULE NO.:

68B-31.004

68B-31.0045

RULE TITLES:

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In developing these rule amendments, the Commission relied upon the best available scientific information, discussions with industry representatives, and public testimony gathered at federally noticed publicly hearings, and publicly noticed Commission meetings. A draft rule was presented at a publicly noticed Commission meeting on June 18, 2009 in Crystal River, Florida.

STATEMENT OF ESTIMATED REGULATORY COSTS
FISH AND WILDLIFE CONSERVATION COMMISSION
RULE CHAPTER TITLE: Shrimp

RULE NO.:

68B-31.004

68B-31.0045

RULE TITLES:

Trawl Gear Specifications: Turtle Excluder Devices Required;
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Otter Trawl Gear Specifications: Bycatch Reduction Devices

A statement of estimated regulatory costs has not been prepared for this rule change because the agency has determined that this rule will not have a significant economic impact on a substantial number of small businesses. If consistent rules are not adopted the interactions of shrimp trawl gear with sea turtles and finfish species may be too high and may lead to further restrictions on the fishery in the long term in order to reduce these interactions. Thus, there will likely be a greater impact to small businesses if the State of Florida does not adopt the proposed rule amendment that creates consistency between Florida State Jurisdictional Waters and the federal regulations regarding TEDs and BRDs.