

**03L .0103 AMEND
ADOPT FEDERAL TED RULES BY REFERENCE
ISSUE PAPER
June 10, 2008**

I. ISSUE

Adopt Federal Turtle Excluder Devices (TED) rules for shrimp trawls by reference in order to allow NC Marine Patrol enforcement in state waters.

II. ORIGINATION

Sea Turtle Advisory Committee (STAC) recommendation in “Sea Turtle Interactions with North Carolina Fisheries” report

III. BACKGROUND

The Sea Turtle Advisory Committee was formed by the North Carolina Marine Fisheries Commission (NCMFC) in response to continuing problems with protected species interactions in fisheries throughout North Carolina. The committee began by gathering relevant information pertaining to the many issues surrounding federally and state protected sea turtles (ESA 1973) and North Carolina commercial and recreational, inshore fisheries. Their final report that contained a number of recommendations was approved by the MFC in 2007. One recommendation for the shrimp trawl fishery was to “determine and enforce TED compliance throughout NC by providing state authority.” The MFC at the February 2007 Business Meeting supported moving forward as follows: “Support this recommendation with the caveat of accurately defining citation protocols among federal and state enforcement officers such that a fisher is not fined double. Forward to DMF Rules Advisory Team to draft rule wording and report back to the MFC.”

IV. AUTHORITY

Authority G.S. 113-134; 113-182; 143B-289.52

V. DISCUSSION

During the review of the STAC report and its recommended management actions by the Regional Advisory Committees (AC) (except for Inland) and the Finfish AC during early 2007, these Advisory Committees voted to approve the measure to adopt Federal Turtle Excluder Devices (TED) rules for shrimp trawls by reference in order to allow NC Marine Patrol enforcement in state waters. The Crustacean AC during a discussion on allowing mechanical retrieval of Recreational Commercial Gear License (RCGL) shrimp trawls was notified that this rule was being drafted for MFC consideration. If mechanical retrieval is allowed, the RCGL shrimp trawl would need to have a TED by federal rule. Public comment was received at the Crustacean meeting stating the size of federal TEDs would not work effectively in small RCGL trawls and the state should not have to require them. DMF staff investigated the process for reopening an existing federal regulation and the AC was informed it would be unlikely for the federal government to lessen TED requirements.

The draft rule was presented to the ACs and their actions are summarized below. All ACs voted for rule adoption.

	NEAC	Central AC	Inland AC	SEAC	Crustacean AC
Position	Adopt Rule Vote 6-0-2	Adopt Rule w/o dissent	Adopt Rule w/o dissent	Adopt Rule w/o dissent concern for extra MP burden	Adopt Rule Vote 4-2 enforce only dockside
Meeting Date	Jan. 2008	May 2008	May 2008	Jan. 2008	June 2008

VI. PROPOSED RULE

MODIFY SUBCHAPTER 3L - SHRIMP, CRABS, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0103

.0103 PROHIBITED NETS, MESH SIZES AND AREAS

(a) It is unlawful to take shrimp with nets with mesh lengths less than the following:

- (1) Trawl net - one and one-half inches;
- (2) Fixed nets, channel nets, float nets, butterfly nets, and hand seines - one and one-fourth inches; and
- (3) Cast net - no restriction.

(b) It is unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh size. Net material used as chafing gear shall be no less than four inches mesh length except that chafing gear with small mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

(c) It is unlawful to take shrimp with trawls which have a combined headrope of greater than 90 feet in internal coastal waters except:

- 1) Pamlico Sound;
- 2) Pamlico River downstream of a line from a point 35° 18.5882'N – 76° 28.9625'W at Pamlico Point; running northerly to a point 35° 22.3741'N – 76° 28.6905'W at Willow Point;
- 3) Neuse River northeast of a line from a point 34° 58.2000'N – 76° 40.5167'W at Winthrop Point on the eastern shore of the entrance to Adam's Creek running northerly to a point 35° 01.0744' N –76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(d) It is unlawful to use a shrimp trawl in the areas described in 15A NCAC 03R .0114.

(e) It is unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 2006.*

VII. RECOMMENDATION

DMF recommends the MFC give Notice of Text at their June 2008 meeting.

Prepared by Katy West, April 2007
Modified November 2007
Modified June 10, 2008

List of applicable CFR rules are available if requested.

NOTICE OF TEXT ATTACHMENT

15A NCAC 03L .0103 PROHIBITED NETS, MESH SIZES AND AREAS

Rule is proposed for amendment based on the recommendations of the MFC Sea Turtle Advisory Committee. The proposed change would adopt federal Turtle Excluder Device requirements for shrimp trawls by reference and thus allow state enforcement that would improve compliance and better protect sea turtles.