

this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highway safety, Motor carriers, and Safety fitness procedures.

Issued on: October 29, 1998.

Gloria J. Jeff,
Deputy Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, Chapter III, Appendix B to Part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, and 31502; 49 CFR 1.48.

2. Appendix B to Part 385 is amended by revising section II.A.(a)2., the motor carrier safety table in section III.A., and sections III.B.(a) and III.B.(c); and in section VII by removing the citations

and text for §§ 391.87(f)(5) through 391.115(c), to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

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II. Converting CR Information Into A Safety Rating

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A. Vehicle Factor

(a) * * *

2. If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

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III. Safety Rating

A. Rating Table

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MOTOR CARRIER SAFETY RATING
TABLE

Factor ratings		Overall Safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory
0	more than 2	Conditional
1	2 or fewer	Conditional
1	more than 2	Unsatisfactory
2 or more	0 or more	Unsatisfactory

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS-151, part B.

"Your proposed safety rating is
SATISFACTORY."

OR

"Your proposed safety rating is
CONDITIONAL." The proposed safety rating will become the final safety rating 45 days after you receive this notice.

OR

"Your proposed safety rating is
UNSATISFACTORY." The proposed safety rating will become the final safety rating 45 days after you receive this notice

* * * * *

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of § 385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials

requiring placarding or more than 15 passengers, including the driver.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427117–8275–04; I.D. No. 100598B]

RIN 0648–AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS notifies fishermen that it has extended the authorization for shrimp trawlers to use limited tow times in the inshore waters of Alabama as an alternative to the otherwise required use of Turtle Excluder Devices (TEDs) through November 30, 1998. Without this extension, the authorization would have expired November 6, 1998. NMFS has been notified by the Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director) that debris conditions in Alabama's inshore waters resulting from the passage of Hurricane Georges have persisted or even worsened. Because the use of TEDs may continue to be impracticable, NMFS has extended the authorization to use limited tow times. The intent of this extension is to provide adequate protection for threatened and endangered sea turtles when debris conditions may make TED-use impracticable.

DATES: This extension is effective from November 5, 1998 through November 30, 1998. Comments on this notification are requested, and must be received by December 7, 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 kempii*), 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 Alabama Director stated in a September 30, 1998, 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.

As a result of the special environmental conditions that may have made trawling with TED-equipped nets impracticable, the Assistant Administrator issued an emergency notification to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of Alabama (63 FR 55053, October 14, 1998). That notification was effective from October 7, 1998 through November 5, 1998.

The Alabama Director recently informed the NMFS Southeast Regional Administrator in a November 3, 1998 letter that debris conditions in Mississippi Sound have been worsening as debris has been flushed out of Mobile Bay and into Mississippi Sound. Shrimpers continue to collect large amounts of debris, but many areas remain untrawlable. The Alabama Director reports that shrimp trawlers are generally not able to work closer than one-half mile from shore due to the large amounts of nearshore debris. He requested that the authorization to use limited tow times be extended to November 30, 1998, to allow additional time to remove the debris.

Special Environmental Conditions

The Assistant Administrator finds that special environmental conditions following Hurricane Georges have persisted in Alabama inshore waters and may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator, by this notice, extends the authorization to use 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, Alabama's enforcement officers have assisted with the enforcement of the restricted tow times. In his November 3, 1998, letter, the Alabama Director reported that

shrimpers have given the Alabama enforcement officers excellent cooperation in following the tow time limits. He stated that Alabama enforcement officers will continue to monitor the area for the duration of this exemption extension. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the Alabama Director's commitment 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 notification 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 preceding 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 notice extends, through November 30, 1998, the authorization to use restricted tow times in the inshore waters of Alabama as an alternative to the otherwise required use of TEDs. This notice 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 notification 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, through November 30, 1998, may opt to comply with the sea turtle conservation regulations by using restricted tow times. If they do so, their tow times must not exceed 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 this authorization through publication of a notice in the **Federal Register**, if the Assistant Administrator determines that the alternative authorized 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. If necessary, the Assistant Administrator could modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times. The Assistant Administrator may also terminate this authorization at any time for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. This authorization will expire automatically at midnight on December 1, 1998, unless it is 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 Assistant Administrator 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 5 U.S.C. 553(b)(B), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this extension. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from providing relief within the necessary timeframe. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane Georges, has created a special environmental conditions that may make trawling with TED-equipped nets impracticable and that the use of limited tow times for the described area and time instead of TEDs would adequately protect threatened and endangered sea turtles. Notice and comment are contrary to the public interest in this instance.

Because this action relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a delay in effective date.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by 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 requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this (57 FR 57348, December 4, 1992). Copies of the EA are available (see **ADDRESSES**).

Dated: November 5, 1998.

Rolland A. Schmitten,

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

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