

1445 Ross Avenue, Dallas, Texas 75202-2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, telephone: (214) 665-7259.

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I. What is the Authority for Delegation?

Sections 110, 111(c)(1) and 301, of the Clean Air Act (ACT) as amended November 15, 1990, authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, NSPS.

II. What was the Existing Delegation?

The original delegation of NSPS authority to Oklahoma was granted by EPA on March 25, 1982. This delegation was granted based on the State incorporating the NSPS requirements into future permits; therefore, the delegation excluded the authority to enforce the standards against sources constructed or modified prior to the effective date of the delegation.

III. What is Being Delegated?

On November 2, 1998, under the State's "Emergency Rules" statute (75 Oklahoma Statute, supplement 1998, section 253, Statutes and Reports), the State adopted emergency rules that incorporated by reference the NSPS in 40 CFR part 60. Both emergency and permanent rules were adopted by the Oklahoma Environmental Quality Board on September 15, 1998, and both were signed by the Governor on November 2, 1998. While the emergency rules took effect on November 2, 1998, the Oklahoma legislature reviewed and approved the permanent rules that became effective on June 1, 1999.

After a thorough review of the newly adopted rule, the Regional Administrator has determined that this action was appropriate for all source categories constructed or modified prior to the effective date of this delegation. All sources subject to the requirements of 40 CFR part 60 will now be under the jurisdiction of the State as appropriate.

Since review of the pertinent laws, rules, and regulations for the State has down them to be adequate for implementation and enforcement authority, EPA hereby notifies the public that it has extended the delegation of authority to all sources upon the effective date of the Regional Administrator's letter. Based on ODEQ's additional authority, EPA has updated the delegation agreement. This delegation is based upon the State's incorporation by reference of NSPS which will apply regardless of date. It is also important to note that EPA retains concurrent enforcement authority.

IV. What is not Being Delegated?

It is important to note that no delegation authority is granted to the ODEQ for Indian lands. In 1983, the President established a Federal Indian Policy which emphasized the principle of Indian "self-government," and direct dealing with Indian Nations on a "government-to-government" basis. We have adopted this policy for administration of the environmental programs on Indian lands. Also, no authority is delegated to the State for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters.

V. What About the NESHAP Delegation Agreement?

This will not affect the 1982 delegation agreement with ODEQ for NESHAPs. Any changes with that agreement will be addressed separately in the future.

VI. Administrative Requirements

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore, not subject to review by the Office of Management and Budget.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Authority: This document is issued under the authority of sections 101, 110, 111, and 301 of the Act, as Amended (42 U.S.C. 7401, 7410, 7411, and 7601).

Dated: October 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99-27796 Filed 10-22-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: 99-001; Notice 02]

RIN 2127-AH62

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: This final rule updates the lists in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. 33112. Each insurer listed must file a report for the 1996 calendar year not later than October 25, 1999.

DATES: This final rule is effective October 25, 1999.

Reporting Date: Insurers listed in the appendices are required to submit their reports on CY 1996 experience on or before October 25, 1999. Previously listed insurers whose names are removed by this notice need not submit reports for CY 1996. Insurers newly listed in this final rule must submit their reports for calendar year 1996 on or before October 25, 1999. Under part 544, as long as an insurer is listed, it must file reports each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report on the following October 25, and on each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Spinner's telephone number is (202) 366-4802. Her fax number is (202) 493-2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the

insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The agency may not, however, exempt an insurer under this section if it is considered an insurer only because of section 33112(b)(1); that is, if it is a self-insurer. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As provided in 49 CFR part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the

latter. In Appendix B, NHTSA lists those insurers that are required to report for particular States because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In establishing part 544 (52 FR 59, January 2, 1987), the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, defined in 49 U.S.C. 33112(b)(1) as any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded those reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C that consists of an annually updated list of the self-insurers that are subject to part 544.

Following the same approach, as in the case of Appendix A, NHTSA has included, in Appendix C, each of the relatively few self-insurers subjected to reporting instead of relatively numerous self-insurers exempted. NHTSA updated Appendix C based primarily on information from the publications,

Automotive Fleet Magazine and Business Travel News.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On May 14, 1999, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (64 FR 26352). Based on the 1996 calendar year A.M. Best data for market shares, NHTSA proposed to amend the listing in Appendix A of insurers which must report because each had at least 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on December 18, 1998 (See 63 FR 70051). Three companies, Aetna Life & Casualty Group, Safeco Insurance Companies, and Travelers Insurance Group, were proposed to be removed from Appendix A. One company, Travelers PC Group, was proposed to be added.

Under part 544, each of the 18 insurers listed in Appendix A of the NPRM would have been required to file a report not later than October 25, 1999, setting forth the information required by Part 544 for each State in which it did business in the 1996 calendar year. As long as those 18 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B of the NPRM listed those insurers that would be required to report for particular States for calendar year 1996, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1996 calendar year A.M. Best's data for market shares, it was proposed that Island Insurance Group, reporting on its activities in the State of Hawaii be removed from Appendix B.

Under part 544, each of the 11 insurers listed in Appendix B of the NPRM would have been required to report no later than October 25, 1999, on their calendar year 1996 activities in every state in which they had a 10 percent or greater market share, and set forth the information required by Part 544. As long as those 11 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in Automotive Fleet Magazine and Business Travel News for 1996, the most recent year for which data are available, NHTSA proposed one change in Appendix C. As

indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it proposed that one rental and leasing company, Citicorp Bankers Leasing Corporation, be removed from Appendix C.

Under part 544, each of the 19 companies (including franchisees and licensees) listed in Appendix C would have been required to file reports for calendar year 1996 no later than October 25, 1999, and set forth the information required by part 544. As long as those 19 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Public Comments on Final Determination

1. Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received two comments. Both commentors were companies listed in the May 1999 NPRM. Each commentor questioned the appropriateness of its inclusion in one of the appendices.

Travelers Property Casualty Corporation (Travelers) wrote to request that it not be included in Appendix A. As stated, NHTSA's proposal to include Travelers was based on market share data provided by A.M. Best. Travelers wrote that it was created following the purchase by Travelers of Aetna Life and Casualty's property casualty business on April 2, 1996. Since Traveler's acquisition of Aetna in 1996, the companies have integrated its auto insurance products, reentered some states from which each had previously withdrawn, and achieved solid growth under the Travelers Property Casualty Corporation banner. The insurer, Travelers, believes that because the business was not consolidated until 1999, compiling the data required for reporting for the years prior to CY 1999 would be extremely burdensome, and in some cases, it might not even be possible.

The agency notes Travelers request for an exemption from the October 25, 1999, 2000 and 2001 insurer reporting requirements. However, the agency does not believe that Travelers meets any of the exemption requirements provided under U.S.C. 33112(e)(1) and (2). The agency does not believe that the cost of preparing and furnishing this report will be excessive in relation to the size of the insurer's business. Additionally, the agency believes that because Travelers' insurer information would contribute significantly to the agency's statutory

requirements, it should submit a report of its CY 1996 insurer information and adhere to the reporting requirements for any subsequent years it is required to report. Since Travelers does not meet the criteria for exemption, NHTSA determines that Travelers should remain listed on Appendix A. Additionally, the agency was subsequently notified that the GEICO Corporation Group, an insurance entity, became a wholly owned subsidiary of Berkshire Hathaway Inc. Therefore, both names will be listed on Appendix A, but the GEICO Corporation Group will continue to report for purposes pursuant to 49 U.S.C. 33112.

Nodak Mutual Insurance Company (Nodak) in North Dakota wrote to request that it not be listed in Appendix B. Nodak indicated that it is not the largest writer of automobiles in the state of North Dakota, although it is the largest property/casualty insurer in that state. The insurer stated that the subject report relates strictly to automobiles, and, therefore, it does not feel the company is in the best position to make comments on stolen vehicles. Nodak stated that it has few auto theft claims, and it does not have any great bearing on the statistics. For instance, in calendar years 1994 and 1995, Nodak reported 14 and 18 stolen vehicles respectively. It believes that the small amount of the vehicles stolen affecting its company would have no bearing on nationwide statistics. Further, Nodak feels that the efforts they would take to acquire statistics of this nature would be an undue hardship considering the lack of effect its information would have on the statistical data gathered nationwide. Finally, Nodak stated that it is a small company and is not in a position to take steps on a nationwide basis to promote programs that deter theft.

The agency notes Nodak's rationale that its auto theft has declined over the past year and the undue hardship it believes it will endure to provide the required insurer information. The agency also notes Nodak's comment that it believes it is not in the best position to comment on stolen vehicles because while it is the largest property/casualty insurer in North Dakota, it is not the largest writer of automobiles in the state of North Dakota. Therefore, Nodak requests to be exempted from further insurer reporting requirements. However, the agency has determined that the exemption authority provided in section 33112(e)(1) and (2) should not be applied to this insurer. Nodak does not qualify as a "small insurer" because its *total premiums* written exceed 10 percent of the total written in North Dakota. As defined by 49 U.S.C.

33112(f)(1)(B), a small insurer means an insurer whose premiums for motor vehicle insurance account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by the insurers in any State. Section 33112 provides that if an insurance company satisfies the section's definition of small insurer nationally, but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report this information about its operation in that State. Additionally, the agency believes that the cost of preparing and furnishing this report would not be excessive in relation to the size of the insurers' business. The agency also notes that there have been several other companies similar in premium size for a given State who have experienced anywhere from none to a very few thefts and have continued to provide the required insurer information in a timely fashion. Therefore, because the agency believes that the submission of Nodak's required information will not be excessive in relation to the size of its business, and that its report will contribute to carrying out the agency's statutory requirements, the agency has determined that the Nodak Mutual Insurance Company should remain on Appendix B.

After reviewing the public comments and in making the appropriate adjustment to Appendix B, NHTSA has determined that each of the 18 insurers listed in Appendix A, each of the 11 insurers in Appendix B, and each of the 19 insurers listed in Appendix C, are required to submit an insurer report under Part 544. Each listed insurer must report on its experience for calendar year 1996, and set forth the information required by 49 CFR part 544.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this final rule and has determined the action not to be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects

the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about \$50,000 for any insurer added to Appendix A, about \$20,000 for any insurer added to Appendix B, and about \$5,770 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency would add one insurer and remove three insurers; for Appendix B, the agency would remove one insurer; and for Appendix C, the agency would remove one company. The agency therefore estimates that the net effect of this final rule will be a cost decrease to insurers, as a group of approximately \$125,770.

2. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements") and was approved for use through July 31, 2000.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies included in Appendices A, B, or C would be construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000

vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1999 would contain the required information for the 1996 calendar year).

* * * * *

3. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American Financial Group
American International Group
California State Auto Association
CNA Insurance Group
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers PC Group¹
USAA Group
Zurich Insurance Group-U.S.

4. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Allmerica P & C Companies (Michigan)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.
A T & T Automotive Services, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Vehicle Management Services

¹ Indicates a newly listed company which must file a report beginning with the report due on October 25, 1999.

Ryder System, Inc. (Both rental and leasing operations)
 U-Haul International, Inc. (Subsidiary of AMERCO)
 USL Capial Fleet Services
 Wheels Inc.

Issued on: October 15, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.950427117-9278-11;I.D. 100899A]

RIN 0648-AN30

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 issues this temporary action to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel Mile Marker 54 (Lat. 28°33'38"N, Long.96°30'50"W) and thence to Sand Point (Lat. 28°34'08"N, Long. 96°29'29"W), including Carancahua and Tres Palacios Bays.

DATES: This action is effective from October 19, 1999 through November 18, 1999. Comments on this action are requested, and must be received by November 18, 1999.

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, 727-570-5312, 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 has 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 223.206. Existing sea turtle conservation regulations (50 CFR part 223, subpart B) 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 223.206 (d)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (AA), may authorize compliance with tow time restrictions as an alternative to the TED requirement, if [she] 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 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are 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. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

The Director of the Division of Coastal Fisheries, TPWD, stated in a September 22 letter to the NMFS Southeast Regional Administrator that the shrimp fishery in Matagorda Bay has been experiencing serious problems since early to mid-August caused by an unusual infestation of the bryozoan, *Bugula sp.* TPWD has received complaints from shrimp fishermen about unusually dense concentrations of what the fishermen called sauerkraut weed (later identified as a bryozoan, *Bugula sp.*) being caught in shrimp trawls and clogging their TEDs. TPWD has also observed this phenomenon in sample trawls made aboard cooperating

shrimp vessels, and supplied NMFS with photographic documentation of the problem.

Drought conditions have produced salinities exceeding 30 parts per thousand in Matagorda Bay. Elevated salinities and water temperatures are believed to be responsible for the extraordinarily high concentrations of the bryozoan, *Bugula sp.* The dense, filamentous bryozoan becomes lodged in the TEDs after relatively short periods of towing, rendering the TEDs ineffective in expelling sea turtles as well as negatively impacting fishermen's catches.

The TPWD letter requested that NMFS use its authority to allow the use of limited tow times as an alternative to the use of TEDs in Matagorda Bay, bounded on the west by a line running from the Matagorda Jetties north along the Matagorda Ship Channel to Mile Marker 54 and east to Sand Point. Essentially, most of Matagorda Bay, excluding Lavaca Bay and the western edge of Matagorda Bay proper, is included in the exemption area requested by TPWD. According to TPWD personnel, the problematic concentrations of *Bugula sp.* are difficult to pinpoint or chart precisely, due to tidal and wind action which continuously moves and shifts the bryozoans from area to area. A NMFS gear specialist, working with Matagorda Bay shrimpers in early October, confirmed the severity and wide distribution of the bryozoan clogging problem. TPWD has asked NMFS to authorize the use of limited tow times for most of Matagorda Bay for a 30-day period.

NMFS and the Texas Parks and Wildlife Department (TPWD) will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether bryozoan concentrations continue to make TED use impracticable. The intent of this action is to relieve the economic hardship on Matagorda Bay shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

Special Environmental Conditions

The AA finds that the impacts of the current drought conditions in southern Texas on Matagorda Bay have created special environmental conditions that may make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel