

exceptionally large or small restraints. This combination of restraints is needed to assure the robustness of automatic suppression systems under real world conditions. It is also important to note that when Appendix A was amended in November 2003, the Britax Expressway ISOFIX was unique in design, in that it was the only child restraint system available with rigid Lower Anchors and Tethers for Children (LATCH) attachments. While the agency has identified a small percentage of child restraint systems that weigh more than the Britax Expressway ISOFIX, the inclusion of heavier child restraint system designs is not inconsistent with the intent of Appendix A of FMVSS No. 208. Further, while the Britax Expressway ISOFIX is approximately 0.5 kg (1.1 lb) heavier than the heaviest child restraint system that was removed from Appendix A as amended in the November 2003 final rule, the agency does not consider this to be an indication that child restraint system designs are increasing in weight.

As noted earlier, FMVSS No. 213 is a performance standard, and does not specify particular design constraints such as mass and/or dimensions. Honda did not provide any rationale for its proposal to limit child restraint system designs to a maximum of 8.5 kg (18.7 lb). NHTSA has not identified any real-world data to support the need to limit the weight of child restraint systems, and specifically as it relates to the performance of occupant detection systems for automatic air bag suppression. Further, specification of a child restraint system mass limit, when considered in conjunction with the mass of the dummy used in air bag suppression testing, would effectively establish a weight threshold for weight-based air bag suppression systems. It is not the intent of the agency to specify such a threshold. Each vehicle manufacturer is responsible for meeting the requirements of FMVSS No. 208 when using any of the child restraint systems listed in Appendix A.

In consideration of the foregoing, NHTSA is denying Honda's petition for rulemaking to amend FMVSS No. 213 to adopt a design weight limit for child restraint systems used with the 3-year-old dummy. In accordance with 49 CFR Part 552, this completes the agency's review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 13, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.050922245-5276-02; I.D. 092005A, 100505D]

RIN 0648-AT89

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule to allow shrimp fishermen to continue to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in inshore and offshore waters from the Florida/Alabama border, westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, as initially authorized in rules published on September 28 and October 14, 2005. This action is necessary because environmental conditions resulting from Hurricanes Katrina and Rita persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

DATES: Effective from October 24, 2005, through 11:59 p.m., local time, November 23, 2005.

ADDRESSES: Requests for copies of the Environmental Assessment on this action should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-551-5794.

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*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green

(*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, which allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions 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 NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA 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. Each tow 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, as measured from the time that the trawl doors enter the water until they are removed from the water. 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

On September 12, 2005, the NMFS Southeast Regional Administrator received requests from the Marine Fisheries Division of the Alabama Department of Conservation and Natural Resources (ALDCNR) and the Louisiana Department of Wildlife and Fisheries (LADWF) to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm-related debris on the fishing grounds as a result of Hurricane Katrina. NMFS received a similar request from the Mississippi Department of Marine Resources (MDMR) on September 13. On September 27, 2005, the NMFS Southeast Regional Administrator received requests from the Louisiana Department of Wildlife and Fisheries (LADWF) and the Texas Parks and Wildlife Department (TPWD) to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm-related debris on the fishing grounds as a result of Hurricane Rita. Subsequent to these requests, NMFS issued 30-day exemptions to the TED requirements from September 23 through October 23, 2005, and October 11 through November 10, 2005, for waters affected by Hurricanes Katrina and Rita, respectively (70 FR 56593 and 70 FR 60013, respectively).

On October 11, 2005, the NMFS Southeast Regional Administrator received requests from the ALDCNR, MDMR, LADWF, and the TPWD for an additional 30-day period allowing the use of restricted tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm-related debris that is still present on the fishing grounds as a result of Hurricanes Katrina and Rita. After an investigation, NMFS has determined that this debris is still affecting fishermen's ability to use TEDs effectively, which is not expected to

dissipate anytime soon. When a TED is clogged with debris it can no longer catch shrimp effectively nor can it effectively exclude turtles. NMFS has investigated the continuing problems with debris and has determined that shrimp fisherman may continue to use limited tow times as an alternative to TEDs in inshore and offshore waters in the affected area off Alabama westward through Texas.

Special Environmental Conditions

The AA finds that debris washed into inshore and offshore waters by Hurricanes Katrina and Rita off Alabama, westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, has created ongoing special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to extend the two previous authorizations for the use of restricted tow times as an alternative to the use of TEDs in inshore and offshore waters off Alabama, westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, through 11:59 p.m. on November 23, 2005. Tow times must be limited to no more than 55 minutes measured from the time trawl doors enter the water until they are retrieved from the water through October 31, 2005, and no more than 75 minutes from the time trawl doors enter the water until they are retrieved, November 1 through November 23, 2005; thus, the permitted tow time will change part way through this exemption period.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times.

NMFS' gear experts have provided several general 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. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. 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 trap debris either on or in front of 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. The use of the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action 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 rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in inshore and offshore waters affected by Hurricanes Katrina and Rita off Alabama, westward to the boundary shared by Matagorda and Brazoria Counties, Texas, and extending offshore 50 nautical miles, through November 23, 2005. Through this temporary rule, shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, as prescribed above.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates

compliance cannot be monitored effectively. This authorization will expire automatically at 11:59 p.m., local time, on November 23, 2005, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

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

The AA has determined that this action is necessary to respond to special environmental conditions to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. The AA finds that

unusually high amounts of debris has created ongoing special environmental conditions that make trawling with TED-equipped nets impracticable. Prior notice and opportunity to comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry relief from the effects of Hurricanes Katrina and Rita in a timely manner.

The AA finds that there is good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) to provide alternatives to comply with the sea turtle regulations in a timely manner. Many fishermen may be unable to operate under the special environmental conditions created by Hurricanes Katrina and Rita without an alternative to using TEDs. Providing a 30-day delay in effective date would prevent the agency from providing the

affected industry relief from the effects of Hurricanes Katrina and Rita in a timely manner. For the reasons stated above, the AA finds that this temporary rule should not be subject to a 30-day delay in effective date, pursuant to 5 U.S.C. 553(d)(1).

Since prior notice and an opportunity for public comment are not required to be provided for this action 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 AA prepared an Environmental Assessment (EA) for this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: October 24, 2005.

James W. Balsiger,

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

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