

permanently excludes "funeral coaches" from the requirements of FMVSS No. 225 and adopts a definition of that vehicle type for the reasons provided in the May 2003 final rule.

This rulemaking relieves a restriction on a group of small manufacturers and has no negative safety consequences. Accordingly, NHTSA finds for good cause that an effective date of less than 180 days from the date of publication of this notice is in the public interest.

V. Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. This document amends FMVSS No. 225 to exclude funeral coaches from the requirements of the standard on a permanent basis. There are no additional costs associated with this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96-354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule relieves a restriction on manufacturers of funeral coaches and does not impose any new obligations or requirements.

Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13132, and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of

this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule will not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule will not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ For the reasons set forth in the preamble, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. In 49 CFR 571.225, S2 and the definition of "funeral coach" in S3 are republished to read as follows:

§ 571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S2. *Application.* This standard applies to passenger cars; to trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,855 kilograms (8,500 pounds) or less; and to buses (including school buses) with a GVWR of 4,536 kg (10,000 lb) or less. This standard does not apply to walk-in van-type vehicles, vehicles manufactured to be sold exclusively to the U.S. Postal Service, shuttle buses, and funeral coaches.

S3. *Definitions.*

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Funeral coach means a vehicle that contains only a front row of occupant seats, is designed exclusively for transporting a body and casket and that is equipped with features to secure a casket in place during operation of the vehicle.

Issued on: October 5, 2004.

Jeffrey W. Runge,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.;I.D. 100404B]

RIN 0648-AS79

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 authorization for a period of 30 days, to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in the state waters of Alabama and Mississippi, and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle). This action is necessary because excessive debris as a result of Hurricane Ivan may affect fishermen's ability to use TEDs effectively. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles.

DATES: Effective from October 12, 2004 through November 12, 2004.

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

FOR FURTHER INFORMATION CONTACT: Bob Hoffman, 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 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 killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Taking endangered sea turtles is prohibited under the ESA, subject to limited exceptions. Through section 4(d) of the ESA, NMFS implemented regulations at 50 CFR 223.206 extending the taking prohibition to threatened sea turtles. Exceptions to the taking prohibition are also authorized 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 provide for the escape of sea turtles. 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, that 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. 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, 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 27, 28, and 29, 2004, the NOAA Fisheries' Southeast Regional Administrator received requests from the Marine Fisheries Division of the Alabama Department of Conservation and Natural Resources (ADCNR), the Mississippi Department of Marine Resources (MDMR), and the Louisiana Department of Wildlife and Fisheries (LDWF), respectively, to allow the use of tow times as an alternative to TEDs in state waters because of excessive storm-related debris on the fishing grounds as a result of Hurricane Ivan. After an investigation, the ADCNR, MDMR, and LDWF have determined that this debris is affecting the fishermen's ability to use TEDs effectively. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Alabama, Mississippi, and Louisiana have stated that their marine enforcement agencies will increase patrols to enforce the tow time restrictions.

NOAA Fisheries gear technicians interviewed fishermen and surveyed parts of the affected areas in Alabama, Mississippi, and Louisiana. The interviews and surveys conducted by the gear technicians indicate that problems with debris exist in Alabama, Mississippi, and Louisiana state waters that are likely to affect the effectiveness of TEDs.

Special Environmental Conditions

The AA finds that debris washed into the state waters of Alabama and Mississippi and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle) by Hurricane Ivan has

created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this temporary rule to authorize the use of restricted tow times as an alternative to the use of TEDs in the state waters of Alabama and Mississippi and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle) for a period of 30 days. Through October 31, 2004, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are completely retrieved from the water. From November 1, 2004, through November 12, 2004, unless terminated earlier, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water. The marine patrols of the affected states are continuing to monitor the situation and will cooperate with NMFS in determining the extent of the ongoing debris problem in this area. Moreover, the affected states have stated that their marine patrols will enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the affected states marine patrols to enforce tow time restrictions is an important factor enabling NMFS to issue this authorization.

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. The use of TEDs negates the tow time restrictions. 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 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 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. 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 the state waters of Alabama and Mississippi, and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90° 03' 00" West longitude (approximately the west end of Grand Isle) for a period of 30 days. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations by using restricted tow times.

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 indicate compliance cannot be monitored effectively. This authorization will expire automatically on November 12, 2004, unless it is explicitly extended through publication in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA 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 applicable regulations.

Pursuant to 5 U.S.C. 553(b)(3)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this temporary rule as such procedures are impracticable and contrary to the public interest. Unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Providing notice and comment would prevent the agency from providing relief within the necessary time frame because shrimp loss and sea turtle lethal take is likely to occur in the interim period prior to finalizing this temporary rule. These resources would be impacted unnecessarily through a notice and comment period process.

For the same reasons, 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). The temporary rule grants a short-term exemption to the requirement to use TEDs, and, therefore, allows fishermen to choose between deploying TEDs or using tow-times. This temporary rule relieves a restriction and is not subject to a 30-day delay in effective date, pursuant to 5 U.S.C. 553(d)(1). NMFS is making the rule effective October 12, 2004 through November 12, 2004.

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 12, 2004.

Rebecca Lent,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040618188-4265-02; I.D. 061404A]

RIN 0648-AS26

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that implemented Amendment 16-3 to the Pacific Coast Groundfish Fishery Management Plan (FMP). This document corrects amendatory instruction 2.

DATES: Effective October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: (206) 526-4646; fax: 206-526-6736; and email: jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule also is accessible via the Internet at the Office of the **Federal Register's** website at www.gpoaccess.gov/fr/index/html and at the NMFS Northwest Region website at www.nwr.noaa.gov/1sustfish/gfsh/gdfsh/gdfsh01.html.

Background

NMFS published a final rule implementing Amendment 16-3 on September 28, 2004 (69 FR 57874). That final rule updated the list of rockfish species defined in the Code of Federal Regulations to match that listed in the FMP and corrected dusty rockfish to read dusky rockfish. In that final rule, dusty rockfish was mistakenly listed as dusky rockfish in the instruction language for which species was to be removed. This document corrects that amendatory instruction language.