

require an environmental assessment or an environmental impact statement.

We have also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General conformity requirement since it involves rulemaking and policy development and issuance. See 40 CFR 93.153(c)(2). It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely clarifies procedures and extends compliance dates for CDL school bus operators obtaining a school bus endorsement on their CDL.

*Executive Order 13211 (Energy Supply, Distribution, or Use)*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action. For these reasons, a Statement of Energy Effects under Executive Order 13211 is not required.

**List of Subjects**

*49 CFR Part 383*

Administrative practice and procedure, Highway safety, and Motor carriers.

*49 CFR Part 384*

Administrative practice and procedure, Highway safety, and Motor carriers.

■ In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations chapter III, subchapter B, as set forth below.

**PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES**

■ 1. The authority citation for 49 CFR part 383 is revised to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; sec. 214 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; sec. 4140 of Pub. L. 10–59, 119 Stat. 1144; and 49 CFR 1.73.

■ 2. Amend § 383.123 by adding a new paragraph (a)(4), and revising paragraph (b)(3) to read as follows:

**§ 383.123 Requirements for a school bus endorsement.**

(a) \* \* \*

(4) *Exception.* Knowledge and skills tests administered before September 30, 2002 and approved by FMCSA as meeting the requirements of this section, meet the requirements of paragraphs (a)(2) and (a)(3) of this section.

(b) \* \* \*

(3) After September 30, 2006, the provisions in paragraph (b) of this section do not apply.

**PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM**

■ 3. The authority citation for part 384 is revised to read as follows:

**Authority:** 49 U.S.C. 31136, 31301 *et seq.*, 31502; sec. 103 of Pub. L. 106–159, 113 Stat. 1753, 1767; sec. 4140 of Pub. L. 10–59, 119 Stat. 1144; and 49 CFR 1.73.

■ 4. Section 384.301 is amended by revising paragraph (b) to read as follows:

**§ 384.301 Substantial compliance-general requirements.**

\* \* \* \* \*

(b)(1) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of September 30, 2002 as soon as practical, but, unless otherwise specifically provided in this part, not later than September 30, 2005.

(2) *Exception.* A State must come into substantial compliance with 49 CFR 383.123 not later than September 30, 2006.

Issued on: September 20, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–19292 Filed 9–27–05; 8:45 am]

BILLING CODE 4910–EX–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 222 and 223**

[Docket No. 050922245–5245–01; I.D. 092005A]

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 for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state and Federal waters from the Florida/Alabama border, westward to the boundary of Cameron Parish, Louisiana (approximately 92° 37' W. long.), and extending offshore 50 nautical miles. This action is necessary because environmental conditions resulting from Hurricane Katrina are preventing some fishermen from using TEDs effectively.

**DATES:** Effective from September 23, 2005 through October 24, 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 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 state and Federal waters because of the presence 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. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and state resource agency staffs confirm there are problems with debris in state and Federal waters off Alabama, westward to the boundary of Cameron Parish, Louisiana, and extending offshore 50 nautical miles, which are likely to affect the effectiveness of TEDs.

#### **Special Environmental Conditions**

The AA finds that debris washed into state and Federal waters by Hurricane Katrina from the Florida/Alabama border, westward to the boundary of Cameron Parish, Louisiana (approximately 92° 37' W. long.), and extending offshore 50 nautical miles, has created special environmental conditions that 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 state and federal waters off Alabama, westward to the boundary of Cameron Parish, Louisiana (approximately 92° 37' W. long.), and extending offshore 50 nautical miles, for a period of 30 days. 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.

#### **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 state and Federal waters affected by Hurricane Katrina off Alabama, westward to the boundary of Cameron Parish, Louisiana (approximately 92° 37' W. long.), and extending offshore 50 nautical miles, for a period of 30 days. 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 on October 24, 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 an environmental 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)(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 are creating 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 Hurricane Katrina in a timely manner.

The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Many fishermen may be unable to operate under these conditions without an alternative to the use of TEDs. Therefore, 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. For the reasons 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: September 23, 2005.

**James W. Balsiger,**

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

[FR Doc. 05-19373 Filed 9-23-05; 2:14 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 091405F]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; inseason catch limit adjustment.

**SUMMARY:** NMFS has determined that the daily retention limit for Atlantic

bluefin tuna (BFT) in the General category should be adjusted to allow maximum utilization of the General category October-January time period. In addition, NMFS is prohibiting the retention of school BFT less than 47 inches (119 cm) in the recreational fishery for the remainder of the fishing year to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA).

**DATES:** Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Dianne Stephan or Brad McHale, 978-281-9260.

#### SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of ATCA and the Magnuson-Stevens Fishery Conservation and Management Act governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. During the rulemaking for the final initial 2005 BFT specifications and General category effort controls that were published on June 7, 2005 (70 FR 33033), NMFS specifically requested comment on options related to a recommendation of ICCAT regarding a four-consecutive-year average 8 percent landings limit for harvest of school BFT. Numerous comments were received on this issue as well as a wide range of topics, including inseason management measures for the Atlantic tunas General, Highly Migratory Species (HMS) Charter/Headboat, and HMS Angling categories throughout the 2005 fishing year.

#### Daily Retention Limits

Pursuant to this temporary action and the final initial 2005 BFT specifications, noted above, the daily BFT retention limits for Atlantic Tunas General, HMS Charter/Headboat, and HMS Angling categories are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

| Permit Category | Effective Dates                                      | Areas | BFT Size Class Limit                                                        |
|-----------------|------------------------------------------------------|-------|-----------------------------------------------------------------------------|
| General         | October 1, 2005, through January 31, 2006, inclusive | All   | Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger |