

horizontal plane (Plane 35) half-way between Plane 33 and Plane 34. Target DF3 is the point located in Plane 35 and on the interior surface of the door frame, which is closest to CG-F2 for the nearest seating position.

(d) *Target DF4.* Locate a horizontal plane (Plane 36) half-way between Plane 34 and Plane 35. Target DF4 is the point located in Plane 36 and on the interior surface of the door frame which is closest to CG-R for the nearest seating position.

S10.15 *Other door frame targets.*

(a) *Target OD1.*

(1) Except as provided in S10.15(a)(2), target OD1 is located in accordance with this paragraph. Locate the point (Point 23), on the vehicle interior, at the intersection of the horizontal plane through the highest point of the highest adjacent door opening or daylight opening (if there is no adjacent door opening) and the center line of the width of the other door frame, as viewed laterally with the doors in the closed position. Locate a transverse vertical plane (Plane 37) passing through Point 23. Locate the point (Point 24) at the intersection of the interior roof surface, Plane 37 and the plane, described in S8.15(h), defining the nearest edge of the upper roof. The other door frame reference point (Point ODR) is the point located at the middle of the line between Point 23 and Point 24 in Plane 37, measured along the vehicle interior surface. Target OD1 is located at Point ODR.

(2) If a seat belt anchorage is located on the door frame, Target OD1 is any point on the anchorage.

(b) *Target OD2.* Locate the horizontal plane (Plane 38) intersecting Point ODR. Locate a horizontal plane (Plane 39) passing through the lowest point of the daylight opening forward of the door frame. Locate a horizontal plane (Plane 40) half-way between Plane 38 and Plane 39. Target OD2 is the point located on the interior surface of the door frame at the intersection of Plane 40 and the center line of the width of the door frames, as viewed laterally, with the doors in the closed position.

S10.16 *Seat belt mounting structure targets.*

(a) *Target SB1.* Target SB1 is located at any point on the seat belt anchorage mounted on the seat belt mounting structure.

(b) *Target SB2.* Locate a horizontal plane (Plane 41), containing either CG-F2 or CG-R, as appropriate, for any outboard designated seating position whose seating reference point, SgRP, is forward of and closest to, the vertical center line of the width of the seat belt mounting structure as viewed laterally.

Target SB2 is located on the seat belt mounting structure and in Plane 41 at the location closest to either CG-F2 or CG-R, as appropriate.

(c) *Target SB3.* Locate a horizontal plane (Plane 42), containing CG-R for any outboard designated seating position rearward of the forwardmost designated seating position or positions whose seating reference point, SgRP, is rearward of and closest to, the vertical center line of the width of the seat belt mounting structure, as viewed laterally. Measuring along the nominal surface of the seat belt mounting structure locate a horizontal plane (plane 43) 225 mm below Plane 42. Target SB2 is located on the seat belt mounting structure and in Plane 43 at the location closest to CG-R, as appropriate.

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Issued on March 28, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 000320077-0077-01; I.D. 021500C]

RIN 0648-AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking to announce that it is considering technical changes to the requirements for turtle excluder devices (TEDs). NMFS proposes to modify the size of the TED escape opening, modify or decertify hooped hard TEDs and weedless TEDs, and change the requirements for the types of flotation devices allowed. NMFS is also considering modifications to the leatherback conservation zone regulations to provide better protection to leatherback turtles. The proposed measures are necessary to effectively protect all life stages and species of sea turtles.

DATES: Written comments (see **ADDRESSES**) will be accepted through May 5, 2000.

ADDRESSES: Written comments on this action and request for copies of the 1999 TED opening evaluation report and the Leatherback Contingency Plan should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT:

Charles A. Oravetz (ph. 727-570-5312, fax 727-570-5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301-713-1401, fax 301-713-0376, e-mail Barbara.Schroeder@noaa.gov).

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 (*Dermodochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtles (*Chelonia mydas*) 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.

The incidental take and mortality of sea turtles as a result of trawling activities has been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR Part 223. The incidental taking of turtles during shrimp or summer flounder trawling is excepted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR Part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the Southeastern United States. (Atlantic Area and Gulf Area) 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, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED—the Parker soft TED.

TEDs incorporate an escape opening, usually covered by a webbing flap, that allow sea turtles to escape from trawl nets. To be certified by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during experimental TED testing. TEDs must meet 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. In the Atlantic Area, these requirements are ≥ 35 inches (≥ 89 cm) in width and ≥ 12 inches (≥ 30) in height. In the Gulf Area the requirements are ≥ 32 inches (81 cm) in width and ≥ 10 inches (≥ 25 cm) in height.

NMFS TED Opening Study

The proportion of large, mature loggerheads and greens that are documented to strand on coastal beaches appear to be greater than the proportion that would be expected given the size distribution of sea turtles found in nearshore waters (Turtle Expert Working Group, in preparation). The disparity in size may be a result of the minimum size requirement for TED openings which only allows smaller turtles to escape. NMFS (Epperly and Teas, 1999; copies available, see ADDRESSES) conducted analyses of the size of TED openings in relation to the carapace width and body depth of stranded sea turtles and concluded that body depth, not carapace width, was a factor in the turtle's ability to exit the TED opening. Up to 47 percent of the body depths for stranded loggerheads and 7 percent for green turtles exceeded the minimum height requirements for TED openings.

Leatherback Contingency Plan

NMFS in cooperation with the U.S. Fish and Wildlife Service, South Carolina, Georgia, and Florida developed the Leatherback Contingency Plan (copies available, see ADDRESSES) to reduce leatherback mortality in shrimp trawls. Leatherback sea turtles are too large to be excluded through the standard size TED opening; when mature they can weigh between 600 and 1300 pounds (273 and 591 kg). The Leatherback Contingency Plan established procedures to identify when and where TEDs with large escape openings should be used to protect leatherbacks during their annual, spring migration along the Atlantic seaboard. In 1995, NMFS established the leatherback conservation zone regulations (50 CFR 223.206) to implement the Leatherback Contingency Plan (60 FR 25260, May 12, 1995; 60 FR

25663, May 12, 1995). The waters north of Cape Canaveral, Florida to the North Carolina-Virginia border were identified as the leatherback conservation zone. Within this zone, weekly aerial surveys for leatherback sightings are conducted from January 1 through June 30 of each year. If sightings, in replicate surveys, exceed 10 leatherback turtles per 50 nautical miles (nm) (92.6 km) of trackline, NMFS will close, for a 2-week period, waters within 1° lat. of the trackline to shrimp trawlers unless they use a TED modified with the leatherback exit opening.

In 1999, NMFS became concerned that the leatherback conservation zone regulation was not adequate to protect leatherbacks. In the spring of 1999, NMFS implemented the 2-week closures in areas of South Carolina and North Carolina (64 FR 25460, May 12, 1999; 64 FR 27206, May 19, 1999; 64 FR 28761, May 27, 1999; 64 FR 29805, June 3, 1999). In implementing the regulation, it was determined that replicate surveys were not always feasible due to weather, staff, or equipment constraints and that a sighting of less than 10 leatherbacks per 50 nm (92.6 km) in the replicate survey was not necessarily an indication that the turtles had moved away from the closed area, and that the 2-week closure duration was insufficient to ensure protection while leatherbacks were present in the area.

From October 1 through to December 15, 1999, 15 leatherbacks stranded in Nassau through Brevard counties on the east coast of Florida. Since these strandings occurred outside of the seasonal provisions specified in the leatherback conservation zone regulation, NMFS issued an emergency 30-day rule requiring shrimp trawlers to use the leatherback TED modification (64 FR 69416, December 13, 1999). The 30-day restriction was necessary because leatherbacks were expected to be present in the area through that period. The leatherback conservation zone regulation is also limited to only a portion of the Atlantic coast. From 1986 through 1999 an average of 9 leatherbacks per year have been found stranded in the western Gulf with a high of 21 leatherbacks in 1999. Leatherbacks are also documented to strand in the eastern Gulf with an average of 5 per year from 1986 through 1999, with a high of 19 in 1989.

In summary, the leatherback conservation zone regulation may not adequately address leatherback mortality in shrimp trawls for the following reasons: The aerial surveys are limited to the Spring and do not cover the Fall when leatherbacks are known to strand, the leatherback

conservation zone does not encompass all areas where leatherbacks may be present, the ability to conduct the replicate surveys required in the regulation is constrained by weather, staff and equipment and may not adequately determine whether leatherbacks have moved from the survey area, and the 2-week closures may not encompass the time that leatherbacks are present in high numbers in certain areas. Therefore, NMFS would like comments on whether the leatherback conservation zone regulation should be modified based on the problems identified previously or eliminated by requiring the use of leatherback TED modifications with long flaps year-round or, at a minimum, along the Atlantic Area in the Spring and Fall, or in other specified areas or during other specified times of the year.

TED Opening Size Options

NMFS is considering two options to modify TED openings. The first option would require the leatherback modification (the opening must have a 142-inch (361-cm) circumference with a corresponding 71-inch (180-cm) straight line stretched measurement) with a minimum 32-inch (81-cm) grid for all TEDs in all areas at all times. The advantages of this option are (1) decreased escape times for all turtles (this size opening will release leatherbacks and all large loggerhead and green turtles); (2) elimination of the leatherback conservation zone regulation which may not adequately protect leatherbacks; and (3) the leatherback TED modification would allow long flaps on bottom opening TEDs which may reduce shrimp loss and eliminate debris in the trawl. The disadvantages of this option are the 32-inch (81-cm) grid TED may not fit into small nets and small vessels may not be able to handle this size TED. Also, data on shrimp retention with the leatherback TED modification are lacking. NMFS intends to conduct tests on shrimp loss in the leatherback TED modification by early 2000.

The second option would require the use of an opening that is 35-inch (89-cm) wide by 16-inch (41-cm) high with a minimum 30-inch (76-cm) grid in all areas at all times. The advantages of this option are (1) increased release of larger loggerhead turtles and small leatherbacks; and (2) based on reports from NMFS enforcement agents and gear specialists, many fisherman already use this size opening or larger. The disadvantages are (1) this size opening will not release most leatherback turtles; and (2) use of this opening will require the continued use and modification of

the leatherback conservation zone regulation.

Other TED Modifications (Hooped Hard TED, Weedless TED, Flotation Devices)

Information from enforcement personnel and recent net shop surveys conducted by NMFS gear specialists have shown little or no use of the hooped hard TED. Enforcement personnel also report confusion with the differing regulatory requirements for escape openings for single grid and hooped hard TEDs. The weedless TED (a TED with the deflector bars not attached to the bottom to the grid frame) has been documented by NMFS enforcement with bent bars and spacing more than 4 inches (10-cm) apart. The bars of the weedless TED may bend during commercial use due to poor construction or inherent weakness in the design. NMFS TED testing in 1996 showed that weedless TEDs with the bars bent inward (toward the codend of the trawl) caught 100 percent of the

turtles introduced into the trawl net. NMFS is considering either eliminating the weedless TED or requiring reinforcement of the bars. NMFS is soliciting public comment on these options.

NMFS enforcement has documented improper or inoperable flotation which will cause the TED to drag on the bottom resulting in damage and improper function. Flotation devices such as sponges do not perform well on deep-water offshore trawls because they collapse and lose buoyancy. NMFS is seeking public comment on whether different flotation, such as aluminum or hard plastic should be required in deep water areas where traditional sponges floats are ineffective.

Conclusion

NMFS is seeking advanced public input on potential changes to the TED regulations. NMFS wants to improve the performance of TEDs to protect large turtles, streamline and simplify the

regulations, and improve the ability to enforce such regulations. The options NMFS is currently considering are:

Requiring the leatherback opening and long flap with a minimum 32-inch (81-cm) grid in all areas; or

Requiring a 35-inch (89-cm) by 16-inch (41-cm) opening with a minimum 30-inch (76-cm) grid in all areas;

Modifying or decertifying hooped hard TEDs and weedless TEDs;

Changing the requirements for the types of flotation devices allowed;

Modifying or eliminating the leatherback conservation zone regulation to provide better protection to leatherback turtles.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

Dated: March 31, 2000.

Penelope D. Dalton,

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

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