

a hooped hard TED ("the Coulon TED") that is capable of releasing large loggerhead and green turtles as well as leatherback turtles.

DATES: This final rule is effective August 21, 2003.

ADDRESSES: Copies of the environmental assessment can be obtained from the Protected Resources Division, Southeast Regional Office, 9721 Executive Center Drive, North, Suite 102 St. Petersburg, Florida, 33702.

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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. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206, or if in accordance with the terms and conditions of a biological opinion issued under section 7 of the ESA or an incidental take permit issued under section 10 of the Act. 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.

February 21, 2003, Amendments to the Sea Turtle Conservation Regulations

On February 21, 2003, NMFS issued a final rule (68 FR 8456), amending the sea turtle conservation regulations to protect large loggerhead, green, and leatherback sea turtles. The final rule became effective April 15, 2003, with the exception of the Gulf Area where it will become effective on August 21, 2003. The February final rule requires that all shrimp trawlers fishing in the offshore waters of the southeastern United States (Atlantic Area and Gulf Area) and the inshore waters of Georgia and South Carolina use either a double cover flap TED, a single-grid hard TED with a 71-inch (180-cm) opening, or a Parker soft TED with a 96-inch (244-cm) opening in each net rigged for fishing. In inshore waters, except those of Georgia and South Carolina, the rule allows the use of a single-grid hard TED with a 44-inch (112-cm) opening, a Parker soft TED with a 56-inch (142-cm) opening, and a hooped hard TED with a 35-inch (89-cm) by 27-inch (69-cm) escape opening.

Since publication of the final rule (68 FR 8456, February 21, 2003), NMFS has tested a new hooped hard TED design developed in Louisiana (the Coulon TED) that contains a larger escape opening than the hooped hard TED design used in inshore waters. Louisiana fishermen prefer the Coulon TED due to its higher shrimp retention, and its efficiency and quickness in releasing both turtles and fish bycatch. Because of the desire of fishermen to continue to use this style of TED in offshore waters and their assertion that it could indeed be made large enough to release leatherback turtles, the Southeast Fisheries Science Center's Harvesting Systems and Engineering Branch worked with the inventor of the Coulon TED and fishermen who use it to develop and test a large Coulon style TED to evaluate its ability to release

large loggerhead, green, and leatherback turtles.

Large Hooped Hard TED Testing

NMFS tested the large Coulon style TED using testing protocols designed to evaluate a TED's ability to release large turtles. The protocols were developed during the testing and approval of the double cover TED (66 FR 24287, May 14, 2001). NMFS used the average carapace measurements of 15 nesting female leatherback turtles to construct a pipe-framed model of a leatherback turtle. This model measured 40 inches wide by 21 inches (102 cm by 53 cm) deep. The test was performed by a diver swimming repeatedly through the trawl with the model and pushing it through the TED opening. During these tests, the diver was able to push the model through the opening with ease. When the model was inverted (simulating the dorsal surface of the turtle oriented against the TED frame), the diver was still able to push the model through the opening with ease.

A large Coulon style TED with a hinged door covering the escape opening to within 12 inches (30 cm) from the back edge of the opening was also tested to determine its ability to release small turtles. The small turtle protocol calls for the release of 25 turtles, released one at a time, into a trawl towed at 2.5 knots (55 FR 41092, October 9, 1990). Each turtle is given 5 minutes to escape; if the turtle does not escape within 5 minutes, it is retrieved by divers and is considered to have been captured. The capture rate is then compared to that of a control TED (in this case a top-opening double cover flap TED).

During the week of June 22, 2003, 25 small turtles were exposed to the large Coulon style TED with a hinged door and all 25 turtles escaped quickly and easily. The Southeast Fisheries Science Center's Harvesting Systems and Engineering Branch believes that this particular configuration of the large Coulon style TED would be the most difficult for small turtles to escape from because of the weight and size of the door. However, when compared to the control TED, the average escape times did not differ significantly; the average escape time for the control TED was 62 seconds compared to 68 seconds for the Coulon style TED with the hinged door. Based upon the tests described above, NMFS determined that the large Coulon style TED meets the regulatory turtle release rate requirement.

Therefore, on July 30, 2003, NMFS published a proposed rule (68 FR 44722) requesting comments on allowing the use of a large hooped hard