

shipment of shrimp was harvested under conditions that do not adversely affect sea turtles. *Turtle Island Restoration Network v. Evans*, 284 F.3d 1282 (Fed. Cir. March 21, 2002).

NMFS has been actively engaged with the Department of State (DOS) in enforcing section 609 of Public Law 101-162, since it was enacted in 1990. Nations with shrimp fisheries in the Atlantic, Pacific and Indian Oceans, the Caribbean Sea, and the Gulf of Mexico have faced trade restrictions on their commercially harvested shrimp exports to the United States. In most cases, these embargoes remained in place until the national government implemented a sea turtle protection program comparable in effectiveness to that of the United States. Embargoes on wild caught shrimp from nations with ineffective enforcement regimes have also been enacted. NMFS and DOS visit participating countries regularly to observe the performance of the foreign TED programs and ensure that certifications made pursuant to section 609 are based on the best information available. DOS has determined that section 609's embargo provision only applies to wild-harvested shrimp and not to aquacultured shrimp which make up the majority of U. S. imports.

*Comment 3:* Some fishermen commented that the larger TEDs could not be pulled by boats with small trawls and that large turtles would be unable to pass through the neck of the trawl to reach the grid. Also, a 71-inch (180-cm) opening installed in a small trawl will not properly support the TED. The TED would become wobbly, lose its angle, and may rip away from the trawl.

*Response:* During their June 2002, TED testing trip to Panama City, FL, NMFS gear technicians tested the 71-inch (180-cm) opening in a small trawl and found that it could be effectively used in a trawl with a 120-mesh extension. The gear technicians used a model leatherback turtle to determine if it could move through the trawl neck and reach the grid. The model turtle is an aluminum pipe frame that is made to resemble a leatherback turtle that is 40 inches wide (102 cm) by 21 inches deep (53 cm). These dimensions are based on the average measurements taken of 15 nesting leatherback turtles. The gear technicians were able to pass the model through the trawl with a 120 mesh extension to the grid and out the 71 inch (180 cm) opening. NMFS believes that the use of a 71 inch (180 cm) TED or the double cover flap TED in a small trawl will be effective for large turtle release and fishing efficiency.

Gear technicians also tested the use of a 140-mesh extension in a small trawl.

The trawl's performance was not altered by the use of the larger extension. The larger extension also made the installation of the large TED easier and the extra webbing made for a stronger installation and allowed the TED to maintain its angle better. The model leatherback also passed through the trawl to the grid and out the opening more easily than it did through the trawl with the 120 mesh extension. NMFS believes that fishermen who use small trawls may want to use a 140 mesh extension with the new, larger TED to provide better fishing and turtle release performance.

*Comment 4:* Some fishermen and the Georgia Department of Natural Resources (GA DNR) believe that the grid size should be 32 inches (81 cm) measured from the outside of the TED frame, not the inside. This is the grid size many fishermen use.

*Response:* NMFS is requiring a minimum grid size of 32 inches (81 cm) by 32 inches (81 cm) outside measurement, rather than the inside measurement originally proposed. TEDs of this size can be used effectively with the larger escape opening dimensions. This change may eliminate gear replacement costs for many fishermen.

*Comment 5:* The GA DNR believes that the dimensions of the cuts for the new opening should be the same dimensions as those for the current leatherback TED, not the dimensions that were proposed. GA DNR reports that only 9 out of 61 captains who use the current leatherback TED claim that the TED loses shape faster than the 35 inch (89 cm) by 12 inch (30 cm) TED. They also suggest that to reduce stress in the trawl, the grid should be oval with dimensions of at least 31 inches (79 cm) by 42 inches (107 cm).

*Response:* NMFS disagrees that the dimensions of the new opening should be those currently required for the leatherback opening. However, NMFS agrees that the dimensions should be altered from the opening specified in the proposed rule. Based on further information from fishermen who use the current leatherback TED and additional testing of the new opening, the cuts for the new 71-inch (181-cm) TED will be as follows: Two 26 inch (66 cm) cuts forward of the TED frame and one 71-inch (181-cm) cut across the top of the opening. NOAA gear technicians tested the 71-inch (181-cm) TED with three different cuts, to determine which cut would be most capable of releasing a leatherback turtle. This testing was conducted by using the model leatherback described in the response to comment 3. The model leatherback passed through the 71-inch (181-cm)

TED with an opening made with a 71-inch (181-cm) by 26-inch (66-cm) cut more easily than it did through the 71-inch TED with an opening made with a 71-inch (181 cm) by 20-inch (51-cm) cut; however, there was little to no difference between an opening made with a 71-inch (181-cm) by 26-inch (66-cm) cut and an opening made with an 83-inch (211-cm) by 26-inch (66-cm) cut (the dimensions of the current leatherback TED). NMFS believes that the 71-inch (181-cm) by 26-inch (66-cm) cut results in a stronger TED than the 83-inch (211-cm) by 26-inch (66-cm) cut because the former cut takes out less webbing.

Although an oval grid with measurements of 31 inches (79 cm) by 42 inches (107 cm) may work well with the new opening sizes, NMFS believes that other size and shaped grids will also work well. Allowing different grid sizes and shapes will allow fishermen greater flexibility in customizing their gear to help meet the demands of the different areas in which they fish.

*Comment 6:* Net makers, fishermen, and various state agencies are concerned with the elimination of gear that works well in their areas such as the Coulon TED, weedless TED, and accelerator funnels. Fishermen believe that the new TED requirements will minimize options to choose gear that will optimize shrimp catch while still protecting turtles.

*Response:* NMFS agrees and is allowing the weedless TED, hooped hard TED (of which the Coulon TED is one type), and accelerator funnels to be used in certain areas and with certain conditions. These areas and conditions are described in detail in the codified language below, and are only briefly described here. Hooped hard TEDs, of which the Coulon TED is a variety, can be modified to release large loggerhead turtles but cannot be modified to release leatherback turtles; therefore, NMFS believes that this TED, with the modifications to release large loggerheads, can be used in those inshore areas where leatherbacks are uncommon. The weedless TED can be strengthened through the use of a brace bar which will reinforce the grid bars to keep them from bending toward the back of the TED. This will eliminate the problem which caused NMFS to propose banning the weedless TED. Recent testing by gear technicians has shown that accelerator funnels with increased dimensions to allow the escape of large loggerhead and leatherback turtles can work effectively.

*Comment 7:* Louisiana fishermen encounter a large number of objects and debris that force open the TED flap