

That data set did not include unsuccessful tows. Unsuccessful tows are those that include problems which would bias the data in a manner unrelated to the TED, i.e., fouled tickler chain, torn nets, and catches dumped together. As a result, data gathered from such tows can not be used to make a judgment on the functioning of the TED. The 58 tows referenced in this comment had one or more of these problems and were therefore not included in the data set. However, all tows are recorded by the observer and any problems are noted. These records are archived and are available upon request.

Shrimp size is not always recorded by the observer. The database may provide shrimp size for selected trips and can be queried upon request. Trawl sizes varied depending on the captain of the vessel; however, during comparative tows, the size and type of each trawl used during a tow were the same for the control TED and the experimental TED.

Comment 13: Various state agencies and fishermen indicate that large turtles are not found in their state waters. Since 1968, three turtles were recorded caught in shrimp trawl nets during independent fishery trawl surveys conducted in state waters by Alabama, Mississippi, Louisiana and Texas.

Response: NMFS does not agree that the lack of sea turtle captures in state waters during fishery independent sampling represents an absence of sea turtles. Stranding information, observed captures, and survey data indicate that large loggerhead and leatherback turtles can be found in Alabama, Mississippi, Louisiana, and Texas state waters.

The fishery independent sampling that is the subject of these comments is conducted mostly with small trawls of 16 ft. (5 m) or less (although a small percentage were conducted with 40-ft. (12-m) trawls), with short tow times (10 to 15 minutes) which reduce the probability that the trawls would catch sea turtles. The purpose of these sampling programs is generally to record target catch and finfish bycatch and, therefore, are not necessarily representative of shrimp fishing effort and/or areas fished. However, NMFS did consider this information and researched the possibility of allowing the use of smaller TED sizes in all Gulf state waters. Based on the information below, leatherbacks occur in all offshore waters which warrants the use of a TED capable of releasing them.

Strandings in inshore waters likely are underestimated due to the difficulty in surveying areas that generally are marshlands or do not have sandy beaches. For the same reasons, offshore

strandings on much of the coastline of Louisiana are underestimated.

The greatest proportion of loggerheads stranding that are too large to fit through current TED openings is in the Gulf Area, where the current minimum height opening is 10 inches (25 cm) (compared to 12 inches (31 cm) in the Atlantic Area). In the western Gulf of Mexico, an annual average of 63 percent of stranded loggerheads offshore and 48 percent of stranded loggerheads inshore were larger than the dimensions of the current minimum TED opening. In the eastern Gulf of Mexico, the values are 89 percent offshore and 80 percent inshore. The proportions are less in the Atlantic Area: 27 percent offshore and 17 percent inshore, but because the number of turtles stranding in the Atlantic Area is higher, the actual number of animals too large to fit through the openings is comparable to the number of strandings that are too large in the Gulf Area. Based on 1995–99 data, each year approximately 250 loggerheads that are too large to fit through existing TED openings strand in each area; approximately 13 percent of these occur in inshore waters. Based on strandings, reported incidental captures, NMFS Beaufort project, Cooperative Marine Turtle Tagging, N.C. public sightings, observer data (Gulf and South Atlantic Fisheries Development Foundation and NMFS), aerial surveys (SETS, Pascagoula Oil Platform Association data, GOM red drum surveys of 1987, 1995, and 1999, NEFSC 1995 and 1998 surveys, CETAP, SEAS92 and SECAS95, MATS95, GulfCet I, GulfCet II, and GoMex surveys), and telemetry tracks, loggerheads are distributed ubiquitously in the Southeast United States, generally occurring in all areas, inshore and offshore, and at all times when shrimp trawling activity is likely to occur.

Leatherback turtles are distributed throughout the Southeast United States, but are not as abundant as loggerheads. Leatherbacks are predominantly found in offshore waters but infrequently enter inshore waters. In the Gulf Area, 8 percent of leatherbacks stranding were found on inshore beaches and in the Atlantic Area 11 percent were reported from inshore waters. The actual number of turtles stranding in inshore waters, however, is small: seven in the Gulf Area from 1995–1999 and 21 in the Atlantic Area for the same time period, for an average of six leatherback turtles stranding annually in southeast inshore waters. Based on the same information used for loggerhead turtles above, leatherbacks occur offshore during all seasons when shrimp trawling activity is expected to occur. The number of strandings on offshore beaches is

significantly more than in inshore waters: the average is 56 animals per year in the Atlantic and Gulf Areas offshore beaches combined.

This information is discussed in greater detail in Appendix A of the environmental assessment prepared for this final rule, which can be obtained from NMFS (see **ADDRESSES**).

Comment 14: Fishermen believe that better abundance and distribution data on sea turtles are needed, and that NMFS should identify an acceptable level of strandings. They have observed more turtles today than ever before and anticipate an increase in interactions.

Response: NMFS agrees that increases in stranding levels may be related to increases in certain turtle populations, but the populations of particular concern for this final rule—leatherbacks and northern subpopulation loggerheads—are not increasing. In addition, there are many other factors that could cause strandings to increase including a change in fishing practices. NMFS is unable to identify a stranding level that would trigger an adjustment to management measures. In their 1998 report to NMFS, the Turtle Expert Working Group (TEWG) analyzed existing data on the population status and trends of the loggerhead and Kemp's ridley turtles. The TEWG concluded that an estimation, derived from stranding data, of the maximum number of individual loggerheads or Kemp's ridleys that can be taken incidentally to commercial fishing could not be made. The TEWG determined that strandings were an underestimate of nearshore mortality and were inadequate for determining the population's actual status. Recovery goals for the Atlantic populations are identified in the joint NMFS and U.S. Fish and Wildlife ESA Recovery Plans completed in the early 1990s (see **ADDRESSES** for copies or visit <http://www.nmfs.noaa.gov/endangered.htm>). NMFS agrees that data on abundance and distribution can be improved. NMFS is currently supporting in-water population studies in Florida and North Carolina. NMFS also conducted a pilot aerial survey for loggerhead and leatherback turtles in the coastal waters of the Mid-Atlantic in July 2000, to investigate whether line transect methodology can be used to produce precise estimates of marine turtle abundance. NMFS intends to revise the existing recovery plans in the near future. These revisions will likely include additional research recommendations to improve our understanding of turtle abundance and distribution.