

economic impacts. They believe that the provisions of the proposed rule should be implemented as is, without the 1-year delay.

Response: This final rule will be implemented for the Atlantic Area on April 15, 2003, and for the Gulf Area 6 months after its publication in the **Federal Register**. NMFS believes that the 6-month delay in the Gulf Area is appropriate because fishermen in the Gulf Area use smaller TEDs with smaller grids than fishermen in the Atlantic Area, and the Gulf Area also has the majority of hooped hard TED users, bait shrimpers, and weedless TED users. Most fishermen in the Atlantic have been subject to the implementation of the leatherback contingency plan and likely already have the equipment to comply with the new regulations. The GA DNR reports that many shrimpers (up to 60 percent) use the leatherback TED year-round. Net shops in the Atlantic Area are more likely to stock the required equipment. Net shops in the Gulf Area will need additional time to supply the equipment necessary to comply with these new regulations. In addition, the six months will provide opportunity to evaluate preliminary results from the Gulf and South Atlantic Fisheries Foundation study on the shrimp fishery and sea turtles. In the proposed rule, NMFS had initially discussed a 12-month delay in implementation. In light of the additional time allowed for public comment, NMFS now believes that an additional 12-month delay is not warranted.

Comment 21: State agencies from Mississippi, Alabama, Louisiana and Texas believe that their bait shrimp industries are tightly regulated by state laws and additional Federal regulations are unnecessary. Texas Parks and Wildlife believes that the new regulations would require the state to make major changes to their license program to provide bait-only licenses.

Response: NMFS enforcement and gear specialists have seen an increase in boats claiming to be bait shrimpers but possessing more than 32 lb (14.5 kg) of dead shrimp. Increased tow times are necessary to land this much dead shrimp. Longer tow times would increase the likelihood of entangling a sea turtle and, without a TED installed, increase the chance of injury or mortality. When there is no incentive to limit tow times as a part of normal fishing operations, tow time limits are extremely difficult to enforce. Also, the possession of both bait and food shrimping licenses aboard the same vessel may allow such vessels to exploit the bait shrimping exemption as a

loophole. Therefore, NMFS is limiting the bait shrimp TED exemption to shrimpers with a valid state bait-shrimp license for which such state license allows the licensed vessel to participate in the bait shrimp fishery only.

The new requirements for bait shrimpers should not affect state programs that have separate bait and food shrimp licenses. The new requirements do not eliminate dual-license programs; rather, dual-license holders will be required to use a TED. Texas Parks and Wildlife can decide whether or not a separate bait-only license is warranted to allow bait shrimpers to fish without a TED.

Comment 22: Environmental groups believe that TEDs should be required on all try nets. Tow time limitations do not work and are unenforceable.

Response: Sea turtles are captured in try nets. The NMFS observer program from 1992 through 1995 documented that try nets accounted for 43 percent of the observed turtle captures. In 2001, shrimpers operating in the Atlantic Area reported capturing more than 20 turtles in their smaller try nets without TEDs installed. NMFS required shrimpers deploying try nets with head rope lengths greater than 12 ft. (3.6 m) or foot rope length greater than 15 ft. (4.6 m) to have a TED installed but exempted the smaller try nets (61 FR 66933, December 19, 1996). Experimental trawling completed in 1994 and 1996 indicated that small try nets (≤ 12 ft. (3.6 m)) were less likely to catch turtles. A total of 100 tows deploying three sizes of try net, 12 ft. (3.6 m), 15 ft. (4.6 m), and 20 ft. (6.2 m), were conducted in Cape Canaveral Ship Channel. Thirty-five turtles were caught. Of these, 17 were caught in the 20-ft. (6.2-m) net, 10 in the 15-ft (4.6-m) net, and 8 in the 12-ft (3.6-m) net. NMFS believes that when used as intended, small try nets pose little threat to turtles. NMFS initially issued this exemption without tow time restrictions because it felt that this type of gear naturally lent itself to short tow times. However, information from GADNR indicates that some fishermen are using try nets as another fishing trawl, towing it for long periods of time. NMFS will continue to monitor this issue. If tow time limitations do not prevent the capture of sea turtles in try nets, then NMFS will consider other alternatives, such as requiring TEDs in all try nets.

Comment 23: Environmental organizations believe that NMFS should allocate adequate funding toward ensuring shrimpers' compliance with these regulations. They believe that one way to accomplish this is to increase enforcement personnel. They also believe that NMFS should establish a

mandatory observer program to cover a representative sample of shrimp vessels in the southeastern United States.

Response: NOAA Enforcement, in partnership with the USCG and deputized state law enforcement agencies, have been successful in enforcing these regulations. Further, based on information from these agencies, the vast majority of fishermen follow the regulations.

The NMFS Shrimp Trawl Bycatch Observer Program has observed over 2,800 sea days on shrimp trawl vessels since 2000. This level of observer coverage is expected to continue in the future. NMFS is required to have observer coverage for the shrimp fishery, but the sampling is inadequate, given fleet size. Because of the massive size of the shrimp fleet and the amount of resources (funding and personnel) it would require, the establishment of a sampling program that would result in precise estimates of turtle bycatch has not been possible. Currently, limited resources are focused on specific issues that need evaluation such as testing new TED designs and BRDs.

Comment 24: Fishermen from Alabama, Mississippi, and Louisiana have complied with current TED regulations and additional burdens should not be placed on them without adequate data to support the new requirements.

Response: Shrimpers in the southeastern United States have made great contributions to the protection of endangered species through their use of TEDs over the last decade and more. Those efforts have borne fruit, as evidenced by the population increases of the critically endangered Kemp's ridley turtles, which are small enough to escape through the current TEDs. However, studies have shown that 33–47 percent of the loggerhead turtles stranded throughout the southeastern United States are too large to fit through the current TED openings. This is a much greater percentage than this size group represents in the population at large. The continued disproportionate loss of this size class will seriously hamper recovery efforts for this species, and might require change in its status from threatened to endangered. Leatherback turtles are severely endangered throughout the world. Nesting numbers on their main nesting beach in the western north Atlantic have decreased by 15 to 17 percent per year since 1987. NMFS believes that increasing the size of current TED openings is necessary to ensure the conservation and recovery of these listed species.