

Comment 25: Eight years ago the shrimp fishing industry offered a well-funded plan for turtle recovery that included money to protect nesting beaches in Mexico and helped to fund the head start program, in lieu of TEDs, but NMFS would not accept it. Fishermen are willing to pay to protect sea turtles and protect eggs and nests in lieu of TEDs. The money can go to protect nesting beaches and hatch eggs to release into the wild.

Response: Nesting beach habitat conservation plays an important role in the recovery of sea turtles. However, the protection of turtles in the water is equally important. The use of TEDs is a major factor in the recent population increase of Kemp's ridley turtles. Kemp's ridleys are the smallest sea turtles, and adult size animals can pass through the current TED openings. Since 1990, corresponding with the more widespread use of TEDs in U.S. waters, the total annual mortality (including natural mortality) of Kemp's ridleys has been reduced by 44–50 percent. At the same time, nesting has gone from 700–800 nests per year in the late 1980s to approximately 6,000 nests in 2000. This kind of increase in nesting numbers could not have happened without in-water protection provided by TEDs. NMFS believes that the use of TEDs can have a significant impact on the survival and recovery of sea turtles. The majority of loggerhead turtles nesting in the United States takes place on the east coast, where there is comprehensive nesting beach and nest protection. Even with these comprehensive conservation and protection programs in place, the northern nesting population of loggerhead sea turtles (from northeast Florida north) is at best stable and possibly declining, demonstrating that in-water protection of sea turtles is still required to achieve recovery.

Comment 26: Fishermen and environmental organizations believe that NMFS should investigate the impact of recreational shrimping on sea turtles. Recreational trawls may reach 16 ft. (4.88 m) in width with a fleet estimated at 8,000 boats. At 16 ft. (4.88 m) these trawls are the same size as try nets which already require TEDs.

Response: The majority of recreational shrimp fishermen pull their trawls out of the water by hand, and this naturally limits the size of the trawl and the tow times (a large full net would not be able to be retrieved by hand). They must also use tow times as specified at 50 CFR 223.206(d)(3)(i). NMFS believes this fishery poses little threat to sea turtles because of the combination of short tow times and small trawls. Any recreational

fisherman who does not pull his or her trawl in by hand must use a TED.

Comment 27: Members of the United States Congress commented that food safety is a national security issue and the proposed rule may result in the United States becoming more dependent on foreign produced foods at a time of national hazard.

Response: NMFS believes regulations to increase the size of current TED openings would allow for adequate protection of listed species, possibly avoiding the curtailment of the shrimp fishery in the southeastern United States, and thus allowing the shrimp fishery to continue to harvest shrimp.

Comment 28: Fishermen believe that NMFS' method for announcing and convening public hearings for the proposed rule was inadequate. NMFS should do direct mailings of notices to shrimpers by using lists that the state agencies have from selling shrimp licenses.

Response: While NMFS procedures for public notification satisfy legal requirements, NMFS agrees that public notification of our proposed actions could be improved. NMFS increased coordination with affected entities, by extending the public comment period on the proposed rule by 90 days, funding a major industry workshop in Tampa, FL, and participating in three industry-sponsored meetings in Louisiana. NMFS is currently developing a mailing list based on public hearing participation to distribute information on future meetings and notices to the people these actions affect.

Provisions and Justification for the Final Rule

NMFS is adopting the proposed measures as a final rule with the changes specified below, based on a review of the public comments and additional analyses of biological and commercial information. The changes to the proposed rule consist of specifying different TED-openings and configurations for inshore and offshore waters and allowing the use of accelerator funnels, hooped hard TEDs, and weedless TEDs with modifications. Once the final rule is published in the **Federal Register** the changes will be effective April 15, 2003, in the Atlantic Area and after 6 months in the Gulf Area.

Summary of the Final Rule

The final amendments to the TED regulations are applicable to trawling in all inshore and offshore waters of the southeastern United States as follows:

(a) Require all hard TEDs to have a grid

with a minimum outside measurement of 32 inches (81–cm) by 32 inches (81–cm); (b) require the use of either the double cover flap TED, a TED with a minimum opening of 71 inch (180 cm) straight-line stretched mesh, or the Parker soft TED with a minimum 96–inch (244–cm) opening in offshore waters (from the COLREGS demarcation line seaward) and in all inshore waters off of Georgia and South Carolina; and require a TED-opening in all inshore waters (from the COLREGS Demarcation line landward) except for the inshore waters of Georgia and South Carolina of at least 44–inch (112–cm) straight-line stretched mesh measurement with a 20–inch (51–cm) vertical taut height, with each measurement taken separately on all hard TEDs (see Figure 1) or a

Parker soft TED with a 56–inch (142–cm) opening; (c) disallow the use of the hooped hard TED in all offshore waters and in the inshore waters of Georgia and South Carolina; and allow a hooped hard TED in inshore waters, other than Georgia and South Carolina, to have a minimum size of 35 inches (89 cm) by 27 inches (67 cm) on the top opening, with a minimum inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm) on the front hoop, with a clearance between the deflector bars and the inside of the front hoop no less than 20 inches (51 cm); (d) eliminate the special regulations for the leatherback conservation zone and for flaps on bottom opening TEDs in the shrimp fishery sea turtle conservation areas (SFSTCA); (e) disallow the use of the Jones TED; (f) allow the use of the weedless TED with a brace bar; (g) require all accelerator funnels to have a stretched mesh opening of no less than 44 inches (112 cm) in the 44–inch (112–cm) TED and no less than 71 inches (180 cm) in the 71–inch (180–cm) TED and the double cover flap TED; (h) require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; (i) require the use of tow times on small try nets; and (k) change the language of the flounder TED rule to clarify that the new escape opening sizes are not required in the Atlantic summer flounder bottom trawl fishery as a result of this rule change, although the agency is currently evaluating the need for such restrictions.

The justification for the changes and adoption of the final modifications to the TED regulations are discussed below for each measure.

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