

Increase of the Minimum Size of TED Grids and TED Openings in all Inshore and Offshore Waters of the Southeastern United States

The 71-inch (180-cm) TED, the double cover flap TED, the Parker soft TED with a 96-inch (244-cm) opening, the Parker soft TED with the 56-inch (142-cm) opening and the 44-inch (112-cm) TED are large enough to exclude 100 percent of nesting loggerhead and green turtles based on the information in Epperly and Teas (2002) and the measurements of nesting loggerhead turtles taken by the South Carolina Department of Natural Resources (SCDNR) in the spring and summer of 2000 as referenced in the proposed rule (66 FR 50148). This is particularly important for loggerhead turtles, as population models indicate that a reduction in mortality in these size classes would result in the greatest annual population increase rate (Crouse *et al.*, 1987; Hopewell, 1998).

Leatherback turtles are too large to fit through the current size TED openings; when mature, they can weigh between 600 and 1,300 lb (273 and 591 kg). The use of the 71-inch (180-cm) TED, the double cover flap TED, and the Parker soft TED with a 96-inch (244-cm) opening in all offshore waters in the southeastern United States and the inshore of Georgia and South Carolina will ensure the use of TEDs capable of releasing leatherback turtles in the waters where they are most commonly found and in areas and times not currently covered by the leatherback contingency plan. This final rule eliminates the unplanned, temporary actions implemented under the leatherback conservation zone which will increase predictability for the industry. NMFS believes that the inshore waters of Georgia and South Carolina have a higher potential for the presence of leatherback turtles because they are mostly open sounds with little barrier from nearshore oceanic habitat.

See NMFS response to comment 13 in this document for a summary of the aerial, standings, observer, and other data used to support this rule.

Disallowing the use of the Hooped Hard TED in all Offshore Waters in the Atlantic and Gulf Areas and Changing the Description of a Hooped Hard TED for Use in Inshore Waters

Based on information received from Louisiana fishermen and NMFS gear specialists, the hooped hard TED known as the Coulon TED may work well as a bycatch reduction device. NMFS was considering disallowing the use of hooped hard TEDs in all waters in the

proposed rule because of enforcement problems seen with this type of fixed-angle TED installed backwards. Based on the information in Epperly and Teas (2002), and the measurements of nesting loggerheads conducted by the SCDNR in the summer of 2000, the modifications to the hooped hard TED that are part of this rule will give this TED an escape opening large enough to exclude large loggerhead turtles found in inshore waters, which will allow its continued use by some of the fishermen who prefer it.

NMFS is not allowing the use of the hooped hard TED in offshore waters because the design cannot be modified to be large enough to exclude leatherback turtles.

Weedless TEDs; Jones TEDs; and Accelerator Funnels

The structural integrity of the weedless and Jones TEDs does not hold up under commercial use; grid bars bend toward the back of the net. This condition has been shown to severely limit the ability of these TEDs to exclude turtles. Therefore, NMFS is requiring the use of a brace bar to increase the structural integrity of the weedless TED and is disallowing the use of the Jones TED. The brace bar for the weedless TED must be constructed of the same or stronger material as the deflector bars and must be attached across the deflector bars in an area defined by the mid point of the outer frame, and the unattached ends of the deflector bars. The horizontal brace bar may be offset from the deflector bars, using spacers constructed of the same or stronger material. The spacers may not exceed 3 inches in length. The Jones TED can not be practically strengthened with a brace bar.

In the proposed rule NMFS proposed disallowing the use of the accelerator funnel in the 71-inch (180-cm) TED and the double cover flap TED. To exclude large turtles, we felt that the funnel would have to be of such a large size that it would not accelerate water and may hang out the flap causing shrimp loss. However, based on information from fishermen and further investigation by NMFS gear technicians, NMFS found that an accelerator funnel that is large enough to release leatherback and large loggerhead turtles will work in the single grid hard TEDs approved for use in this rule.

Accelerator funnels used in the 71-inch (180-cm) TED and the double cover flap TED must be attached according to the current rules and must have an opening of at least 71 inches (180 cm) stretched mesh. Accelerator funnels used in the 44-inch (112-cm) TED must also be

attached according to the current rules and must have an opening of at least 44 inches (112 cm) stretched mesh.

Requiring 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

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. These dead shrimp are likely sold as food shrimp. Landing this much dead shrimp was likely the result of an increase in tow times beyond the shorter tows used to catch live bait. 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.

Requiring the Use of Tow Times on Small Try Nets

Although sea turtles have been documented as having been captured in try nets, experimental trawling completed in 1994 and 1996 indicated that small try nets were much less likely to catch turtles. However, as discussed in NMFS' response to comment 22, turtle captures in try nets may still be a problem. NMFS believes that tow time restrictions will give NMFS an enforcement mechanism to help maintain compliance by the small number of fishermen who do not use try nets as intended. However, NMFS will continue to evaluate this issue. If tow time restrictions do not prevent capture of sea turtles in try nets, then NMFS will evaluate other options, including requiring TEDs in try nets.

Classification

This final rule has been determined to be significant for purposes of Executive Order 12866.

The ESA provides the statutory basis for this final rule.

NMFS prepared a draft Environmental Assessment/Regulatory Impact Review/Regulatory Flexibility Act Analysis (EA/RIR/RFAA) for the proposed rule that discussed the impact on the