

Originally Processed With FOIA(s):  
1998-0004-F[1]

FOIA Number:  
S

# FOIA MARKER

**This is not a textual record. This is used as an administrative marker by the George Bush Presidential Library Staff.**

---

**Record Group/Collection:** George H.W. Bush Presidential Records  
**Collection/Office of Origin:** Chief of Staff, White House Office of  
**Series:** Sununu, John, Files  
**Subseries:** Issues Files

---

**OA/ID Number:** 29173  
**Folder ID Number:** 29173-011

---

**Folder Title:**  
Turtle Excluder Devices (1990) [5]

---

Stack:	Row:	Section:	Shelf:	Position:
<b>G</b>	<b>15</b>	<b>25</b>	<b>4</b>	<b>4</b>

---



UNITED STATES DEPARTMENT OF COMMERCE  
Office of the Secretary  
Washington, D.C. 20230

TO: Governor John Sununu  
Chief of Staff  
White House

FROM: Wayne Berman *W Berman*  
Counselor to the Secretary

SUBJECT: Turtle Excluder Device (TED) Regulations --  
BRIEFING MEMORANDUM

This is in response to President Bush's discussions with Louisiana Congressmen Bob Livingston (R) and Billy Tauzin (D). Both Congressmen are opposed to a decision Secretary Mosbacher made to reimpose the original 1987 TED regulations on the shrimp industry effective September 8, 1989. That decision was dictated by Federal court decisions, has been reviewed by the Department of Justice, and is supported by the Department of the Interior, environmental groups and the general public.

The regulations the Secretary decided to reimpose require fishermen from North Carolina through Texas to use a TED when trawling for shrimp during certain times of the year. These regulations were the product of negotiations between representatives of the shrimp industry and several prominent environmental organizations and were intended to prevent the extinction of endangered and threatened sea turtles.

A TED is a metal grid inserted in the shrimp net that deflects sea turtles and other large objects through an opening in the net; shrimp pass through the grid to be captured. Many shrimp fishermen object to the device because they believe they lose shrimp. Estimates of shrimp loss range from none to 15%.

Opposition to the regulations is strongest in the western Gulf. Shrimpers staged harbor blockades in Galveston and other Gulf ports the weekend of July 21-23. Atlantic fishermen have generally accepted the TED regulations.

The TED regulations are required to enforce the Endangered Species Act which makes it unlawful to capture or kill sea turtles. Without the TED regulations, shrimp fishermen are expected to capture nearly 48,000 sea turtles per year; 11,000 sea turtles will die each year as a result.

This issue has a very long history that is explained in the supporting documents. The Secretary's decision to suspend the regulations following the July protests was overturned by the Federal courts. The critical biological facts do not permit many legal alternatives that will allow the Louisiana and Texas shrimpers to continue shrimping without TEDs.

Essentially, the Secretary had only two other legal options:

(1) Allow the fishermen to limit their towing times to specified 105-minute synchronized periods by extending the times of the year when they must either use TEDs or limit tow times. We tried limited tow times from August 8 to September 7.

The Secretary rejected continuing this option because, after September 1, it would increase the regulatory burden on Atlantic shrimpers, who have complied with the regulations, in order to permit Gulf shrimpers an alternative means of compliance. As a matter of law, this option would only be available for the next six months, a period of diminished fishing; TEDs again would be required on March 1, 1990. Moreover, there was very poor compliance by western Gulf shrimpers from August 8 to September 7.

(2) Convene the Endangered Species Committee and seek an exemption from the Endangered Species Act that would allow shrimpers to continue operating without TEDs, an activity known to kill endangered and threatened species. This committee is chaired by the Secretary of the Interior who has supported the TED regulations. Other Federal members are the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Council of Economic Advisors, and the Administrators of the EPA and NOAA. Additional members are drawn from each of the affected states. The Committee was formed by Congress in response to the infamous conflict between the Tellico Dam and the endangered snail darter.

This option was rejected because of the political costs of having so many prominent members of the Bush Administration take a public vote to exterminate an endangered species. The TEDs do save turtles -- 97% of those encountered are excluded. The overall mortality is less than 1% if TEDs are properly used. This compares to turtle mortality rates in excess of 14% with 105-minute tow times and even this assumes perfect compliance. The opposition to TEDs is localized in the western Gulf; elsewhere support for the regulations is widespread. During the brief comment period we had on the 105-minute regulations, 3,459 of those commenting favored TEDs and only 151 opposed them.

✓  
✓  
5.37,  
@90 min!

I have attached, and highlighted, copies of the TED regulations, the relevant portions of the Endangered Species Act, a press release announcing the Secretary's decision, a chronology, a fact sheet, a list of other options that we considered and rejected, a compilation of recent press reports and editorials, copies of the Federal court decisions upholding the 1987 regulations and a copy of the most recent court decision setting aside the Secretary's July 24 decision to suspend the regulations.

Attachments

INDEX TO BRIEFING BOOK

Briefing Memorandum for John Sununu

Attachments

- Tab A. Chronology
- Tab B. Fact Sheet
- Tab C. TED Regulations (June 29, 1987)
- Tab D. Excerpts from the Endangered Species Act
- Tab E. Press Release (September 5, 1989)
- Tab F. Alternatives to TED Regulations
- Tab G. Press clippings
- Tab H. Circuit Court's Opinion in Louisiana v. Verity  
(August 15, 1988)
- Tab I. District Court's Opinion in Louisiana v. Mosbacher  
(July 31, 1989)
- Tab J. District Court's Opinion in National Wildlife  
Federation v. Mosbacher (August 14, 1989)

## CHRONOLOGY

- ° 1973 - 1978. All five species of Atlantic sea turtles were listed as threatened or endangered species.
  - ° 1982. The NMFS turtle excluder device (TED) was capable of excluding from a shrimp net 97% of the sea turtles that would be encountered.
  - ° 1986. NOAA concluded that voluntary TED use was not sufficient and conducted a mediated rulemaking. Four of five shrimp industry representatives and all five environmental representatives agreed that NOAA should issue regulations that would phase in TED requirements throughout the southeast.
  - ° July, 1987. NOAA issued regulations calling for TEDs to be used in offshore waters in specified areas at specified times.
  - ° October, 1987. The State of Louisiana challenged the regulations in Federal court. Although NOAA prevailed, the effectiveness of the regulations was delayed by the courts until September 1, 1988.
  - ° November, 1988. Congress provided an additional delay of part of the TED regulations. Under this legislation, the TED regulations were to come into effect according to the following schedule:

Cape Canaveral	-- immediately
All other offshore waters	-- May 1, 1989
All inshore waters	-- May 1, 1990
- This legislation also directed a study of the sea turtle situation by the National Academy of Sciences. That study will not be completed before mid-February 1990.
- ° May 1, 1989. Secretary Mosbacher announced a 60-day liberal enforcement policy -- written warnings only -- that was in effect until July 1, 1989.
  - ° July 10, 1989. The Coast Guard suspended enforcement in the western Gulf to allow NOAA time to respond to shrimper complaints of massive problems with sargassum sea grass fouling their TEDs.
  - ° July 20, 1989. NOAA determined that sea grass was not a major problem to shrimpers and the Secretary informed Congress and the shrimpers that enforcement would resume on July 20.
  - ° July 22 - 23, 1989. A series of harbor blockades and other acts of violence by shrimpers took place in several western Gulf ports.

° July 24, 1989. After meeting with concerned Members of Congress, the Secretary announced a 45-day cooling off period during which NOAA would work to amend the regulations to allow shrimpers an alternative to TEDs -- limited tow times.

° August 3, 1989. The U.S. District Court for the District of Columbia declared the Secretary's suspension of the regulations unlawful. The court indicated that some form of sea turtle protection was required while the agency attempted to amend the regulations.

° August 7, 1989. The 105-minute tow time schedule was implemented as an interim alternative to the TED regulations.

° September, 1989. NOAA's new Administrator and Under Secretary for Oceans and Atmosphere, Dr. John A. Knauss readdressed the scientific issues concerning sea turtles and TEDs. As a result, NOAA decided not to extend the interim regulations beyond their expiration on September 7, 1989.

° September 7, 1989. The interim regulations expired by their own terms.

° September 8, 1989. Enforcement of the original TED regulations resumed.

° 1989 - 1990. NOAA intends to continue research and other efforts directed at identifying and minimizing all sources of sea turtle mortality. Subsequent to receipt of the National Academy study, NOAA will consider further necessary actions. We do not expect to be able to relax the TED regulations at that time.

## FACT SHEET ON SEA TURTLES AND NOAA'S PROTECTIVE REGULATIONS

° All five species of Atlantic sea turtles have been listed as threatened or endangered species since 1978. The Kemp's ridley is critically endangered. There were 648 nesting females in 1988 and 545 nesting females this year; this is down from over 40,000 that were photographed nesting on one day in 1947.

° Gulf offshore shrimpers, on average, catch only 2 or 3 turtles per year. There are, however, over 5,000 offshore Gulf vessels. Atlantic offshore shrimpers, on average, catch 20 to 30 turtles per year. There are over 1,500 offshore Atlantic vessels.

° NOAA estimates that nearly 48,000 sea turtles are captured annually by the U.S. shrimp fishery. Over 11,000 of the captured turtles die. The National Academy of Sciences is evaluating our statistical methodology.

° NOAA (NMFS) modified a device used by Atlantic shrimpers to exclude large cannonball jellyfish from their nets (the Georgia Jumper). By 1982, the NMFS turtle excluder device (TED) was capable of excluding from a shrimp net 97% of the sea turtles that would be encountered. NOAA hoped the TED would be adopted voluntarily because of statistical studies showing improved fishing efficiency using TEDs.

° A TED is a metal or net grid that is inserted into the middle of a shrimp trawl net. Turtles and other large objects are deflected out of the net by the grid while shrimp and smaller objects pass through the grid to be captured by the net.

° By 1986, NOAA concluded that voluntary TED use was not sufficient. NOAA then conducted a mediated rulemaking. Four of five shrimp industry representatives and all five environmental representatives agreed that NOAA should issue regulations that would phase in TED requirements throughout the southeast.

° NOAA issued regulations in July, 1987, calling for TEDs to be used in offshore waters during the following months:

North Carolina to North Florida	-- May through September
Cape Canaveral	-- All year
Florida Keys and SW Florida	-- All year
NW Florida through Texas	-- March through November

° The seasonality reflected in the regulations resulted from the mediation process. The seasons when TEDs are required roughly correspond to months when shrimp landings and sitings of dead sea turtles are highest.

° The regulations also approved three other TEDs and provided a protocol for securing NOAA approval of new TED

designs. Two additional TEDs have since been approved, one of which is made of net mesh.

° NOAA Fisheries conducted a workshop to evaluate existing data on tow times as an alternative to the original regulations. The data confirm the earlier biological opinion that 105-minute tow times are less protective of turtles than TEDS.

° NOAA considered an option for allowing the 105-minute tow time to remain in effect by eliminating the open seasons from the current regulations. Under this option, all shrimpers would have to either use TEDs or limit tow times for the next six months.

° Under this option, slightly more turtles would be killed in the Gulf than under the original regulations, but fewer would be killed in the Atlantic. This does not result from the fact that tow times are more effective than TEDs, but from the fact that the original mediation agreed that TEDs would not be required along the Atlantic from September through April nor in the Gulf from December through February. ] ?

° Recent data indicate that even 105-minute tow times are harming the shrimp industry. NOAA estimates that shrimpers complying with the 105-minute tow times could lose from 20% to 28% of their catch. Coast Guard observations also indicate that less than 50% of the vessels in the western Gulf are observing the 105-minute regulations.

° NOAA rejected the option of extending the 105-minute regulations for the next three months for the following reasons:

- it would disrupt the seasonality agreed to in the mediated rulemaking;
- it would require Atlantic shrimpers, who have largely complied with the original regulations, to undertake an additional regulatory burden to allow Gulf shrimpers to continue to limit tow times; ] ?
- there was inadequate compliance with the tow time alternative in the western Gulf; and,
- if extended beyond March 1, 1990, the 105-minute tow times would not provide equivalent sea turtle protection as the TED regulations.

° NOAA's enforcement schedules specify a minimum \$8,000 civil penalty for violation of the TED regulations. A qualified TED can cost as little as \$50.

° From September 8 to September 22, 1989, shrimpers cited for failure to use a TED will be afforded the opportunity to settle their cases by purchasing and installing a qualified TED before October 15, 1989. Shrimpers cited after September 22,

1989, may have their penalties reduced, at NOAA's discretion, if they purchase and install qualified TEDs within 15 days of the date of the violation.

° NOAA recognizes that some shrimpers will sustain economic losses as a result of this decision. Many fishermen experience initial losses with any change in gear -- TEDs are no different - training and experience should result in minimal loss of shrimp.

° NOAA also recognizes that TEDS can become clogged with debris. Other debris is excluded from the net by the TEDs.

° Economic losses caused by TEDs are not legally relevant under the Endangered Species Act. TEDs represent an alternative means for continuing shrimping without violating the Act.

° Shrimpers can be compensated by NOAA if their shrimping is adversely affected by debris generated by offshore energy activities. Any debris that is claimed to have fouled a TED equipped net should be retained as evidence to support any such claims.

° There have been suggestions that artificial propagation of sea turtles would be more effective in restoring depleted stocks than the TED regulations. NOAA does not agree for the following reasons:

- Project Head Start takes wild turtle hatchlings from Mexico and raises the turtles until they are nine months old. This is thought to protect wild turtles from very high first year mortality rates.
- Mexico, which supplies the wild Kemp's ridley eggs, has been unwilling to increase the size of the head start program until the program proves itself. Proof must await the head started turtles reaching sexual maturity and returning to nest successfully.
- Efforts at captive breeding of sea turtles, including Kemp's ridleys, are proceeding at the Cayman Island Turtle Farms. These efforts have not been successful to date. It may take decades to establish a successful closed cycle that does not depend on collection of turtle eggs from the wild.

Monday  
June 29, 1987

50 CFR Parts 217, 222 and 227  
Sea Turtle Conservation; Shrimp Trawling  
Requirements; Final Rule

---

**Part II**

**Department of  
Commerce**

---

**National Oceanic and Atmospheric  
Administration**

---

**50 CFR Parts 217, 222 and 227  
Sea Turtle Conservation; Shrimp Trawling  
Requirements; Final Rule**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 217, 222 and 227

[Docket Number 70227-7121]

## Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

**SUMMARY:** The Secretary of Commerce adopts rules requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the Southeastern United States to use measures to reduce the incidental catch and mortality of sea turtles in shrimp trawls. In offshore waters at specified times all shrimp trawlers 25 feet and longer are required to use qualified turtle excluder devices (TEDs) and all shrimp trawlers smaller than 25 feet are required to restrict tow times to 90 minutes or less. In inshore waters at specified times all shrimp trawlers are required to restrict tow times to 90 minutes or less. In both inshore and offshore waters shrimp trawlers using TEDs are exempt from the tow time restrictions. The rules specify criteria and procedures for qualifying additional TEDs: specify vessel sizes, areas and seasons for which qualified TEDs or 90 minute tow times must be used; establish reporting requirements; continue measures for resuscitation and release of captured sea turtles; and continue designated critical habitat. These rules will reduce substantially the incidental catch and mortality of endangered and threatened sea turtles associated with shrimp trawling.

**DATE:** This rule becomes effective on October 1, 1987.

**Address:** Regional Director, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, (813) 893-3366, Charles Karnella, (202) 673-5349, or David Cottingham, (202) 377-5181.

**SUPPLEMENTARY INFORMATION:**

## a. Background

All sea turtles that occur in U.S. waters are listed as endangered or threatened species under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA or the Act). Five of these, the loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*) and

hawksbill (*Eretmochelys imbricata*), are found in marine waters from North Carolina through Texas, where there is a significant incidental mortality of sea turtles in shrimp trawls.

The Act prohibits captures of endangered sea turtles within the United States, within the U.S. territorial sea, and on the high seas, except as authorized by the Secretary of Commerce or the Secretary of the Interior. The Secretary of Commerce has authority over sea turtles in marine waters and the Secretary of the Interior has authority over sea turtles on land. The Act authorizes the respective Secretaries, by regulation, to extend to threatened species the protections provided by statute to endangered species.

## b. Incidental Mortality and Capture in Shrimp Trawls

Incidental capture and drowning of sea turtles by shrimp trawlers is a significant source of mortality for sea turtles. Research programs using on-board observers have documented the capture and drowning of turtles in shrimp trawls in both the Gulf of Mexico and the Atlantic. Although it is not possible to determine from these data precisely how many turtles drown in shrimp trawls each year, NMFS estimates that this figure is in excess of 11,000. This estimate is derived from data gathered during more than 27,000 hours of observation aboard commercial shrimp trawlers. The Final Supplement to the Final Environmental Impact Statement on Listing and Protecting the Green Sea Turtle, Loggerhead Sea Turtle and the Pacific Ridley Sea Turtle under the Endangered Species Act of 1973 (FSEIS) discusses these data in greater detail. An overview of the problem of the incidental take of sea turtles in fisheries operations is presented in the U.S. Recovery Plan for Marine Turtles.

Some of the sea turtles that die in marine waters wash onto shore in coastal areas. Since 1980 a volunteer Sea Turtle Stranding and Salvage Network has patrolled beaches and reported sea turtle strandings to NMFS. From January 1980 through December 1986, the network has reported over 8,300 strandings in coastal areas from North Carolina through Texas. Most of these were loggerheads but nearly 600 of the critically endangered Kemp's ridley sea turtles also were reported. In a number of geographic areas, seasonal peaks in sea turtle strandings correspond to seasonal peaks in shrimp trawling effort.

A number of researchers have interviewed shrimp fishermen. Data gathered during these interviews

support the NMFS observer and stranding data and show that in some areas incidental catch rates of sea turtles are relatively high. Similarly, data from sea turtle tagging studies show that many sea turtles are caught in shrimp trawls. From these four sources of data, it is clear that shrimp trawls are a major source of mortality of sea turtles.

## c. Gear Research

In 1978 NMFS began a research program to develop gear or methods to reduce the mortality of sea turtles in shrimp trawls. The program was designed to achieve this goal at minimal costs to shrimp trawlers. By 1981, NMFS developed its turtle excluder device, or TED, to the point where it released 97 percent of the turtles caught in shrimp trawls with no loss of shrimp. Since then NMFS has modified its TED and number of times, making it smaller, lighter and collapsible for easier and safer handling. The NMFS TED also releases debris and unwanted bycatch. In addition to the NMFS TED, other TEDs have been developed. Some of these are as effective, less costly and easier to handle than the NMFS TED.

During this gear research program, NMFS scientists also conducted studies on the relationship between sea turtle mortality and the amount of time a shrimp trawl fishes. This study showed that there is a direct relationship between the percent mortality of sea turtles caught in shrimp trawls and the time towed. Mortality is negligible at tow times up to about 75 minutes. Between 75 and 90 minutes the percent mortality increases to about 15 percent. Beyond 90 minutes there is a linear relationship between mortality and tow time, with percent mortality increasing to about 53 percent at 330 minutes. These times are actual times the trawls fished at depth and do not include trawl setting or retrieval times. Restricting the total time of a tow to 90 minutes results in fishing at depth for about 60 to 75 minutes. This study shows that reduced tow times will result in fewer deaths of sea turtles in shrimp trawls. Tow time restrictions can be a valuable conservation measure if they can be enforced effectively.

## d. Voluntary TED Program

NMFS began a formal program in 1983 to encourage shrimp fishermen to use the TED voluntarily. NMFS built and delivered TEDs to shrimp fishermen who agreed to use them in commercial trawling operations. Gear experts worked with shrimp fishermen to demonstrate how to properly install and

use TEDs. NMFS worked closely with Sea Grant and a number of industry groups to transfer this technology to the shrimp fishing industry. Despite these and other efforts the voluntary program was not successful because sufficient numbers of TEDs were not used on a regular basis. It is unlikely that a sufficient number of shrimp fishermen will use TEDs voluntarily either to reduce sea turtle mortality or unwanted bycatch. Therefore, it is necessary to adopt rules requiring shrimp fishermen to use TEDs or to restrict tow times to protect sea turtles.

#### e. Proposed Regulations

To prevent further declines in the populations of the five species of sea turtles and because of the lack of success of the voluntary TED program, NMFS published proposed regulations on March 2, 1987 (52 FR 6179-6199). Public hearings on the proposed regulations and the Draft Supplemental Environmental Impact Statement were conducted in each state where shrimp trawlers would be affected and in Washington, DC. In addition to comments provided at these hearings, several thousand people provided written comments. The comments are discussed below.

#### f. Comments on the Proposed Regulation and Draft Supplemental Environmental Impact Statement

NOAA and NMFS received thousands of comments on the proposed regulations and the Draft Supplemental Impact Statement both from participants in the public hearings and by letter. These comments covered a broad spectrum and ranged from full support of the TED requirements to complete opposition to the use of TEDs. Some commenters stated that the regulations were not comprehensive enough to ensure adequate protection to sea turtles and others that these requirements would not help turtle populations recover. NMFS and NOAA personnel reviewed all of the comments and combined them into the general categories given below.

Responses are provided for each of these general categories. These responses address the substance of individual comments. Additional discussion of these comments is provided in the FSEIS. About 60 percent of the commenters favored at least TED requirements and about 40 percent were opposed to any TED requirements.

*Comment: I support mandatory TEDs.* Many commenters wrote to support the regulations. Most of these indicated that TED requirements are necessary to protect endangered and

threatened sea turtles, particularly the Kemp's ridley.

*Response:* NMFS agrees that the available data indicate that sea turtle mortality in shrimp trawls must be reduced significantly. The final regulations require the use of TEDs in offshore waters for all shrimp trawlers 25 feet or longer and restrict tow times to 90 minutes or less for almost all other shrimp trawlers. NMFS is issuing these regulations under the authority of the Endangered Species Act, which requires all federal agencies to use their authorities to carry out programs for the conservation of endangered and threatened species.

*Comment: I oppose the use of TEDs/I will not use a TED.* These were the most numerous comments provided at the public hearings.

*Response:* Most of these commenters provided no reasons to support the comment but some did, for example, TEDs lose shrimp, TEDs are dangerous, TEDs won't save sea turtles. These reasons are addressed below.

*Comment: TEDs are dangerous.* A large number of commenters stated that TEDs were dangerous and would result in many accidents and injuries. TEDs were considered dangerous because they are heavy, take up too much space, would be in the way when nets are emptied, make the trawl more difficult to handle, especially when setting or retrieving the trawl. Shrimpers on small boats stated that they could not safely handle TEDs.

*Response:* NMFS believes that shrimp trawling has a number of associated hazards, whether or not TEDs are used. Decks of shrimp trawlers are dangerous because of open winches, exposed lines and heavy gear such as trawl doors and nets.

In over 15,000 hours of testing of TEDs on commercial shrimp trawlers and many more hours of actual use on commercial shrimp trawlers, NMFS is aware of only one injury related to the use of a TED. A crew member stated at a public hearing that he suffered an injury because of a TED. In followup discussions, NMFS learned that the crewman was actually injured when a pelican hook opened while it was being improperly used to hoist a trawl equipped with a TED.

If TEDs are used with the proper operation they will not add to the number of accidents or injuries that occur on shrimp trawlers. Shrimpers concerned about space and weight problems can use either the Matagorda or Georgia TEDs, both of which are lighter, and less bulky and cumbersome than the NMFS or Cameron TEDs. In addition industry has developed a "soft TED", which will be

tested off Cape Canaveral, Florida, in the near future. The final regulations address the concern of using TEDs on smaller boats by basing the exemption from using a TED on boat length rather than trawl headrope length. Shrimp trawlers less than 25 feet long are not required to use TEDs. This change also resolves net measurement problems identified by the U.S. Coast Guard and NMFS enforcement personnel.

*Comment: TEDs will cause insurance premiums to increase.* Many commenters stated that their insurance premiums would increase as a result of accidents and injuries resulting from the use of TEDs.

*Response:* NMFS discussed this with a number of insurance companies. At this time insurance companies lack statistical information on accidents and injuries associated with the use of TEDs, and cannot determine what, if any, effect TED use would have on premiums. However, none of these companies or their agents indicated that they would change coverage or premiums simply because TEDs were required by regulation. NMFS is aware of the problems that commercial fishermen have obtaining insurance at reasonable rates. However, there is no indication that requiring TEDs in shrimp trawls will add significantly to these problems.

*Comment: TEDs reduce shrimp production and increase costs.* Many commenters stated that TEDs would reduce shrimp catch. They gave several examples of how TEDs could or would fail: TED escape openings would clog with debris and allow shrimp out; TEDs will increase that amount of time shrimp trawls are out of the water ("down time"), and thus reduce the catch.

*Response:* TEDs now in use are, in part, a product of comments and suggestions made by a number of commercial shrimp fishermen who used earlier versions. TEDs have been used aboard commercial shrimp trawlers fishing on offshore shrimp grounds throughout the U.S. South Atlantic and Gulf of Mexico. Based on several thousand hours of field tests, the NMFS TED works in all areas tested. During this testing there was no indication that TEDs would not exclude sea turtles in any area. NMFS tests showed that its TED did not affect the shrimp catch. These tests compared the shrimp catch in TED-equipped trawls to the catch in trawls without TEDs. If commercial shrimp trawlers properly install and use the NMFS TED there should be no significant loss of shrimp.

Tests have been conducted with the other three qualified TEDs to determine

if these devices have any effect on shrimp catch. In general, these tests have shown that differences in catches between TED-equipped and control nets are not statistically significant.

At one of the public hearings a shrimper stated that while using a NMFS TED he incurred an 18.5 percent loss of revenue. He attributed this loss to the time his trawls were not fishing because of TEDs. During NMFS TED tests there were few instances of lost fishing time because of fouling of or damage to the TED. NMFS believes that these tests show that shrimp fishermen should not experience significant losses of fishing time or revenues because of TEDs. Conversely, due to the bycatch reduction features of TEDs, a number of shrimpers have indicated that they could tow longer because TED-equipped nets did not fill up as fast and did not require as frequent emptying as nets without TEDs.

Although many commenters stated that the economic impacts of TED requirements would put shrimpers out of business and have disastrous effects on the local economics of a number of shrimping areas, few data were submitted to substantiate these claims. Based on NMFS analysis, the economic impacts of these regulation will be small compared to the total costs of shrimping.

*Comment: TEDs don't exclude turtles.* Several commenters stated that TEDs would not allow turtles to escape because they would get caught in the TEDs, especially if the TED was clogged or jammed.

*Response:* NMFS has tested its TED extensively in offshore waters. These tests show that the NMFS TED effectively excludes turtles. Clogging and jamming has not been a problem. The University of Georgia Sea Grant program conducted a series of tests of the four qualified TEDs for turtle exclusion in the Cape Canaveral Navigation Channel, Florida. In those tests all four devices successfully excluded sea turtles. NMFS believes that if a TED effectively excludes turtles in off-shore waters, it will function as effectively in inshore waters. However, NMFS acknowledges that TEDs have not been tested for turtle exclusion in inshore waters, where shrimpers contend that clogging problems will be the worst. The final regulations do not require shrimpers to use TEDs in inshore waters at this time. Tow time restrictions are substituted for the TED requirement.

*Comment: Shrimpers do not catch/kill any more sea turtles.* A number of shrimpers commented at the public hearings and in letters that they could not find sea turtles, especially Kemp's

ridleys. They also said that all or nearly all captured sea turtles were released alive, some after resuscitation. Some shrimpers stated that they have never caught a sea turtle despite shrimp trawling for 10 or more years.

*Response:* NMFS believes that most of the sea turtles caught in shrimp trawls are released alive and that most shrimp fishermen attempt to resuscitate unconscious sea turtles. Based on the observer data, NMFS estimates that between 20 and 40 percent of the turtles are dead when they are brought aboard. The mortality of sea turtles in shrimp trawls depends on several factors including the length of the tow and the physiological condition of the turtle. NMFS has placed observers on shrimp trawlers for more than 27,000 hours. These observers documented the capture of 884 sea turtles in shrimp trawls fishing on offshore commercial grounds throughout the Gulf of Mexico and the U.S. South Atlantic. Using observer data, NMFS estimates that 47,973 sea turtles are captured and 11,179 are drowned in offshore commercial shrimp trawls in southeast U.S. waters each year. Obviously the rate of sea turtle capture is relatively small (884 in 27,578 hours). Thus for individual shrimp trawlers the capture of a sea turtle will be a relatively uncommon event. However, when the total number of hours of shrimp trawling is considered (several million each year), the total catch and mortality of sea turtles is considerable. NMFS believes the current estimates of incidental catch and mortality to be conservative. These data indicate the need to require shrimp fishermen to use conservation measures to reduce the mortality of sea turtles in shrimp trawls.

*Comment: Bait shrimpers have very short tow times because the shrimp must be landed alive; there is no need to regulate bait shrimpers to protect sea turtles.*

*Response:* The tow time restrictions adopted herein will allow most bait shrimpers to comply with the rules without using TEDs.

*Comment: My interests were not represented during the meetings sponsored by NOAA.* A number of shrimpers stated that they were not represented at the meetings between the shrimp industry and the environmental community that preceded the proposed rules. Several recreational shrimpers and representatives of state natural resource agencies also stated that they should have been included in those meetings.

*Response:* NOAA sponsored the meetings to get recommendations from the shrimp industry and environmental

community on ways to provide sea turtles with adequate protection while keeping economic losses to shrimp fishermen to a minimum. The meetings were open to the public. Interested parties and advisors to the participants were allowed to attend all sessions. Following publication of the proposed rules, NMFS held public hearings in each state where shrimp trawlers would be affected and in Washington, DC. Thousands of people attended these hearings. NMFS also held separate meetings with several state agencies and attorneys general. The agency believes that all interested parties were provided an opportunity to participate in the rulemaking process.

*Comment: The available data do not support the proposed regulations.* Many of the commenters, including some members of Congress and State officials, stated that NMFS should have stronger evidence that shrimp trawling results in significant turtle mortality. In general, these people recommended either delaying TED requirements until more information becomes available or not publishing any regulations requiring the use of TEDs. Information needs were identified for the following areas: The extent of incidental capture and mortality of sea turtles in specific geographic areas; sea turtle distribution and abundance in specific geographic areas; the effectiveness of various TEDs in retaining shrimp and releasing sea turtles in various local inshore areas; and the economic effects of TED requirements on shrimp trawlers, other sectors of the shrimp industry, and the economies of various shrimping areas.

*Response:* NMFS agrees that more research is needed and therefore will develop and implement a research program on the distribution, abundance and incidental catch and mortality of sea turtles and additional studies on the sea turtle exclusion and shrimp retention characteristics of TEDs. NMFS is aware of the limited scientific data on the incidental mortality of sea turtle and TED effectiveness in certain areas, particularly inshore waters. There is however a good data base for offshore areas in the southeast United States, showing that more than 11,500 sea turtles die in shrimp trawls each year. Because of this disparity, NMFS agrees that it is not appropriate at this time to require TEDs to be used in both inshore and offshore waters by all shrimp trawlers. However, sea turtles are known to occur in inshore waters. It is very likely a significant number of sea turtles are caught and drowned or killed while fished in these waters. NMFS agrees that the available information indicates

that sea turtles require additional protection from these impacts.

Before, NMFS will require the use of TEDs in offshore waters for all shrimp trawlers 25 feet and longer and will restrict tow times for smaller shrimp trawlers in offshore waters and for all shrimp trawlers in inshore waters to 90 minutes or less. These regulations will become effective on or after January 1, 1988, in most areas, as opposed to July 15, 1987, under the proposed regulations.

*Comment:* NMFS should delay publishing final regulations until more research has been done on shrimp retention when using TEDs. Fisheries associations from Louisiana and Texas submitted detailed comments which included recommendations as to additional TED testing that should be done prior to issuing final regulations.

*Response:* NMFS placed observers aboard commercial shrimp trawlers during several thousands hours of testing the NMFS TED for shrimp retention. Data from those tests indicate no significant loss of shrimp. There is little information on shrimp retention of other TEDs. These were discussed briefly in response to an earlier comment.

As stated earlier, NMFS will delay the dates when these regulations will take effect from July 15, 1987, to no earlier than January 1, 1988, except for the Canaveral Area. This delay will give shrimpers more time to test TEDs and learn how to use them.

*Comment: Establish/increase captive breeding and hatchery programs.* A number of commenters suggested that NMFS, the shrimp industry and the environmental community work together to increase headstart and captive breeding programs for sea turtles, especially the critically endangered Kemp's ridley. Some shrimpers recommended placing a tax on shrimp landings and/or imports to support sea turtle headstart and captive breeding programs.

*Response:* Headstarting by NMFS has been conducted on a large scale only for the Kemp's ridley sea turtle. The only source of Kemp's ridley eggs is from Mexican beaches. Under a cooperative research program, Mexico provides the United States with 1,500 to 2,000 eggs each year for headstarting at the NMFS Galveston Laboratory. NMFS hatches these eggs, raises the hatchlings in captivity for about a year and releases them. Although NMFS has demonstrated that sea turtles can be successfully headstarted, we cannot be sure that such a program increases the size of the wild breeding stock of sea turtles. This part of the program is still in the experimental stage. NMFS anticipates

that within the next few years enough data will be available to assess whether this aspect of the program has been successful. In addition, sea turtle scientists have recommended that no more than five percent of the eggs be removed from the wild for headstarting. Until headstarting can be demonstrated to increase the number of sea turtles breeding in the wild, NMFS does not believe that it is prudent to concentrate sea turtle conservation efforts on headstarting. Similar questions exist for captive breeding programs.

*Comment: NMFS should address all sources of impacts to sea turtles, not just shrimp trawling.* A number of commenters stated that NMFS singled out shrimp trawling as the only cause for the decline of endangered and threatened sea turtles. They stated that it was not fair to focus on shrimp trawling and neglect all the other causes. The following were identified by commenters as sources of sea turtle mortality: Pollution of marine waters; disposal of plastics and other debris in the marine environment; dredging operations; military and industrial use of explosives; turtles used for food and other products in foreign countries; destruction and degradation of habitat, particularly nesting beaches; beach lighting; and other fisheries. Several commenters recommended that the agency delay issuing final regulations until all the causes of sea turtles mortality could be addressed.

*Response:* NMFS agrees that all causes of adverse impacts to sea turtles need to be addressed. Most of the causes of mortality to sea turtles are identified and discussed in the Recovery Plan for Marine Turtles and in the preamble to the proposed rule. Many of these activities are under the jurisdiction of other Federal agencies and have been the subject of consultations required by section 7 of the Act and either the Fish and Wildlife Service (FWS) or NMFS. Under section 7, Federal agencies are required to consult with the Secretary of the Interior or the Secretary of Commerce, depending on the species involved, to ensure that their actions are not likely to jeopardize the continued existence of endangered and threatened species, or destroy or adversely modify designated critical habitat. During these consultations the Federal agency and FWS or NMFS review projects to assess the potential impacts to listed species and determine how these impacts can be avoided or minimized. Before the project can proceed, the action agency must find that the activity is not likely to jeopardize the continued existence of endangered or threatened species, or

destroy or adversely modify designated critical habitat. Section 7 consultations have been conducted for a number of activities including dredge and fill projects, beach nourishment projects, jetty construction, oil and gas lease sales, oil rig removals, ocean disposal and fishery management plans. FWS also is working with a number of state and local government agencies to protect nesting female and hatchling sea turtles and eggs on beaches.

NMFS believes that available observer data and the estimated annual incidental catch and mortality of sea turtles in shrimp trawls show that this is a significant source of impacts on turtle populations. The best way to reduce these impacts is by shrimp trawlers using TEDs.

NMFS will strengthen its efforts to work with other agencies and groups to address other sources of impacts, such as oil rig removals, beach development, and pollution discharges.

A number of commenters stated Mexico was the principal cause of sea turtle mortality. Mexico also has designated a number of turtle sanctuaries recently. Mexico also provides protection to the Kemp's ridley nesting area at Rancho Nuevo, to prevent poaching of eggs and other impacts to nests, eggs, hatchlings and nesting females. Mexico has indicated that it may require its shrimp trawlers to use TEDs. The United States has offered to provide assistance in training Mexican shrimp fishermen how to use TEDs.

### Final Regulations

The final regulations will require all shrimp trawlers to use conservation measures when fishing for shrimp. Under these regulations the use of TEDs or tow time restrictions are required in all waters of the Atlantic between the North Carolina—Virginia border and 23°40'N and throughout the U.S. Gulf of Mexico. Based on seasonal requirements, Atlantic and Gulf waters each are divided into two areas. These are called the Canaveral, the Atlantic, the Southwest Florida and Gulf Areas. These areas are defined as follows: (a) Canaveral Area—includes all ocean and tidal waters between 28° N and 29° N in the Atlantic Ocean; (b) Atlantic Area—includes all ocean and tidal waters in the Atlantic Ocean from the North Carolina—Virginia border to 23°40'N, except for waters in the Canaveral Area; (c) Southwest Florida Area—includes all ocean and tidal waters within the region bounded by 23° N to 27° N between 81° W and 84° W; and (d) The Gulf Area—includes

all ocean and tidal waters of the U.S. Gulf of Mexico except for waters in the Southwest Florida Area. These areas are shown in Maps 1 and 2.

**1. TED Requirements and Tow Time Restrictions**

These final rules require all shrimp trawlers to either use a qualified TED or restrict tow times to 90 minutes or less. These requirements are summarized in Table 1. A number of changes (these changes are discussed in greater detail below) have been made to the proposed rules based on the comments provided to the agency.

**A. TED Requirements**

(i) *Offshore.* All vessels 25 feet or longer trawling for shrimp in offshore waters must use a qualified TED in each trawl as follows: in the Canaveral Area all year beginning October 1, 1987; in the Atlantic Area from May 1 through August 31 each year, beginning May 1, 1988; in the Southwest Florida Area all year beginning January 1, 1988; and in the Gulf Area from March 1 through November 30 each year, beginning March 1, 1988. At the starting dates

TEDs will be required in all offshore waters of the Canaveral and Atlantic Areas and from the shore (or baseline of the territorial sea) to 15 nautical miles in the Southwest Florida and Gulf Areas. A year from the starting dates TEDs will be required in all offshore waters of the Southwest Florida and Gulf Areas. Reduced tow times cannot be used in lieu of TEDs for vessels 25 feet and longer.

**B. Tow Time Restrictions**

(i) *Inshore.* All vessels (regardless of length) trawling for shrimp in inshore waters of the Canaveral, Atlantic, Southwest Florida and Gulf Areas are required to restrict tow times (tow time starts when the trawl doors enter the water and ends when they are removed from the water) to 90 minutes or less all year as follows: In the Canaveral Area all year beginning October 1, 1987; in the Atlantic Area from May 1 through August 31 each year, beginning May 1, 1988; in the Southwest Florida Area all year beginning January 1, 1988; and in the Gulf Area from March 1 to November 30 each year, beginning March 1, 1988. This restriction does not

apply to shrimp trawlers using a TED in each net during trawling.

(ii) *Offshore.* All shrimp trawlers less than 25 feet trawling for shrimp in offshore waters at times when and in areas where TEDs are required for larger shrimp trawlers must restrict tow times to 90 minutes or less. The restriction applies as follows: in the Canaveral Area all year beginning October 1, 1987; in the Atlantic Area from May 1 through August 31 each year, beginning May 1, 1988; in the Southwest Florida Area all year beginning January 1, 1988; and in the Gulf Area from March 1 through November 30 each year, beginning March 30, 1988. At the starting dates this restriction will apply in all offshore waters of the Canaveral and Atlantic Areas and from shore to 15 miles in the Southwest Florida and Gulf Areas. A year from the starting dates in the Southwest Florida and Gulf Areas the tow time restriction will apply in all offshore waters of these areas. This restriction does not apply to shrimp trawlers using a TED in each net during trawling.

TABLE 1.—SUMMARY OF FINAL REGULATIONS

Areas	Trawler size	Requirement	Season	Start	Coverage
<b>Offshore:</b>					
Canaveral area	> 25 ft	TED	All year	10-1-87	All waters.
Atlantic area	Do	TED	May 1 to August 31	05-1-88	Do.
Southwest Florida area	Do	TED	All year	01-1-88	Shore to 15 miles. <sup>1</sup>
Gulf area	Do	TED	March 1 to November 30	03-1-88	Shore to 15 miles. <sup>2</sup>
Canaveral area	< 25 ft	90 minute tow <sup>3</sup>	All year	10-1-87	All waters.
Atlantic area	Do	do	May 1 to August 31	05-1-88	Do.
Southwest Florida area	Do	do	All year	01-1-88	Shore to 15 miles. <sup>1</sup>
Gulf area	Do	do	March 1 to November 30	03-1-88	Shore to 15 miles. <sup>2</sup>
<b>Inshore:</b>					
Canaveral area	All	90 minute tow <sup>3</sup>	All year	10-1-87	
Atlantic area	All	do	May 1 to August 31	05-1-88	
Southwest Florida area	All	do	All year	01-1-88	
Gulf area	All	do	March 1 to November 30	03-1-88	

<sup>1</sup> Will extend to all waters 1-1-89.

<sup>2</sup> Will extend to all waters 3-1-89.

<sup>3</sup> Tow time restrictions do not apply to shrimp trawlers that are using a TED in each net during trawling.

**2. Qualification of TEDs**

Four TEDs have been demonstrated to have very high turtle exclusion rates. These are commonly called the NMFS TED, the Cameron TED, the Matagorda TED, and the Georgia TED. The final rules declare these TEDs to be qualified devices and contain a description of the essential design and construction and an illustration of each device. The qualification of these devices fulfills the requirements of these regulations. The rules provide a procedure for submitting inshore devices and

submitting them to NMFS for qualification. The standard for qualification is a 97 percent exclusion rate for the size of sea turtles encountered in the area where the device is intended to be used. All testing for turtle exclusion will be performed under NMFS supervision. Such testing normally will be conducted off Cape Canaveral, Florida, using scientific protocols approved by NMFS. One such protocol is published as an appendix to this rule. NMFS is aware that "Soft TEDs" (i.e., made of washing-like

materials) have been developed recently. These devices will be tested for turtle exclusion off Cape Canaveral in the near future.

**3. Shrimp Efficiency Testing**

A major concern of shrimpers with all TEDs is the possible loss of shrimp. Refinements in TED design may improve shrimp yields or reduce unwanted bycatch. These rules contain a provision for the Regional Director, NMFS, to allow public or private parties to conduct experiments on the effects of

various TEDs on shrimp catch. A research protocol is available from NMFS to aid in comparing shrimp retention or bycatch exclusion rates of the experimental gear to the rates of conventional nets or nets equipped with qualified TEDs.

#### 4. Reporting Requirements

The Notice of Proposed Rulemaking (52 FR 6179-6199) contained a collection of information requirement subject to the Paperwork Reduction Act that is under review by the Office of Management and Budget (OMB). That provision would require shrimp fishermen to report pertinent information concerning the capture of sea turtles. If OMB approves the information collection requirement, NMFS will amend the final rule.

#### 5. Enforcement Policy

The rule contains a statement of the Secretary's policy with respect to the use of civil penalties to enforce the prohibitions on taking of endangered and threatened sea turtles by shrimp trawlers that have observed the requirements of these rules. Briefly, the Secretary will not subject shrimp fishermen in the Canaveral, Atlantic, Southwest Florida and Gulf Areas who comply with this rule to civil penalties under the Act for the unintentional incidental capture or mortality of endangered or threatened sea turtles in shrimp trawls.

#### 6. Exemptions

Shrimp trawlers intending to fish for royal red shrimp (or rock shrimp in the Atlantic Ocean) are exempt from the TED requirements and tow time restrictions provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp (or rock shrimp from the Atlantic Ocean). The reason for this exemption is that turtles are rarely encountered in the very deep waters where these fisheries take place.

A single "test net" having a headrope length of 20 feet or less also is exempt from the TED requirement (but not tow time restrictions) so long as the test net is independent of the primary net or nets. A test net is considered to be independent if it is pulled immediately in front of a primary net or is not connected to a primary net in any way. The reasons for exempting "test nets" are that TEDs are not efficient, both in terms of turtle exclusion and shrimp retention, when used on small nets and that small nets are towed for relatively short periods, reducing the risk of sea turtle mortality.

#### Differences Between the Proposed and Final Rules

Several changes were made to the proposed rules as a result of comments received from the public. The major differences are for where TEDs are required, imposition of tow time restrictions, which shrimp trawlers must use TEDs, and starting dates.

##### 1. TED Requirements

The proposed rules would require the use of TEDs in most inshore waters of the Atlantic and Gulf. In response to the thousands of commenters who indicated that there are no data on the incidental catch and mortality of sea turtles in shrimp trawls in inshore waters, NMFS has dropped TED requirements for all inshore waters. However all shrimp trawls in inshore waters will be required to restrict tow times to 90 minutes or less. The final regulations will allow shrimp trawlers to use qualified TEDs in inshore waters in place of tow time restrictions.

##### 2. Tow Time Restrictions

The proposed rules contained no restrictions on tow times. Many commenters suggested limits on tow times as being the most effective alternative to TEDs. NMFS believes that requiring the use of TEDs in shrimp trawls would provide a most effective method of reducing sea turtle drownings in shrimp trawls. However, NMFS scientists have demonstrated that there is a relationship between tow time and percent mortality of sea turtles caught in shrimp trawls. NMFS believes that tow time restrictions can be an effective technique to reduce sea turtle mortality associated with shrimp trawling.

Although NMFS has no observer data, sea turtles do occur in inshore waters and NMFS believes that they are incidentally caught and drowned in shrimp trawls in inshore waters. NMFS also believes that most inshore shrimp trawlers are smaller craft that generally do not tow for long periods. Tow time restrictions admittedly are difficult to enforce. However, NMFS believes that in many inshore areas tow time restrictions can be enforced effectively, but that in many offshore areas tow time restrictions will be much more difficult to enforce. To provide protection for sea turtles in inshore waters, NMFS has determined that restricting tow times to 90 minutes or less (total time from setting to retrieving trawls, which equals 60 to 75 minutes towing time at depth) is necessary until additional data on incidental take and mortality of sea turtles in inshore waters are available. Tow time restrictions apply to all shrimp

trawlers in inshore waters. In addition NMFS is requiring shrimp trawlers smaller than 25 feet in length to restrict tow times in offshore waters where and when larger trawlers are required to use TEDs. Since most shrimp trawlers less than 25 feet long generally fish near shore, this restriction can be effectively enforced. The tow time restriction does not apply to shrimp trawlers using a TED in each net during trawling.

##### 3. Vessels Required to Use TEDs

The proposed rules would require the use of TEDs on shrimp trawls with a headrope 30 feet or longer. Responding to comments concerning the potential danger of using TEDs on small trawlers and on difficulties associated with enforcement, NMFS based TED requirements on shrimp trawler length. All shrimp trawlers 25 feet or longer are required to use TEDs in offshore waters. This length was selected because there is no doubt that TEDs can be used safely on vessels 25 feet or greater in length. Because there are no safety considerations associated with tow time restrictions, all shrimp trawlers are required to abide by them as specified in the regulations.

##### 4. Starting Dates

There are several differences in starting dates for TED requirements between the proposed and final regulations. The proposed rules would have required TEDs to be used as early as July 15, 1987, in offshore waters of the Atlantic and Gulf. A number of commenters requested that TED requirements be delayed to allow shrimp fishermen sufficient time to obtain and learn to use TEDs. In response to these comments NMFS has delayed TED requirements until at least January 1, 1988, except for the Canaveral Area, where TEDs will be required on October 1, 1987.

##### 5. Areas

Under the proposed rules there were no TED requirements for waters off North Carolina north of 35°N, waters south of 28°N off the Atlantic coast of Florida and for Gulf of Mexico waters north of 27°N on the Florida coast (near Englewood, Florida) to Mobile Bay. The final regulations require the use of TEDs and tow time restrictions in all of these waters. These changes are made because sea turtles and shrimping both occur in these waters. Under the proposed regulations, TEDs would have been required initially in the Gulf of Mexico from shore to the 10 fathom contour and then would extend out to the 15 fathom contour one year later.

NMFS has determined that it would be very difficult to enforce the requirement based on depth contours. Therefore, in the Gulf of Mexico, these regulations will be effective initially out to 15 nautical miles and one year later in all waters.

#### Other Sources of Impacts to Sea Turtles

The Recovery Plan for Marine Turtles identifies a number of sources of significant impacts to sea turtles. In addition to incidental capture and mortality in shrimp trawls, the plan identifies the following sources of impacts: Pollutants from industrial and residential development, including oil, pesticides, herbicides and PCBs; exploratory oil and gas drilling; ocean dumping, including plastics; dredge and fill operations; power boats; harvest for commercial or other purposes; predation of nest and hatching; and destruction or loss of habitat. To promote the recovery of sea turtles all of these sources of mortality must be addressed. NMFS will work with federal, state and private agencies to implement actions to reduce or alleviate the impact burden on sea turtles. In addition we will continue our international efforts to conserve sea turtles. We have worked with a number of countries to transfer TED technology to foreign shrimpers and will continue these efforts.

#### Evaluation Program

NOAA will conduct a detailed evaluation to be completed within two years of January 1, 1988, of the effectiveness of the regulation contained in this rule. This study will include an evaluation as to whether the qualified TEDs are effectively excluding turtles, whether there are alternative performance/design standards for qualifying TEDs that would be acceptable and what their cost would be, and whether the testing and qualifying procedures for TEDs are the most efficient possible.

#### Classifications

A Final Environmental Impact Statement covering portions of this action was prepared in 1978. An Environmental Assessment covering prior voluntary efforts to encourage TED usage was prepared in 1983. A Final Supplemental Environmental Impact Statement concluded that there would be a significant positive impact on the quality of the human environment as a result of adopting these rules. Copies of the environmental documents can be obtained from the Regional Director at the address given above.

The Administrator of NOAA has determined that this rule is not a

rule" requiring a regulatory impact analysis under Executive Order 12291. An initial regulatory flexibility analysis (RFA) was prepared as part of the initial regulatory impact review (RIR) which concluded that the proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. The final rule contains revisions to the proposed rule which will substantially reduce the economic impacts on small entities. These changes are discussed in the final RIR/RFA which can be obtained from the Regional Director (see "Addresses").

By 1989, about 7,000 U.S. shrimp trawlers will be required to purchase and use TEDs. The cost of TEDs ranges between \$200 and \$400. Each of the qualified TEDs have an expected life of two years. The average annual cost to the industry is expected to be between \$2.6 and \$5.2 million. NMFS believes that the tow time restrictions will not result in additional costs to the industry, because nearly all of the vessels affected by these requirements already use reduced tow times. A few shrimp fishermen may incur additional fuel costs resulting from more frequent setting and hauling of their trawls.

The Administrator has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of six southeastern states.

Neither this rule nor the Act preclude any state from adopting more stringent sea turtle protective measures. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act of 1972, 16 U.S.C. 1457.

#### List of Subjects in 50 CFR Parts 217, 222, and 227

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 23, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries.

For the reasons set out in the preamble, 50 CFR Parts 217, 222, and 227 are amended as follows:

#### PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 continues to read as follows:

Authority: 16 U.S.C. 1521-1543 and 16 U.S.C. 742a et seq.

217.1, 217.2, 217.3, and 217.4 are amended:

In Subpart A of Part 217, the authority citation for "Parts 217 through 222" is amended and "Parts 216 through 227" is

added in its place in the following places: § 217.1, § 217.2, § 217.3, § 217.4, introductory text, and in paragraph (a).

3. In § 217.12, the following definitions are added in alphabetical order to read as follows:

#### § 217.12 Definitions.

"Atlantic Area" means all ocean and tidal waters off the southeast Atlantic States from 36°33'00.8"N. latitude (North Carolina or Virginia border) south and west to a line at 81°W. longitude, except for waters within the Canaveral Area, as defined in this section.

"Authorized officer" means (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; (2) any certified enforcement officer of the National Marine Fisheries Service; (3) any officer designated by the head of any Federal or State agency that has entered into an agreement with the Secretary and Commandant of the Coast Guard to enforce provisions of the Act; (4) any Coast Guard personnel accompanying and acting under the direction of any person described in Subparagraph (1) of this definition.

"Canaveral Area" means all ocean and tidal waters off the east coast of Florida between 28°N. latitude and 29°N. latitude.

"Gulf Area" means all ocean and tidal waters in the Gulf of Mexico except the southwest Florida Area, as Defined in this section.

"Inshore" means marine or tidal waters landward of the baseline from which the territorial sea of the United States is measured and marine or tidal waters on the mainland side of any baselines on offshore islands.

"Length" in reference to a shrimp trawler, means the distance from the tip of the vessel's bow to the tip of its stern.

"Offshore" means waters seaward of the baseline from which the territorial sea of the United States is measured.

"Shrimp" means the following species of the order Crustacea:

- (1) Brown shrimp (*Penaeus aztecus*).
- (2) White shrimp (*P. setiferus*).
- (3) Pink shrimp (*P. duorarum*).
- (4) Rock Shrimp (*Sicyonia brevirostris*).
- (5) Royal red shrimp (*Hymenopenaeus robustus*).
- (6) Seabob shrimp (*Niphopenaeus kroyeri*).

"Shrimp trawler" means any fishing vessel which is equipped with trawl nets and fishes for shrimp, or whose on-board or landed catch of shrimp is over one percent by weight of all fish on board.

"Southwest Florida Area" means the ocean and tidal waters off Florida, from

23°40' N. Latitude to 27° N. latitude  
between 81° W. longitude and 84° W.  
longitude.

"Tow time" means the interval from  
trawl doors entering the water to trawl  
doors being removed from the water.

**PART 222—ENDANGERED FISH OR  
WILDLIFE**

4. The authority citation for Part 222  
continues to read as follows:

Authority: 16 U.S.C. 1531-1543.

5. A new Subpart D is added to read  
as follows:

**Subpart D—Incidental Capture of  
Endangered Sea Turtles**

**§ 222.41 Policy regarding incidental  
capture of sea turtles.**

Shrimp fishermen in the southeastern  
United States and the Gulf of Mexico  
who comply with rules for threatened  
sea turtles specified in § 227.72(e) of this  
subchapter will not be subject to civil  
penalties under the Act for incidental  
captures of endangered sea turtles by  
shrimp trawl gear.

**PART 227—THREATENED FISH AND  
WILDLIFE**

6. The authority citation for Part 227  
continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

7. In § 227.72, the headings for  
reserved paragraphs (e)(2) and (e)(3) are  
removed and new paragraphs (e)(2)  
through (e)(7) are added to read as  
follows:

**§ 227.72 Exceptions to prohibitions.**

(e) \* \* \*

(2) *Gear requirements.* (i) Except as  
provided in paragraphs (e)(2)(ii),  
(e)(2)(iii) and (e)(2)(iv) of this section, a  
qualified turtle excluder device (TED)  
must be carried and used in each net  
during trawling by a shrimp trawler 25  
feet or longer in length fishing for white,  
brown, pink, or seabob shrimp (or for  
rock shrimp in the Gulf of Mexico) in  
areas and during periods as follows (see

Table 1 for a summary of the  
requirements and Maps 1 and 2 for  
depictions of the areas):

(A) Atlantic Ocean:  
(1) Canaveral Area, offshore—all  
year, commencing October 1, 1987.  
(2) Atlantic Area, offshore—May 1  
through August 31, each year,  
commencing May 1, 1988.

(B) Gulf of Mexico:  
(1) Southwest Florida Area, offshore  
to 15 nautical miles—all year,  
commencing January 1, 1988.

(2) Gulf Area, offshore to 15 nautical  
miles—March 1 through November 30,  
each year, commencing March 1, 1988.

(3) Southwest Florida Area, offshore—  
all year, commencing January 1, 1989.

(4) Gulf Area, offshore—March 1  
through November 30, each year,  
commencing March 1, 1989.

(ii) In the Southwest Florida and Gulf  
Areas a shrimp trawler fishing for or  
possessing royal red shrimp is exempt  
from the TED requirement provided that  
90 percent of all shrimp offloaded from,  
or on board, the trawler are royal red  
shrimp.

(iii) In the Canaveral and Atlantic  
Areas, a shrimp trawler fishing for or  
possessing rock shrimp or royal red  
shrimp is exempt from the TED  
requirement provided that 90 percent of  
all shrimp offloaded from, or on board,  
the trawler are rock shrimp or royal red  
shrimp.

(iv) A single test net having a  
headrope length of 20 feet or less is  
exempt from the TED requirement  
provided that the test net is pulled  
immediately in front of any other net or  
is not connected to another net in any  
way.

(3) *Tow time restrictions.* (i) Except  
for a shrimp trawler carrying and using  
a qualified TED in each net during  
trawling, a shrimp trawler, regardless of  
length, fishing for white, brown, pink, or  
seabob shrimp (or rock shrimp in or  
from the Gulf or Southwest Florida  
Areas) must limit each tow time to 90  
minutes in areas and during periods as  
follows (see Table 2 for a summary of  
the requirements and Maps 3 and 4 for  
depictions of the areas):

(A) Atlantic Ocean:  
(1) Canaveral Area, inshore—all year,  
commencing October 1, 1988.

(2) Atlantic Area, inshore—May 1  
through August 31, each year,  
commencing May 1, 1988.

(B) Gulf of Mexico:  
(1) Southwest Florida Area, inshore—  
all year, commencing January 1, 1988.

(2) Gulf Area, inshore—March 1  
through November 30, each year,  
commencing March 1, 1988.

(ii) Except for a shrimp trawler  
carrying and using a qualified TED in  
each net during trawling, a shrimp  
trawler less than 25 feet in length fishing  
for white, brown, pink, or seabob shrimp  
must limit each tow time to 90 minutes  
in areas and during periods as follows  
(see Table 2 for a summary of the  
requirements and Maps 1 and 2 for  
depictions of the areas):

(A) Atlantic Ocean:  
(1) Canaveral Area, offshore—all  
year, commencing October 1, 1987.

(2) Atlantic Area, offshore—May 1  
through August 31, each year,  
commencing May 1, 1988.

(B) Gulf of Mexico:  
(1) Southwest Florida Area, offshore  
to 15 nautical miles—all year,  
commencing January 1, 1988.

(2) Gulf Area, offshore to 15 nautical  
miles—March 1 through November 30,  
each year, commencing March 1, 1988.

(3) Southwest Florida Area, offshore—  
all year, commencing January 1, 1988.

(4) Gulf Area, offshore—March 1  
through November 30, each year,  
commencing March 1, 1989.

(iii) In the Southwest Florida and Gulf  
Areas a shrimp trawler fishing for or  
possessing royal red shrimp is exempt  
from the tow time restrictions provided  
that 90 percent of all shrimp offloaded  
from, or on board, the trawler are royal  
red shrimp.

(iv) In the Atlantic and Canaveral  
Areas, a shrimp trawler fishing for or  
possessing royal red or rock shrimp is  
exempt from the tow time restriction  
provided that 90 percent of all shrimp  
offloaded from, the trawler are royal red  
or rock shrimp.

**TABLE 1.—WATERS WHERE TEDS ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET OR LONGER IN LENGTH**

Area	Start date	Season
Atlantic Ocean:		
Canaveral Area—offshore.....	October 1, 1987.....	All year.
Atlantic Area—offshore.....	May 1, 1988.....	May 1 through August 31, each year.
Gulf of Mexico:		
Southwest Florida Area—offshore to 15 nautical miles.....	Jan. 1, 1988.....	All year.
Gulf Area—offshore to 15 nautical miles.....	March 1, 1988.....	March 1 through November 30, each year.
Southwest Florida Area—offshore.....	Jan. 1, 1989.....	All year.
Gulf Area—offshore.....	March 1, 1989.....	March 1 through November 30, each year.



TABLE 2.—90 MINUTE TOW TIMES <sup>1</sup>

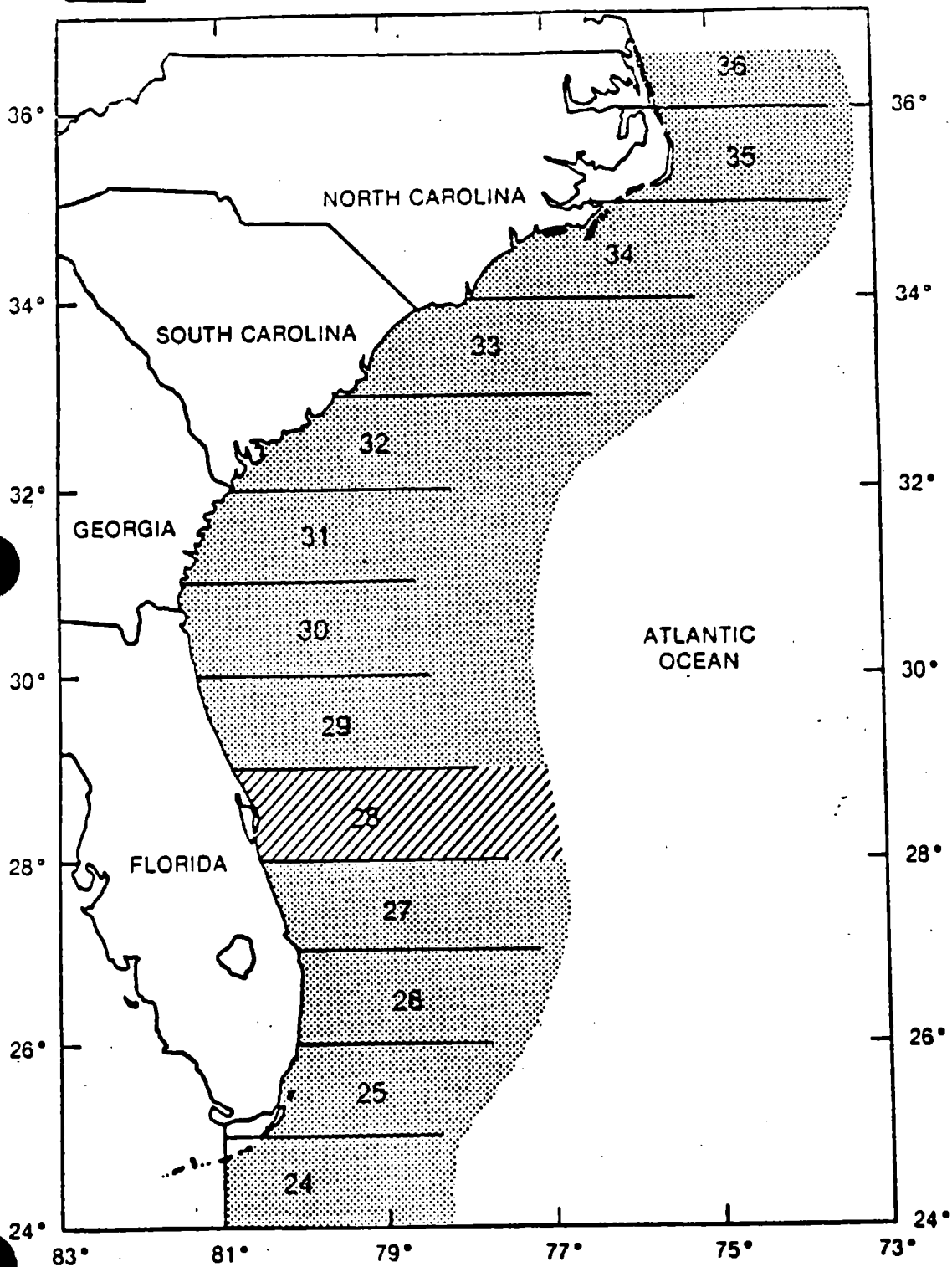
Area	Start date	Season	Vessel sizes
Atlantic Ocean:			
Canaveral Area—inshore .....	October 1, 1988 .....	All year .....	All.
Atlantic Area—inshore .....	May 1, 1988 .....	May 1 through August 1, each year .....	All.
Gulf of Mexico:			
Southwest Florida Area—inshore .....	January 1, 1988 .....	All year .....	All.
Gulf Area—inshore .....	March 1, 1988 .....	March 1 through November 1, each year .....	All.
Atlantic Ocean:			
Canaveral Area—Offshore .....	October 1, 1987 .....	All year .....	< 25 feet.
Atlantic Area—offshore .....	May 1, 1988 .....	May 1 through August 31, each year .....	< 25 feet.
Gulf of Mexico:			
Southwest Florida Area—offshore to 15 nautical miles .....	January 1, 1988 .....	All year .....	< 25 feet.
Gulf Area—offshore to 15 nautical miles .....	March 1, 1988 .....	March 1 through November 30, each year .....	< 25 feet.
Southwest Florida area—offshore .....	January 1, 1989 .....	All year .....	< 25 feet.
Gulf Area—offshore .....	March 1, 1989 .....	March 1 through November 30, each year .....	< 25 feet.

<sup>1</sup> Tow time restrictions do not apply to shrimp trawlers using a qualified tED in each net during trawling.





BILLING CODE 3510-22-M

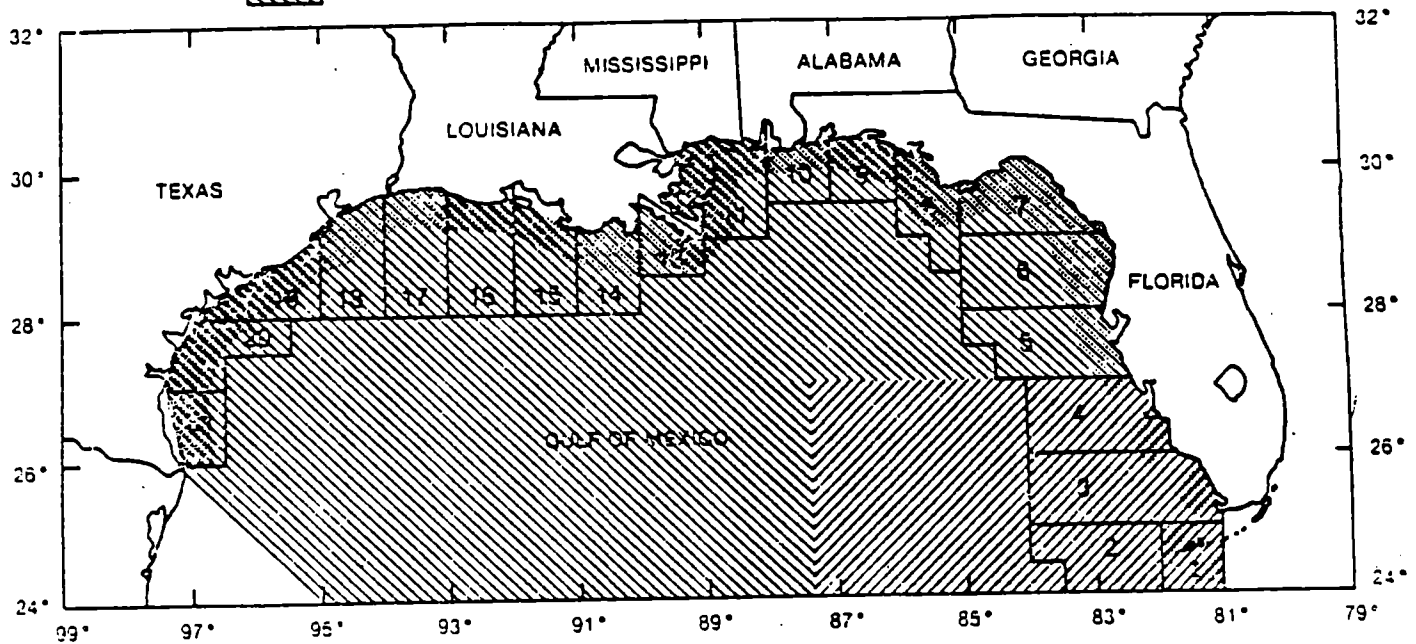
MAP 1. OFFSHORE ATLANTIC WATERS WHERE TEDS ARE REQUIRED

-  Canaveral Area (Zone 28)  
ALL WATERS, all year, beginning October 1, 1987.
-  Atlantic Area (Zone 24 thru NC-VA Border, except Zone 28)  
ALL WATERS, May 1-August 31, each year, beginning May 1, 1988.



MAP 2. OFFSHORE GULF OF MEXICO WATERS WHERE TEDS ARE REQUIRED

-  Southwest Florida Area (Zones 1-4)  
Shore to 15 miles, all year, beginning January 1, 1988.
-  Southwest Florida Area (Zones 1-4)  
ALL WATERS, all year, beginning January 1, 1989.
-  Gulf Area (Zones 5-21)  
Shore to 15 miles, March 1 to November 30, each year, beginning March 1, 1988.
-  Gulf Area (Zones 5-21)  
ALL WATERS, March 1 to November 30, each year, beginning March 1, 1989.



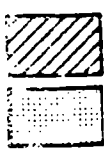
Note: The numbered zones on map 2 correspond to the numbered zones on map 4.

The seaward margin of the stippled area on Map 2 is the 15 nautical mile line. The following 55 points are connected by this line.

- |                          |                          |                            |
|--------------------------|--------------------------|----------------------------|
| 1. 24°28' N., 81°00' W.  | 15. 27°30' N., 83°01' W. | 36. 29°01' N., 91°24' W.   |
| 2. 24°18' N., 81°42' W.  | 16. 27°52' N., 83°08' W. | 37. 29°13' N., 91°50' W.   |
| 3. 24°17' N., 82°00' W.  | 17. 28°32' N., 82°57' W. | 38. 29°17' N., 92°22' W.   |
| 4. 24°23' N., 82°56' W.  | 18. 29°22' N., 83°37' W. | 39. 29°31' N., 93°19' W.   |
| 5. 24°38' N., 83°12' W.  | 19. 29°45' N., 83°54' W. | 40. 29°26' N., 93°49' W.   |
| 6. 24°53' N., 82°55' W.  | 20. 29°39' N., 84°12' W. | 41. 29°14' N., 94°28' W.   |
| 7. 24°51' N., 82°07' W.  | 21. 29°21' N., 85°00' W. | 42. 29°05' N., 94°37' W.   |
| 8. 24°54' N., 81°48' W.  | 22. 29°27' N., 85°30' W. | 43. 28°44' N., 95°07' W.   |
| 9. 25°00' N., 81°25' W.  | 23. 29°59' N., 86°00' W. | 44. 28°31' N., 95°30' W.   |
| 10. 25°32' N., 81°33' W. | 24. 30°09' N., 86°43' W. | 45. 28°19' N., 96°00' W.   |
| 11. 25°43' N., 81°55' W. | 25. 30°04' N., 87°12' W. | 46. 28°07' N., 96°16' W.   |
| 12. 25°11' N., 82°05' W. | 26. 29°58' N., 88°00' W. | 47. 27°59' N., 96°30' W.   |
| 13. 25°10' N., 82°25' W. | 27. 29°58' N., 88°32' W. | 48. 27°43' N., 96°47' W.   |
| 14. 27°11' N., 82°49' W. | 28. 29°29' N., 88°52' W. | 49. 27°30' N., 96°52' W.   |
|                          | 29. 29°08' N., 88°43' W. | 50. 27°16' N., 97°03' W.   |
|                          | 30. 28°45' N., 89°00' W. | 51. 27°00' N., 97°05' W.   |
|                          | 31. 28°40' N., 89°30' W. | 52. 26°45' N., 97°02' W.   |
|                          | 32. 29°03' N., 89°47' W. | 53. 26°30' N., 96°57' W.   |
|                          | 33. 28°52' N., 90°05' W. | 54. 26°15' N., 96°54' W.   |
|                          | 34. 28°48' N., 90°23' W. | 55. 25°59.5' N., 96°52' W. |
|                          | 35. 28°48' N., 90°55' W. |                            |

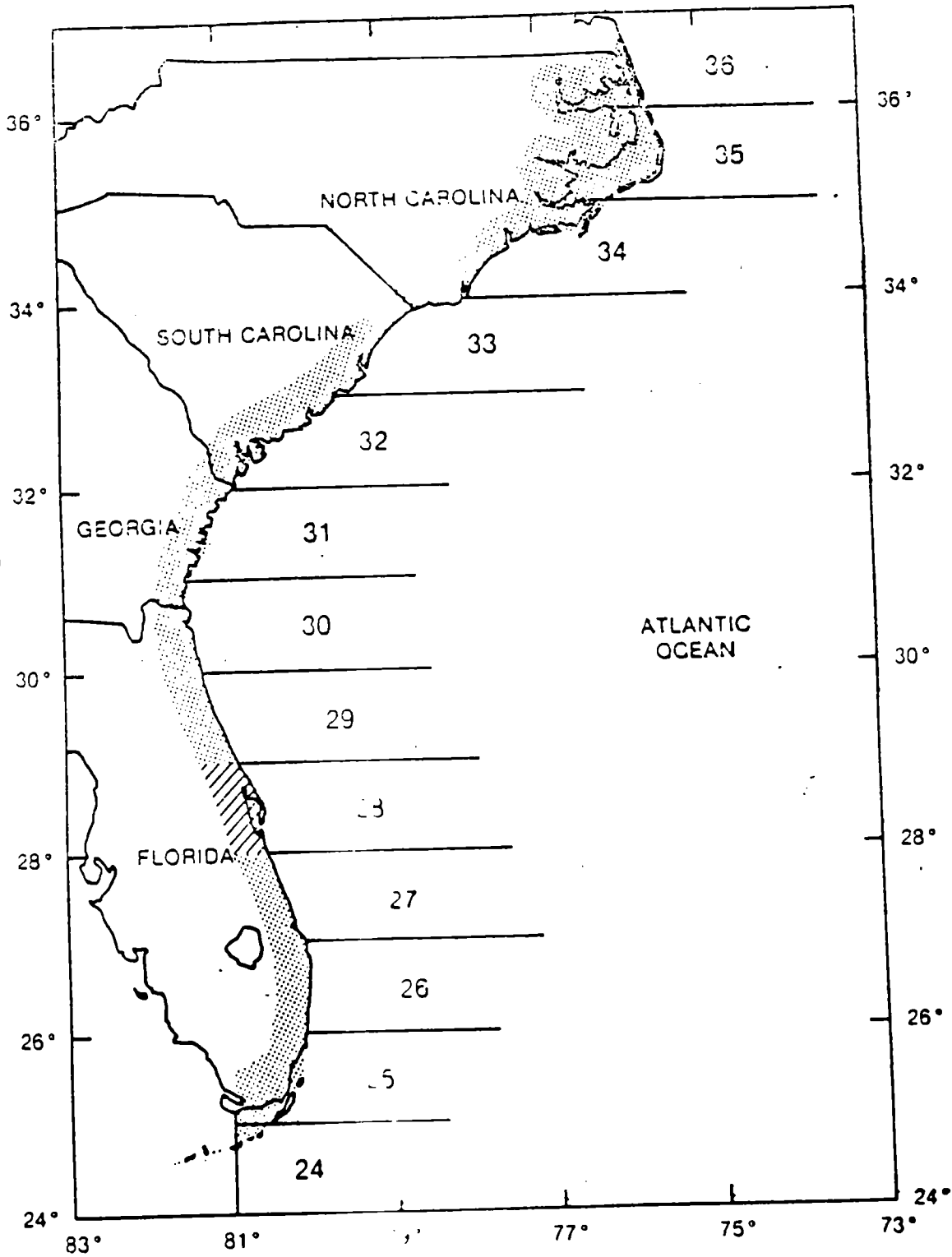
BILLING CODE 3510-22-4

MAP C. INSHORE ATLANTIC WATERS WHERE 90 MINUTE TOW TIMES APPLY

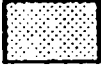
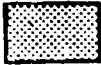


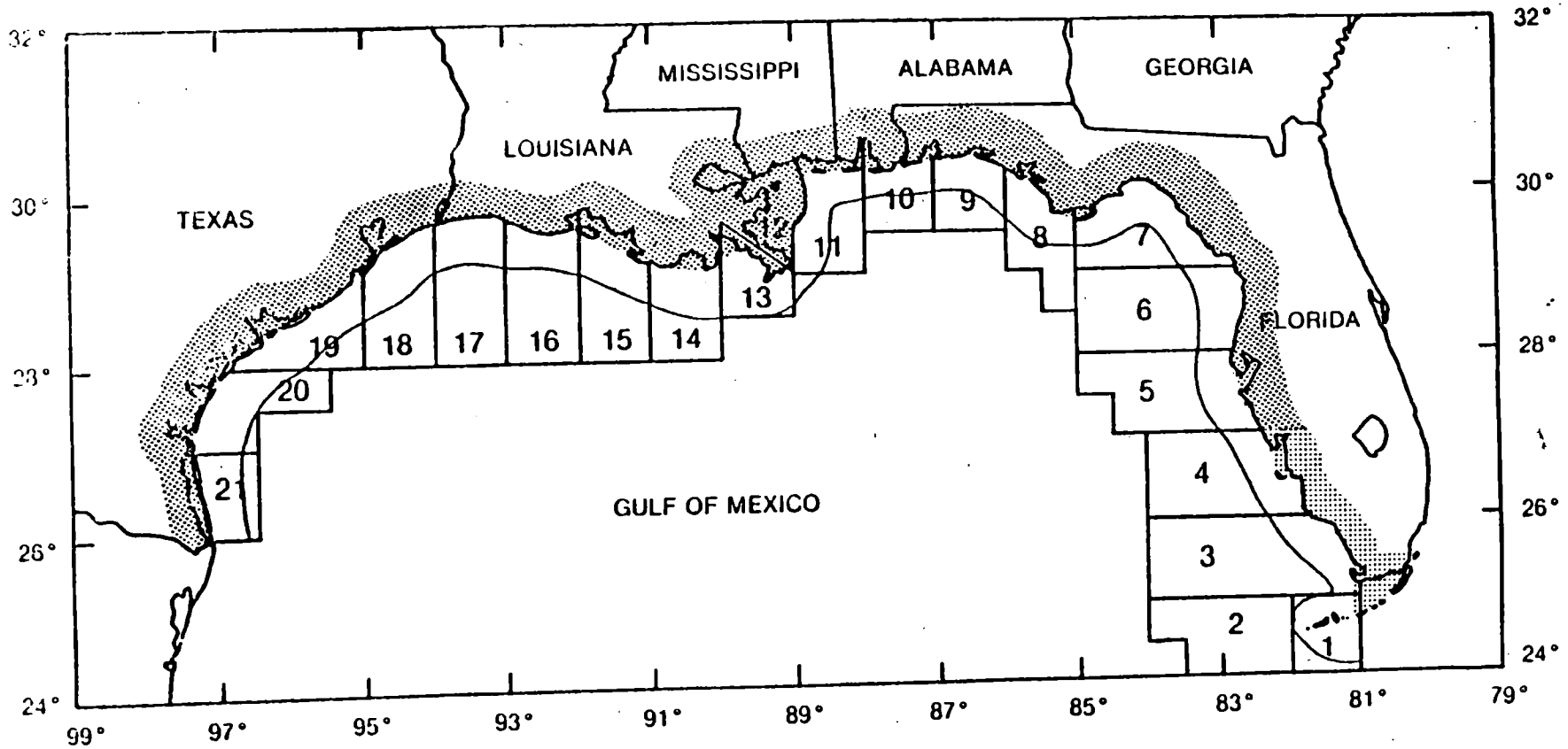
Canaveral Area (Zone 23)  
All year, beginning October 1, 1967.

Atlantic Area (Zone 24 thru NC-VA Border, except Zone 20)  
May 1-August 31, each year, beginning May 1, 1963.



MAP 4. INSHORE GULF OF MEXICO WATERS WHERE 90 MINUTE TOW TIMES APPLY

-  Southwest Florida Area (Zones 1-4)  
All year, beginning January 1, 1988.
-  Gulf Area (Zones 5-21)  
March 1 to November 30, each year, beginning March 1, 1988.



BILLING CODE 3510-22 C

(4) *Qualified turtle excluder devices—*

(i) *General.* In a qualified TED, the space between deflector bars cannot exceed four inches. Any other specification of dimension or strength of construction materials is a minimum requirement; i.e., a component that is larger or more durable than specified in paragraph (e)(4)(ii) of this section meets the requirement. Floats may be attached to any device.

(ii) *Approved TEDs.* The following TEDs are approved for use wherever and whenever a TED is required and for use where and when the 90 minute tow time would otherwise apply.

(A) *NMFS TED (Figure 1).* The NMFS TED consists of two oblong end hoops holding a diagonal deflector grid that are sewn into the trawl net ahead of the cod end. The device has a top-opening door. The end hoops are made from 1/2-inch welded steel pipe. The deflector grid and door are made from 1/4-inch

(inside diameter) welded galvanized pipe. The device may be rigid or collapsible and can be constructed using fiberglass rod or aluminum pipe of similar strength. The rigid version has rods welded to the front and rear hoops to align the deflector grid and to support the weight of the net and its catch. In the collapsible version, 1/4-inch steel cables perform these functions. Net webbing is sewn to the door frame and to the bottom and both sides of the end hoops. The cod end attaches to the rear hoop. A finfish deflecting apparatus may be installed in the device to eliminate unwanted bycatch. A finfish deflecting apparatus may consist of a webbing accelerator funnel placed in front of the TED diagonal bars and a rectangular grid with approximately 2 1/2 inches between bars behind the TED diagonal bars. Holes are cut in the webbing, which has been stretched around the TED frame, to allow finfish to escape.

When a sea turtle enters the net, it passes through the front hoop and is deflected upwards by the grid. The turtle is then able to open the door and escape. Shrimp pass through the grid to be retained in the cod end. The minimum dimensions for a NMFS TED used in the Gulf of Mexico Area and the Southwest Florida area are end hoops 20 inches high by 34 inches wide, door frame 25 inches by 25 inches, door opening 10 inches above the rear hoop. The minimum dimensions for a NMFS TED used in the Atlantic Area and the Canaveral Area are end hoops 30 inches high by 45 inches wide, door frame 30 inches by 30 inches, door opening 12 inches above the rear hoop. In all areas, the deflector grid angle must measure between 30° and 45° from the horizontal when the device is deployed. NMFS TEDs of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used.

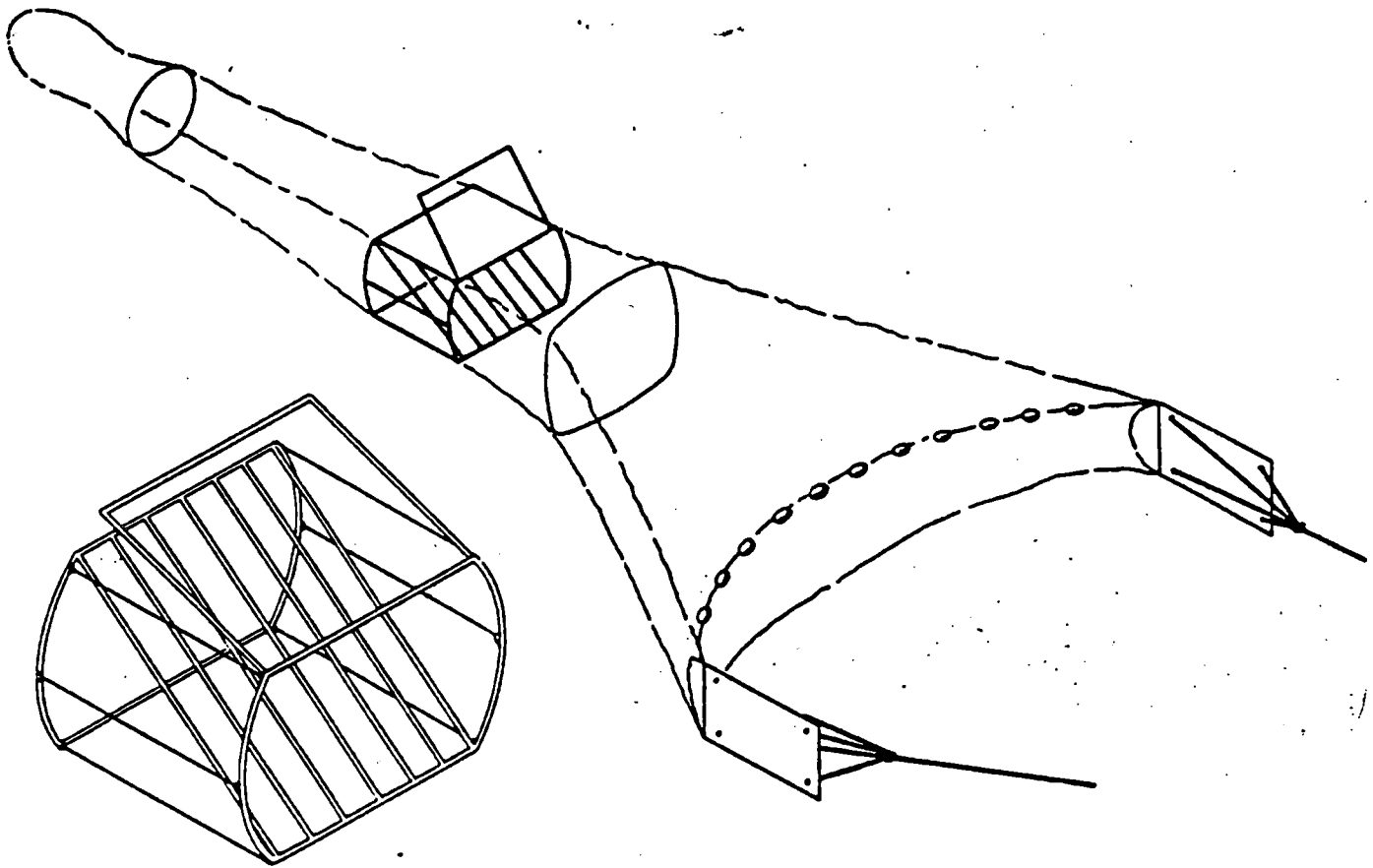


Figure 1 (NMFS TED)

(B) *Cameron TED (Figure 2)*. The Cameron TED is a rigid device similar to the NMFS TED in both form and function. It uses round end hoops instead of oblong ones. It is made from 1/2-inch aluminum rod and is sewn into the trawl net ahead of the cod end. The device may be constructed of steel pipe, fiberglass rod or other materials of similar strength. This TED does not use a movable door. Instead, a turtle escape

opening is cut in the top mesh of the net above the deflector grid. The minimum dimensions for a Cameron TED used in the Gulf Area and the Southwest Florida Area are 32-inch inside diameter end hoops and a 32-inch top mesh opening. The minimum dimensions for a Cameron TED used in the Atlantic Area and the Canaveral Area are 35 inch inside diameter end hoops and a 35 inch top mesh opening. For all areas, the

deflector grid must be angled between 30° and 45° from horizontal. Cameron TEDs of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used. Cameron TEDs, as originally designed, used a quick release hoop fastener. This feature may not be used. A Cameron TED must be sewn into the net to be a qualified device.

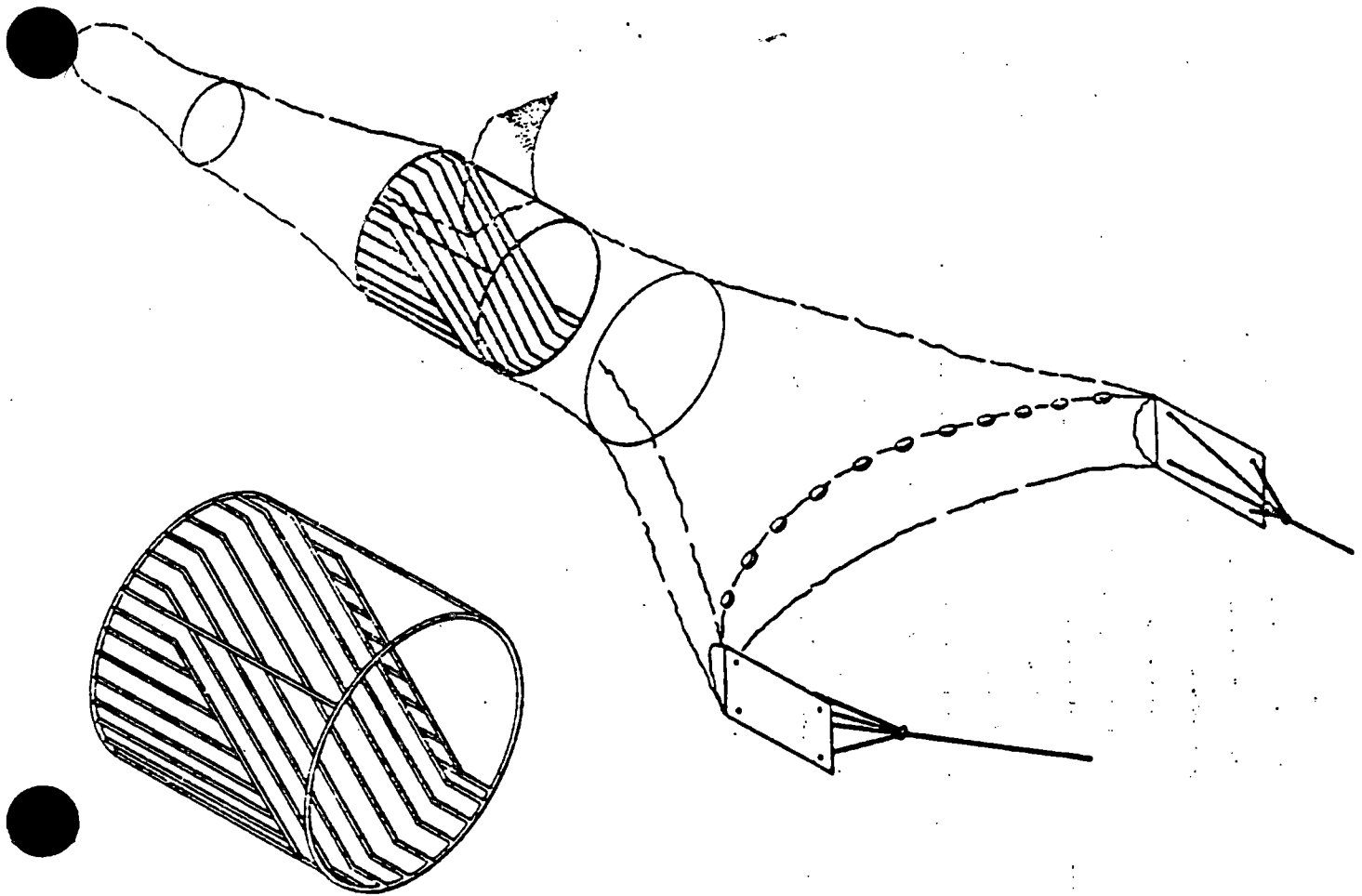


Figure 2 (Cameron TED)

(C) *Matagorda TED (Figure 3)*. The Matagorda TED is a single, rigid, rectangular deflector grid that may be made from a variety of materials including 1/4-inch steel pipe, 1/2-inch aluminum rod, or fiberglass rod of comparable strength. Unlike the NMFS or Cameron TEDs, the Matagorda TED does not use two end hoops to position the deflector grid. The grid itself must be

sewn into the net ahead of the cod end so as to operate at a 30° to 45° angle from the horizontal when pulled through the water. The angled grid deflects turtles either upward or downward to allow them to escape through an opening in the net mesh. The minimum dimensions for a Matagorda TED used in the Gulf Area and the Southwest Florida Area are a deflector grid 28

inches wide, by 36 inches long, and a minimum release opening of 32 inches. The minimum dimensions for a Matagorda TED used in the Atlantic Area and the Canaveral Area are a deflector grid 30 inches wide by 42 inches long, and a minimum release opening of 35 inches.

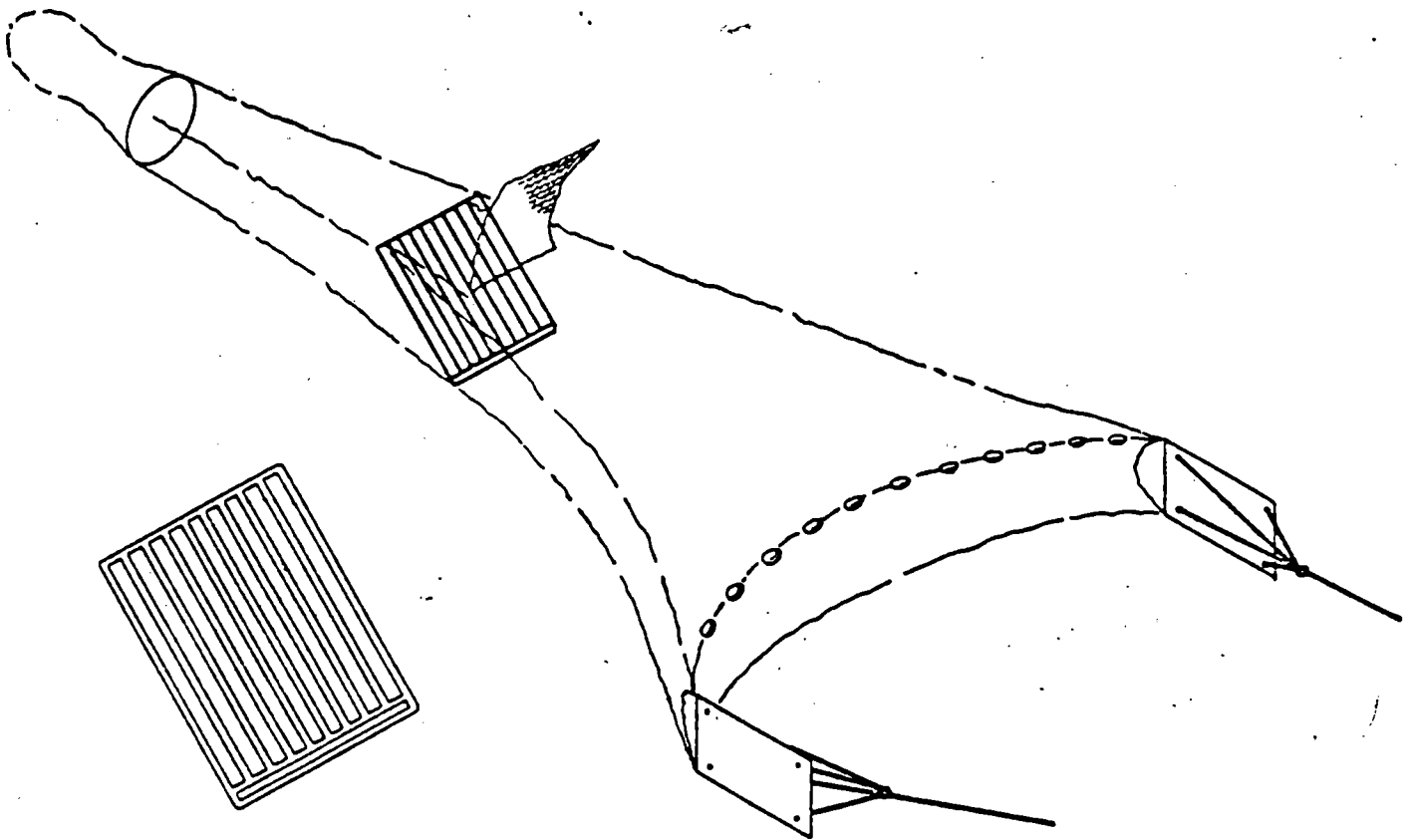


Figure 3 Matagorda TED

(D) *Georgia TED (Figure 4)*. The Georgia TED is a single, rigid, oval deflector grid similar to the Matagorda TED in form and function. It may be made from 1/2-inch steel pipe, 1/2-inch aluminum rod, or fiberglass rod of comparable strength. Like the Matagorda TED, the grid must be set into the net ahead of the cod end to operate at a 30° to 45° angle from the horizontal when pulled through the water to allow turtles to escape upward or downward through an

opening in the net mesh. The minimum dimensions for a Georgia TED used in the Gulf Area and the Southwest Florida Area are a 28-inch smallest inside diameter and a minimum release opening of 32 inches. The minimum dimensions for a Georgia TED used in the Atlantic Area and the Canaveral Area are a 30-inch smallest inside diameter and a minimum release opening of 35 inches. A variation of the Georgia TED uses removable deflector bars (inside a hoop) or varying spacing

which are bolted to a permanently affixed second hoop. This feature may be used only if the deflector bar hoop is also laced to the net and the permanently attached hoop so that it cannot be easily removed at sea. Deflector bars can be spaced no more than 4 inches apart. Georgia type TEDs that were acquired prior to July 1, 1987, may continue to be used as long as they meet minimum size standards and both hoops are permanently affixed to the trawl net.

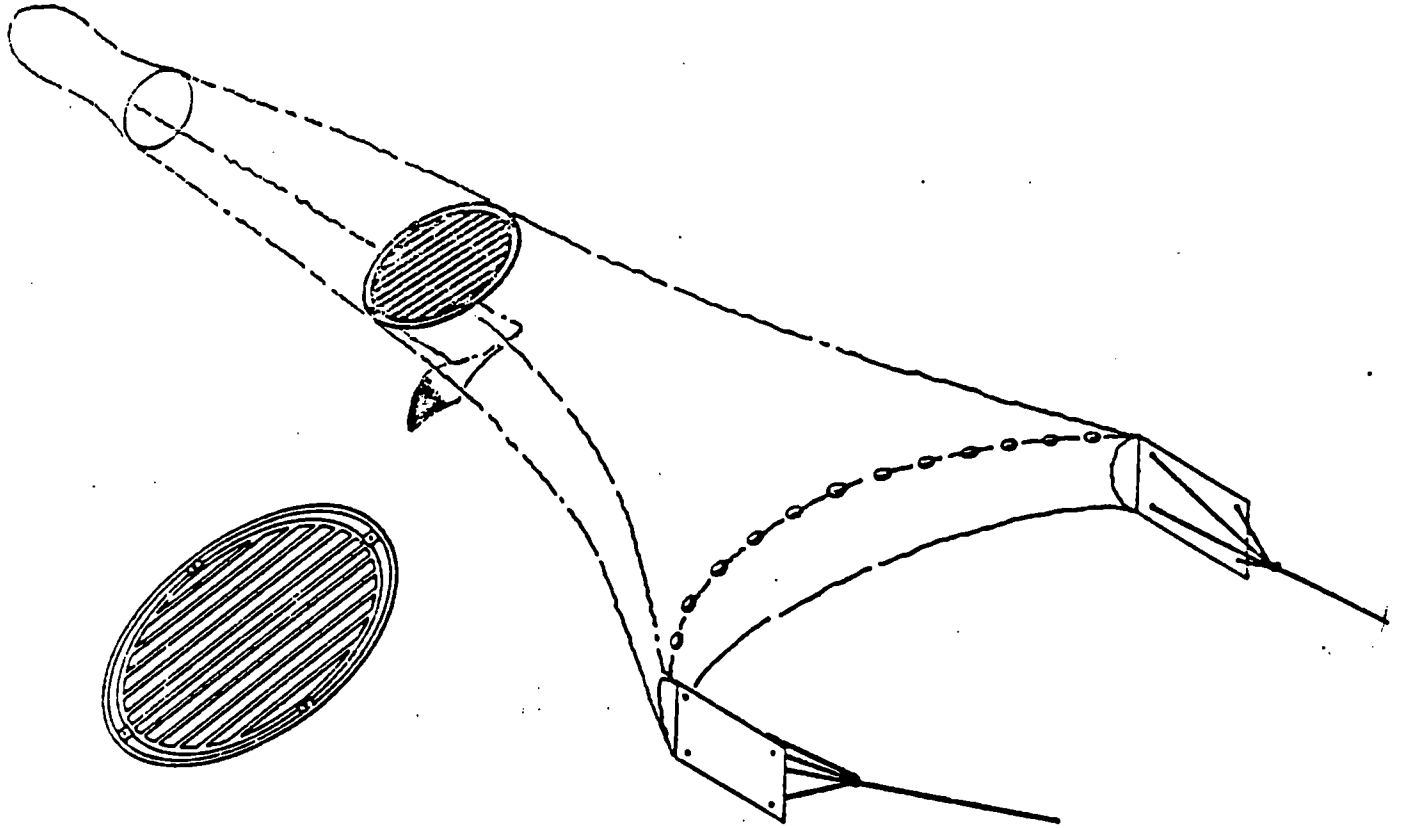


Figure 4 (Georgia TED)

(iii) *Other TEDs.* Additional devices may be approved as qualified TEDs if they demonstrate a turtle exclusion rate of 97 percent according to a NMFS-approved scientific protocol published in the **Federal Register**. One such protocol was published on June 29, 1987. Turtle exclusion testing must be conducted under the supervision of the Assistant Administrator or a designee. A person interested in testing a TED should contact the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

(iv) *Fishing efficiency experiments.* From time to time, the Director, Southeast Region, NMFS, may authorize public or private experimentation to develop alternative turtle excluder devices or to determine effects on shrimp fishing efficiency. A research protocol is available for such purposes. Requests for approval of experimental

programs should be addressed to the Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702.

(5) [Reserved]

(6) *Prohibitions.* It is unlawful for any person to do any of the following:

(i) Fail to use a qualified TED in each net during trawling on a vessel 25 feet or longer in length in an area where and at a time when a TED is required pursuant to this part;

(ii) Fail to restrict a tow time to 90 minutes in an area and at a time such restriction applies, unless a qualified TED is being used in each net during trawling.

(iii) Land from or possess on board a vessel white, brown, pink, or seabob shrimp in quantities exceeding 10 percent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in a TED required area

without using a qualified TED in each net during trawling;

(iv) Fail to follow sea turtle handling and resuscitation procedures specified in paragraph (e)(1)(i) of this section; or

(v) Fail to comply with instructions and signals issued by an authorized officer. Enforcement procedures and signals used in the Gulf of Mexico shrimp fishery are listed at 50 CFR Part 658. These procedures will be used to enforce the rules of this section in all geographic areas.

(7) *Enforcement policy regarding incidental capture of threatened sea turtles.* Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with the rules of paragraph (e) of this section will not be subject to civil penalties under the Act for incidental capture of threatened sea turtles by shrimp trawl gear.

**Appendix—Recommended Statistical Procedures for Evaluating Turtle Excluder Devices in the Cape Canaveral, Florida Ship Channel**

Note: This appendix will not appear in the Code of Federal Regulations.

**Introduction**

Proposed regulations requiring the mandatory use of turtle excluder devices (TED) by the shrimp fleet have led to questions regarding the use of excluder devices other than the NMFS TED. The final regulations stipulate that alternate excluder devices may be used if these devices can be demonstrated effective in releasing turtles. To determine whether an excluder device releases turtles at a specific level (97 percent exclusion is recommended), a series of double-rigged tows can be conducted in the Cape Canaveral Ship Channel, an area of extremely high turtle concentrations. Turtle captures in a standard net can be directly compared with captures in a test net with an excluder device installed.

**Sampling Guidelines**

It is assumed that the normal test will consist of an average shrimp trawler double-rigged with a standard or control net on one side and the same type of net equipped with a TED on the other side. Ideally, approximately half the tows should be with the TED equipped trawl on one side and the other half with the trawls reversed.

The two nets must shown to fish the same. That is, before a TED is incorporated into the test trawl, both the standard and test trawl must be adjusted to fish the same. In other words, there should be no significant difference in turtle, shrimp or finfish catch between the two nets. Any difference between the two nets should not be significant at the 95 percent confidence level with 4 degrees of freedom (i.e., 5 paired tows)

All tests should be done in the Cape Canaveral Channel during February and March. Historical turtle capture rates have been shown to be high during this period. Tests conducted during other seasons of the year likely will require a large number of paired tows because of the expected lower number of turtles.

Paired tows of 30 minutes are recommended. Longer tows are permissible, but conditions in the Channel make longer tows very difficult.

Shorter tow durations are not recommended because of the tendency of turtles to remain in the front portion of the nets before being washed into the throat sections for exclusion by TEDs.

**Statistical Approach**

The null hypothesis ( $H_0$ ) that the excluder net is 96 percent or less effective, will be tested against the alternate hypothesis ( $H_a$ ) that the net is more than 96 percent effective as:

$H_0: (0.04) \mu_{std} - \mu_{ted} < 0.$

$H_a: (0.04) \mu_{std} - \mu_{ted} > 0.$

Where:

$\mu_{std}$  = true (population) CPUE (catch per unit effort) of the standard net (turtles/tow), usually unknown  
 $\mu_{ted}$  = true (population) CPUE of the excluder net (turtles/tow), usually unknown

To demonstrate more than 96 percent reduction by the excluder net, acceptance values (A) for three confidence levels were computed using several values for number of tows (Table 1). Acceptance levels were derived as:

$A = z\sqrt{(0.04)^2 s^2_{std}/n + s^2_{ted}/n}$

where:

$s^2_{std} = 36$ —based on the maximum expected range of 0–24 turtles/tow [(24/4)<sup>2</sup> = 6<sup>2</sup> = 36];

$s^2_{ted} = 0.065$ —based on an expected range of 0–1 turtles/tow [(1/4) = (0.25)<sup>2</sup> = 0.0625];

$z = 95\text{th, } 90\text{th, } 80\text{th percentile } z \text{ scores (1.645, 1.282, 0.84)}$

For a device being tested to be accepted as being more than 96 percent effective at reducing turtle captures, the test statistic B would have to exceed the acceptance value (A) at the specified level and sample size. A formula for computing a test statistic B, which can be used to accept or reject a device as being more than 96 percent effective, is given as:

$B = (0.04) \bar{x}_{std} - \bar{x}_{ted}$

where:

$\bar{x}_{std}$  = observed CPUE of the standard net;

$\bar{x}_{ted}$  = observed CPUE of the excluder net;

Essentially, the test statistic B computed for a given number of paired tows would be compared to the acceptance values (A) in Table 1 to determine if the values were exceeded. If B exceeds these values (A), then the device being tested would be accepted as excluding 97 percent of the turtles.

Some examples of how Table 1 and the B statistic would be used follow:

1. A trawler catches 120 turtles in the standard net and 1 turtle in the excluder net over 20 tows—substituting into the formula:  $B = (0.04) 120/20 - 1/20 = 0.19$ . We would certify the net as 97 percent effective at all confidence levels.

2. If this same trawler caught 120 turtles in the standard net and 1 turtle in the excluder net over 50 tows—the computation:  $B = (0.04) 120/50 - 1/50 = 0.076$ , would lead to rejection at the 95 percent confidence level, but acceptance at the 80 percent and 90 percent confidence levels.

3. If this trawler caught 200 turtles in the standard net and 4 turtles in the excluder net over 10 tows— $B = (0.04) 200/10 - 4/10 = 0.04$ . We would accept the device as 97 percent effective at all confidence levels.

The sample sizes and acceptance levels given in Table 1 should be reviewed only as guidelines. It is reasonable to assume that the required sample sizes and acceptance values will vary depending on test conditions and the number of turtles caught under test conditions. In all instances, test conditions need to be carefully defined and, ideally, a comprehensive statistical treatment of the data be done to demonstrate reasons for accepting or rejecting a test device for excluding turtles at the desired 97 percent level.

TABLE 1. ACCEPTANCE LEVEL (A) WHICH MUST BE EXCEEDED BY THE TEST STATISTIC B\* FOR CERTIFICATION THAT AN EXCLUDER DEVICE IS 97 PERCENT EFFECTIVE. THE ACCEPTANCE LEVEL WILL VARY ACCORDING TO SAMPLE SIZE AND REQUIRED CONFIDENCE LEVEL.

90% Confidence Level	
No. of tows	Acceptance Level A
10.....	0.11049
20.....	.09994
30.....	.09111
40.....	.07925
50.....	.06233
60.....	.05737

\*  $B = (0.04) \bar{x}_{std} - \bar{x}_{ted}$

**Appendix—Recommended Statistical Procedures for Evaluating Turtle Excluder Devices in the Cape Canaveral, Florida Ship Channel**

Note: This appendix will not appear in the Code of Federal Regulations.

**Introduction**

Proposed regulations requiring the mandatory use of turtle excluder devices (TED) by the shrimp fleet have led to questions regarding the use of excluder devices other than the NMFS TED. The final regulations stipulate that alternate excluder devices may be used if these devices can be demonstrated effective in releasing turtles. To determine whether an excluder device releases turtles at a specific level (97 percent exclusion is recommended), a series of double-rigged tows can be conducted in the Cape Canaveral Ship Channel, an area of extremely high turtle concentrations. Turtle captures in a standard net can be directly compared with captures in a test net with an excluder device installed.

**Sampling Guidelines**

It is assumed that the normal test will consist of an average shrimp trawler double-rigged with a standard or control net on one side and the same type of net equipped with a TED on the other side. Ideally, approximately half the tows should be with the TED equipped trawl on one side and the other half with the trawls reversed.

The two nets must shown to fish the same. That is, before a TED is incorporated into the test trawl, both the standard and test trawl must be adjusted to fish the same. In other words, there should be no significant difference in turtle, shrimp or finfish catch between the two nets. Any difference between the two nets should not be significant at the 95 percent confidence level with 4 degrees of freedom (i.e., 5 paired tows)

All tests should be done in the Cape Canaveral Channel during February and March. Historical turtle capture rates have been shown to be high during this period. Tests conducted during other seasons of the year likely will require a large number of paired tows because of the expected lower number of turtles.

Paired tows of 30 minutes are recommended. Longer tows are permissible, but conditions in the Channel make longer tows very difficult.

Shorter tow durations are not recommended because of the tendency of turtles to remain in the front portion of the nets before being washed into the throat sections for exclusion by TEDs.

**Statistical Approach**

The null hypothesis ( $H_0$ ) that the excluder net is 96 percent or less effective, will be tested against the alternate hypothesis ( $H_a$ ) that the net is more than 96 percent effective as:

$H_0: (0.04) \mu_{std} - ted < 0.$

$H_a: (0.04) \mu_{std} - ted > 0.$

Where:

$\mu_{std}$  = true (population) CPUE (catch per unit effort) of the standard net (turtles/tow), usually unknown  
 $\mu_{ted}$  = true (population) CPUE of the excluder net (turtles/tow), usually unknown

To demonstrate more than 96 percent reduction by the excluder net, acceptance values (A) for three confidence levels were computed using several values for number of tows (Table 1). Acceptance levels were derived as:

$A = z\sqrt{(0.04)^2 s^2_{std}/n + s^2_{ted}/n}$

where:

$s^2_{std} = 36$ —based on the maximum expected range of 0–24 turtles/tow [(24/4)<sup>2</sup> = 6<sup>2</sup> = 36];

$s^2_{ted} = 0.065$ —based on an expected range of 0–1 turtles/tow [(1/4)<sup>2</sup> = (0.25)<sup>2</sup> = 0.0625];

$z = 95$ th, 90th, 80th percentile z scores (1.645, 1.282, 0.84)

For a device being tested to be accepted as being more than 96 percent effective at reducing turtle captures, the test statistic B would have to exceed the acceptance value (A) at the specified level and sample size. A formula for computing a test statistic B, which can be used to accept or reject a device as being more than 96 percent effective, is given as:

$B = (0.04) \bar{x}_{std} - \bar{x}_{ted}$

where:

$\bar{x}_{std}$  = observed CPUE of the standard net;

$\bar{x}_{ted}$  = observed CPUE of the excluder net;

Essentially, the test statistic B computed for a given number of paired tows would be compared to the acceptance values (A) in Table 1 to determine if the values were exceeded. If B exceeds these values (A), then the device being tested would be accepted as excluding 97 percent of the turtles.

Some examples of how Table 1 and the B statistic would be used follow:

1. A trawler catches 120 turtles in the standard net and 1 turtle in the excluder net over 20 tows—substituting into the formula:  $B = (0.04) 120/20 - 1/20 = 0.19$ . We would certify the net as 97 percent effective at all confidence levels.

2. If this same trawler caught 120 turtles in the standard net and 1 turtle in the excluder net over 50 tows—the computation.

$B = (0.04) 120/50 - 1/50 = 0.076$ .

would lead to rejection at the 95 percent confidence level, but acceptance at the 80 percent and 90 percent confidence levels.

3. If this trawler caught 200 turtles in the standard net and 4 turtles in the excluder net over 10 tows—

$B = (0.04) 200/10 - 4/10 = 0.04$ .

We would accept the device as 97 percent effective at all confidence levels.

The sample sizes and acceptance levels given in Table 1 should be reviewed only as guidelines. It is reasonable to assume that the required sample sizes and acceptance values will vary depending on test conditions and the number of turtles caught under test conditions. In all instances, test conditions need to be carefully defined and, ideally, a comprehensive statistical treatment of the data be done to demonstrate reasons for accepting or rejecting a test device for excluding turtles at the desired 97 percent level.

TABLE 1. ACCEPTANCE LEVEL (A) WHICH MUST BE EXCEEDED BY THE TEST STATISTIC B\* FOR CERTIFICATION THAT AN EXCLUDER DEVICE IS 97 PERCENT EFFECTIVE. THE ACCEPTANCE LEVEL WILL VARY ACCORDING TO SAMPLE SIZE AND REQUIRED CONFIDENCE LEVEL.

90% Confidence Level	
No. of tows	Acceptance Level A
10.....	0.14049
20.....	.09934
30.....	.09111
40.....	.07725
50.....	.06233
60.....	.05717

\*  $B = (0.04) \bar{x}_{std} - \bar{x}_{ted}$

**§ 1531. Congressional findings and declaration of purposes and policy**

**(a) Findings**

The Congress finds and declares that—

- (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;
- (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;
- (3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;
- (4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the

various species of fish or wildlife and plants facing extinction, pursuant to—

- (A) migratory bird treaties with Canada and Mexico;
  - (B) the Migratory and Endangered Bird Treaty with Japan;
  - (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;
  - (D) the International Convention for the Northwest Atlantic Fisheries;
  - (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;
  - (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
  - (G) other international agreements.<sup>1</sup>
- (5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

**(b) Purposes**

The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

**(c) Policy**

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

(Pub.L. 93-205, § 2, Dec. 28, 1973, 87 Stat. 884; Pub.L. 96-159, § 1, Dec. 28, 1979, 93 Stat. 1225; Pub.L. 97-304, § 9(a), Oct. 13, 1982, 96 Stat. 1426.)

<sup>1</sup> So in original. Probably should be "agreements; and".

**§ 1533. Determination of endangered species and threatened species**

**(a) Generally**

(1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

(3) The Secretary, by regulation promulgated in accordance with subsection (b) of this section and to the maximum extent prudent and determinable—

(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

**(b) Basis for determinations**

(1) (A) The Secretary shall make determinations required by subsection (a) (1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of Title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.

**(d) Protective regulations**

Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a) (1) of this title, in the case of fish or wildlife, or section 1538(a) (2) of this title, in the case

of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535(c) of this title only to the extent that such regulations have also been adopted by such State.

**§ 1536. Interagency cooperation**

**(a) Federal agency actions and consultations**

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 1533 of this title or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d) of this section.

**(b) Opinion of Secretary**

• • • •

(3) (A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a) of this section, the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a) (2) of this section and can be taken by the Federal agency or applicant in implementing the agency action.

• • • •

**(e) Endangered Species Committee**

(1) There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a) (2) of this section for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g) (2) (B) of this section shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4) (A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of Title 5.

(5) (A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7) (A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act [5 U.S.C.A. § 552a], the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

**(f) Promulgation of regulations; form and contents of exemption application**

Not later than 90 days after November 10, 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include, but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a) (2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) (2) of this section.

**(g) Application for exemption; report to Committee**

(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a) (2) of this section, the Secretary's opinion under subsection (b) of this section indicates that the agency action would violate subsection (a) (2) of this section. An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) of this section after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2) (A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) of this section in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a) (2) of this section;

(ii) conducted any biological assessment required by subsection (c) of this section; and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A) (i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of Title 5.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3) (A) (i), (ii), and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of Title 5 and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section.

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b) (3) of section 556) of Title 5.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

**(h) Grant of exemption**

(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g) (5) of this section. The Committee shall grant an exemption from the requirements of subsection (a) (2) of this section for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g) (4) of this section and on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of Title 5.

(2) (A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) of this section with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a) (2) of this section or was not identified in any biological assessment conducted under subsection (c) of this section, and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

**(l) Review by Secretary of State; violation of international treaty or other international obligation of United States**

Notwithstanding any other provision of this chapter, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

**(j) Exemption for national security reasons**

Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

**(k) Exemption decision not considered major Federal action; environmental impact statement**

An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.]: *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

**(l) Committee order granting exemption; cost of mitigation and enhancement measures; report by applicant to Council on Environmental Quality**

(1) If the Committee determines under subsection (h) of this section that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) of this section which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

**(m) Notice requirement for citizen suits not applicable**

The 60-day notice requirement of section 1540(g) of this title shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a) (2) of this section.

**(n) Judicial review**

Any person, as defined by section 1532(13) of this title, may obtain judicial review, under chapter 7 of Title 5, of any decision of the Endangered Species Committee under subsection (h) of this section in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of Title 28. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

**(o) Exemption as providing exception on taking of endangered species**

Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement any such section—

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

**(p) Exemptions in Presidentially declared disaster areas**

In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. § 5121 et seq.], the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. §§ 5171 or 5172], and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

## § 1538. Prohibited acts

### (a) Generally

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

## 16 § 1540 Penalties and enforcement

### (f) Regulations

The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

### (g) Citizen suits

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g)(2) (B)(ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

UNITED STATES DEPARTMENT OF  
**COMMERCE**  
**NEWS**  
WASHINGTON, D.C. 20230

NATIONAL  
OCEANIC AND  
ATMOSPHERIC  
ADMINISTRATION

Contact:

Brian Gorman (W) (301) 427-2370  
(H) (202) 682-1252

Commerce Requires Shrimpers  
To Resume Using TEDs

Reed Boatright (W) (202) 377-4190  
(H) (703) 533-0095

Commerce Department Under Secretary John A. Knauss announced today that commercial shrimp fishermen must resume using turtle excluder devices (TEDs) in their nets at certain times of the year to prevent the accidental killing of sea turtles.

Knauss announced the decision after a temporary rule issued by the National Oceanic and Atmospheric Administration (NOAA), during which shrimpers were permitted to limit their "trawl times," or the time their nets were in the water, to 105 consecutive minutes as an alternative to TEDs.

"Secretary Mosbacher asked me to take a thorough and fresh look at the whole issue of TEDs when I was confirmed as administrator of NOAA in early August," Knauss said. "I have now weighed all the facts and concluded that there is no other choice under the Endangered Species Act but to resume the original TEDs enforcement regime.

"Secretary Mosbacher wanted a dispassionate look at this whole matter to see if there wasn't a way to protect the turtles while recognizing the legitimate economic concerns of shrimpers, and I have concluded that, to comply with the law, the only way to ensure protection of these vanishing species is through the use of TEDs," Knauss said.

"The federal courts have made it abundantly clear that we must do everything we can to see that these species survive, as well, and this decision reflects that reality."

Knauss' decision to resume the original 1987 TEDs regulations, on Friday, September 8, came after further exhaustive evaluations by NOAA showed that limiting shrimpers' trawl times would not be effective in saving turtles as required

by the Endangered Species Act. Scientists began studying sea turtle mortality associated with shrimping 16 years ago, and NOAA urged the voluntary use of TEDs beginning in 1981.

TEDs are trap-door-like devices installed in shrimp nets designed to free captured turtles while retaining shrimp catch. They release about 97 percent of the sea turtles caught in nets while minimizing the loss of shrimp.

According to studies based on 27,000 hours of shrimp fishing time, NOAA has estimated that without the use of TEDs nearly 48,000 turtles would be caught in shrimp nets each year and more than 11,000 of those would drown.

NOAA scientists estimate that full compliance with 105-minute trawl times would result in turtle mortalities unacceptably higher than would full compliance with TEDs regulations.

The TEDs regulations will resume at 12:01 a.m. Friday, September 8, but shrimpers cited for failure to use a TED on or before Sept. 22 may settle their violations by the purchase and installation of qualified TEDs before Oct. 15, 1989.

Until Oct. 15, shrimpers issued violation notices after Sept. 22 may have their penalties reduced if they purchase and install TEDs within 15 days of the date of violation.

#

September 5, 1989

## ALTERNATIVES TO TED REGULATIONS

Suspend enforcement of regulations. This option was abandoned after the District Court entered partial summary judgment for the National Wildlife Federation. The judge found the Secretary had violated the Endangered Species Act, NEPA, and the APA, and ruled the Secretary must take some action to protect sea turtles.

Allow shrimpers to trawl without TEDs during non-synchronized tow times. This alternative violates the ESA because it cannot be effectively enforced. NOAA scientists determined in a Biological Opinion that this regulation would jeopardize the existence of the sea turtles.

Allow shrimpers to trawl without TEDs during synchronized periods. Although this option is more enforceable than the non-synchronized tow times, NOAA scientists found it would not be nearly as effective as the TED regulations. Therefore it is not a reasonable and prudent alternative allowable under the ESA.

Ask Congress to amend the Endangered Species Act. Several bills have been introduced to amend the ESA or delay the TED regulations. Congress rejected them except for the delay to May 1, 1989. Further effort to amend the Act is always possible.

Require use of TEDs at all times in all areas. This regulation would be demonstrably more protective than the 1987 regulations, but the Department prefers to defend the present scheme. Environmental groups may sue to require the Secretary to implement year-round usage of TEDs.

MAY 25 1989

TAMPA, FLA.

# Turtle deaths drop as shrimpers leave

By NANETTE HOLLAND,  
Tribune Staff Writer

**ST. PETERSBURG** — Reports of dead sea turtles washing up on area beaches have declined sharply in the past 10 days, and biologists say that is because most shrimpers have packed up and gone fishing elsewhere.

"Turtle strandings exactly track the shrimping effort," said Alan Huff, a biological administrator with the state Department of Natural Resources. "If you look at a plot for the whole Southeast region, as shrimp landings go up, turtle strandings also increase."

Since the beginning of the year, a record 175 dead sea turtles have been reported from

Pinellas County to Collier County. Twenty of those washed ashore in the Tampa Bay area in the first two weeks of May.

Biologists say most turtles probably drowned when they became entangled in shrimp nets and were unable to surface for air. Shrimpers deny that many turtles die in their nets, but the recent deaths coincided with the pink shrimp season on the Gulf Coast of Florida.

That season begins in mid-November and lasts roughly through mid-May.

Shrimpers say there were no more of them working off West Central Florida this year than in previous years.

But biologists say there appeared to be a higher concentration of sea turtles near shore, which may account for the record number of deaths.

Likewise, a record number of Kemp's ridleys — the most endangered of the sea turtles — washed ashore on the beaches of northeastern Florida earlier this year. Biologists say those deaths occurred because the turtles were migrating south at the same time that 400 shrimp boats gathered in south Georgia and North Florida for an unusually heavy

See FEDERAL, Page 8B

8-B

# Federal officials checking suspected turtle deaths in Texas

From Page 1B

white shrimp season.

Shrimpers interviewed last week said they were finished trawling off West Central Florida and would be moving to Texas or other Gulf states to shrimp until this fall.

At about the same time, sea turtle deaths tapered off in Florida.

In Texas, federal fishery officials, who last week charged two Florida shrimp boat crewmen with slitting the throats of three sea turtles, are investigating a similar incident off Galveston.

A Coast Guard spokesman confirmed that "turtle remains" were found during a routine boarding of a shrimp boat on May

4, prompting an investigation by the National Marine Fisheries Service.

The flippers and shoulder meat of a 150-pound loggerhead turtle, a species on the threatened list, reportedly were found in an ice chest on a Vietnamese shrimp boat.

Crewmen said they snagged the turtle in a net that did not have a turtle excluder device, which automatically frees turtles from a shrimp net. The turtle was taken about 15 miles offshore between Galveston and Freeport.

Killing an endangered species carries a penalty of up to one year in prison or a \$100,000 fine under the Federal Endangered Species Act.

Shrimpers have been fighting a federal requirement that they begin using turtle ex-

cluder devices on their trawl nets to protect endangered sea turtles. The rule was to have gone into effect May 1, but Commerce Secretary Robert Mosbacher issued a two-month delay on enforcement.

In the Florida case, two Fort Myers shrimpers were arrested on charges they slit the throats of three loggerhead turtles and threw them overboard after the turtles became entangled in their nets, officials said.

The two were the first commercial fishermen in Florida ever arrested on such a charge, officials said.

Fishery officials said a record 170 dead sea turtles have washed up on beaches along Florida's west coast during the first five months of 1989, compared with 35 over

the same period last year.

Officials in Galveston said 55 turtles have washed up on Texas shores so far, compared with 64 last year.

Though no turtle carcasses were reported anywhere in West Central Florida last week, three dead turtles have been found so far this week. The animals were found at Caladesi Island in Pinellas County, Fort Myers in Lee County and Homosassa in Citrus County. All of the turtles were loggerheads, the species most commonly found in Florida.

The Caladesi and Homosassa turtles were too decomposed to determine why they died, Huff said, and the turtle found in Fort Myers was emaciated and covered with barnacles, suggesting it probably suc-

cumbed to sickness or disease.

Huff said the dead turtles found this week are so scattered that they are probably not related to the epidemic of turtle deaths recently in this area. Instead, he said, the deaths are more likely associated with the usual, sporadic turtle strandings that occur normally each year.

Scientists and environmentalists alike hope that next year won't bring another rash of turtle deaths. They are basing those hopes on the federal law that requires shrimpers to use turtle excluder devices.

State officials also are considering a law that would force shrimpers to use the devices year-round while in Florida waters.

Information from United Press International was used in this report.

TEXAS  
PRESS CLIPPING BUREAU  
DALLAS  
Established 1910

Galveston, TX

NEWS

MAY 31 1989

# 55 Shrimp trawling violators targeted

By JOEL KIRKPATRICK

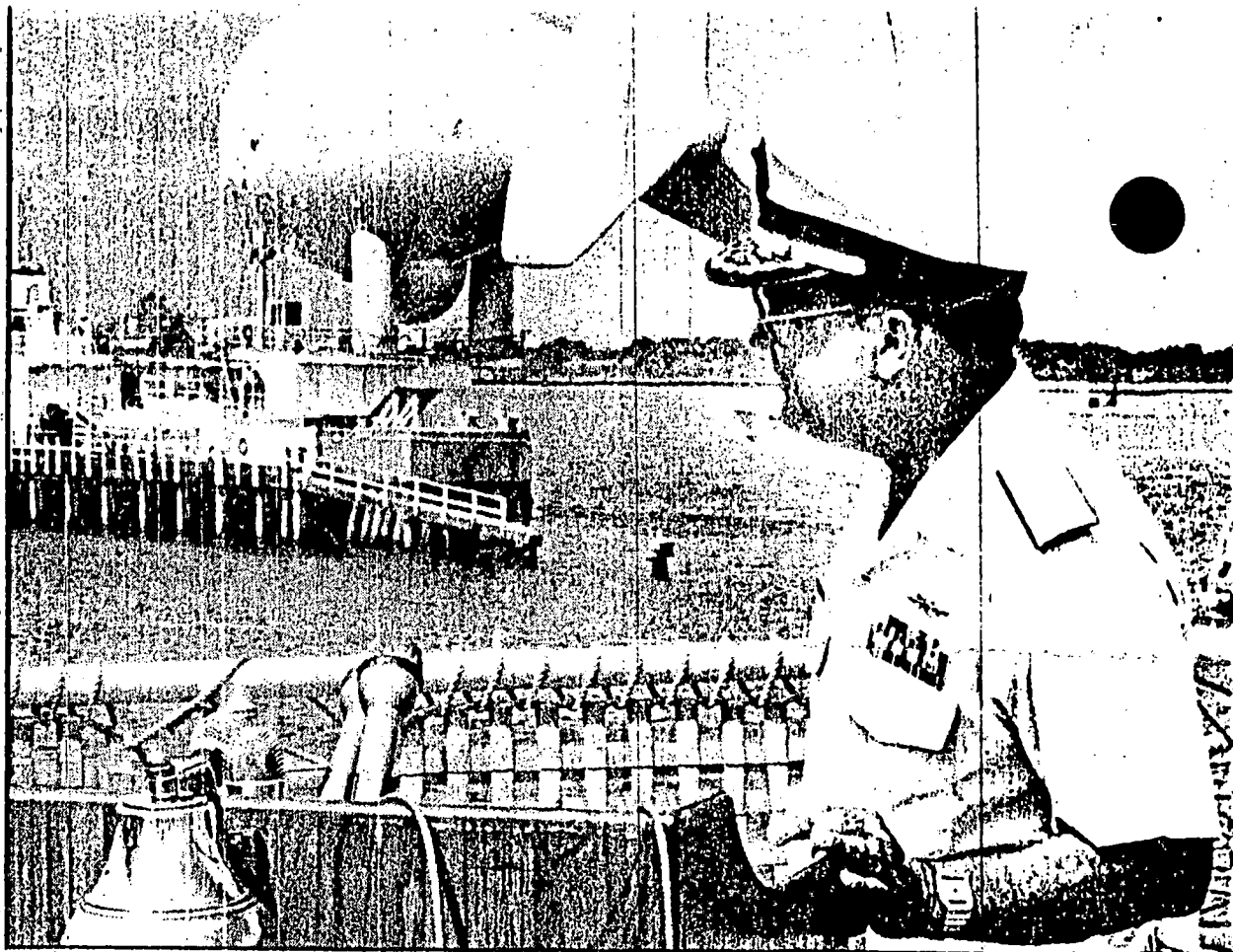
The Daily News

GALVESTON — When the 45-day closure of the gulf shrimping season begins Thursday, poachers will be hunted down by balloon, helicopter and Coast Guard cutter, and their catches will be confiscated and sold.

The closure of the offshore

shrimp trawling season in Texas out to the 200-mile economic zone limits will ultimately benefit all shrimpers, Gary Matlock, director of the Fisheries Division of the Texas Parks and Wildlife Department said at a press conference Tuesday aboard the Coast Guard cutter Dauntless, at Fort Point.

See SHRIMP, 13-A



Staff photo by Joel Kirkpatrick

*Merlin says he would use balloon, background, to catch shrimp poach*

## Shrimp

Continued from 1-A

Matlock appeared with Rear Adm. William F. Merlin, commander of the Eighth Coast Guard District in New Orleans; and Suzanne Montero, special agent in charge of National Oceanic and Atmospheric Administration enforcement in the Southeast Region.

Merlin and Montero promised stringent enforcement of the law against poachers.

The state of Louisiana has not closed its season in offshore waters, and there will be no federal enforcement effort there.

At Tuesday's press conference aboard the Dauntless, a sister ship of the nearby Valiant, newsmen and women saw the new, fast helicopter that will be used in the enforcement effort.

And nearby, tethered to its

mother ship, was the balloon Aerostat I.

It was fastened to a pylon and pillars aboard the Caribbean Sentry, a converted offshore oil supply boat.

Merlin said the closure is being requested by such groups as the Texas Shrimp Association and the Fishery Management Council, and that he believes the offshore fishing industry is behind the closure, which he said is a conservation measure.

Matlock, present, but not a scheduled speaker at the press conference, was asked about the failure of nearby Louisiana to close its offshore waters. "Doesn't the closure mean an economic loss to Texas fishermen?" he was asked.

Matlock said the closure means more shrimp will be landed in Lou-

isiana, but that the value of those landed in Texas will be greater, because the shrimp will be bigger.

Montero said shrimp trawlers who are caught offshore face fines of up to \$8,000 plus confiscation of their catches. They also face one written warning if they are not using turtle excluder devices while trawling, but fines after that on a case-by-case basis.

Matlock said the closure to 200 miles had been in effect since 1981. Last year, he said, 100 and 200 shrimp trawler operators were ticketed for poaching during the closed season.

Quartermaster Chief Petty Officer Jim McInnis said the Coast Guard maintains a nine-member crew aboard the Caribbean Sentry to operate the balloon.

The balloon, he said, is inflated with 56,000 cubic feet of helium, and is tethered to its ship with a mylar cable 3,000 feet long. The cable has a fiber-optic core and contains a power line in its c

AMERICAN PRESS  
LAKE CHARLES, LA.

DAILY

BOX 66061

B.R., LA. 70806

**METROPOLITAN**

*Press Clipping Bureau of La.*

JUL - 7 -- 89

## Alabama company first cited for shrimping without TEDs

BAYOU LA BATRE, Ala. (AP) — Southeastern Fisheries of Bayou La Batre faces a fine of up to \$12,000 as the first company cited for operating a shrimp boat without a turtle-excluding device.

As enforcement of a national regulation mandating use of the devices begins, shrimpers' organizations have launched a new protest against them, saying the devices, known as TEDs, do not work when seaweed clogs the nets.

The National Marine Fisheries Service recently ordered shrimpers to begin using TEDs to allow endangered sea turtles to escape the shrimp nets.

Sea turtles, amphibious creatures which need to surface to breathe, are often caught in the nets and drown as they are dragged through the water.

The citation against Southeastern Fisheries was for a shrimp haul Thursday night. It was the first issued since the end of a 60-day grace period, said Suzanne Montero, special agent in charge of enforcement for the Southeastern region of the National Marine Fisheries Service.

During the grace period, which ended July 1, shrimpers were given only warnings for operating without turtle-excluders, Montero said.

The maximum administrative fine for not using TEDs is \$12,000, but first offenders will probably be fined about \$8,000, she said.

Shrimpers who are cited will later be notified of the fine amount, and then are allowed 30 days to appeal to a traveling administrative law judge.

But Southeastern Fisheries general manager Janelle Savage said TEDs jam when seaweed or plastic clogs the net and the shrimp escape.

That has shrimpers concerned, because large patches of seaweed have been clogging waters in the Gulf of Mexico this season.

Tee John Mialjevich, president of Concerned Shrimpers of America, said Friday that with current conditions, the seaweed-clogged TEDs are not letting turtles escape, but do let shrimp catches out of the nets.

Mialjevich said shrimpers don't have a choice under those conditions.

"They can go out of business because they're not fishing or they can go out of business

because they can't pay the fine," he said.

Mialjevich's group, based in Louisiana, and other groups on the Gulf coast had fought the TEDs regulation.

NEWS - STAR

STATE EDITION

MONROE, LA

DAILY AND SUNDAY

BOX 66061

B.R., LA. 70806

**METROPOLITAN**

Press Clipping Bureau of La.

JUL -3 --89

## Shrimping company faces fine for no TED

BAYOU LA BATRE, Ala. (AP) — Southeastern Fisheries of Bayou La Batre faces a fine of up to \$12,000 as the first company cited for operating a shrimp boat without a turtle-excluding device.

As enforcement of a national regulation mandating use of the devices begins, shrimpers' organizations have launched a new protest against them, saying the devices, known as TEDs, do not work when seaweed clogs the nets.

The National Marine Fisheries Service recently ordered shrimpers to begin using TEDs to allow endangered sea turtles to escape the shrimp nets.

Sea turtles, amphibious creatures which need to surface to breathe, are often caught in the nets and drown as they are dragged through the water.

The citation against Southeastern Fisheries was for a shrimp haul Thursday night. It was the first issued since the end of a 60-day grace period, said Suzanne Montero, special agent in charge of enforcement for the Southeastern

region of the National Marine Fisheries Service.

During the grace period, which ended July 1, shrimpers were given only warnings for operating without turtle-excluders, Montero said.

The maximum administrative fine for not using TEDs is \$12,000, but first offenders will probably be fined about \$8,000, she said.

Shrimpers who are cited will later be notified of the fine amount, and then are allowed 30 days to appeal to a traveling administrative law judge.

But Southeastern Fisheries general manager Janelle Savage said TEDs jam when seaweed or plastic clogs the net and the shrimp escape.

That has shrimpers concerned, because large patches of seaweed have been clogging waters in the Gulf of Mexico this season.

Tee John Mialjevich, president of Concerned Shrimpers of America, said Friday that with current conditions, the seaweed-clogged TEDs are not letting turtles escape, but do let shrimp catches out of the nets.

Mialjevich said shrimpers don't have a choice under those conditions.

"They can go out of business because they're not fishing or they can go out of business because they can't pay the fine," he said.

Mialjevich's group, based in Louisiana, and other groups on the Gulf coast had fought the TEDs regulation, and some shrimpers threatened to ignore the order.

But Mialjevich said he is telling shrimpers not to break the law.

"I'm not saying we're not going to pull the TEDs. I'm saying we can't pull the TEDs because of this grass," he said.

Because the fisheries service did not foresee the problems in operating with TEDs in grassy water conditions, enforcement of the regulation should be delayed further, Mialjevich said.

A U.S. senator from Alabama is also seeking a delay of the regulations. Democrat Howell Heflin has requested a postponement of the regulation pending completion of a study by the independent National Academy of Science.

MORNING EDITION  
TIMES - P. CAYUNE  
STATES - ITEM  
NEW ORLEANS, LA

BOX 6606 DAILY & SUNDAY  
NEW ORLEANS, LA. 70806

**METROPOLITAN**

*Press Clipping Bureau of La.*

JUL - 6 - 89

# Shrimpers gear up to protest TED rule

By **SANDRA BARBIER**  
*West Bank bureau*

Shrimpers at Grand Isle are planning to protest if any one of them is stopped and boarded by the Coast Guard for violating the federal Turtle Excluder Device rule.

"They will all stick together," Grand Isle resident Connie Dubois said Wednesday. Dubois, the wife of a shrimper, said fishermen agreed Wednesday morning that if any one of them is stopped, the others also will stop fishing.

Dubois said the shrimpers agreed they all would return to the docks on the island.

Diana Cheramie, another shrimper's wife, said the shrimpers would rally around the boat stopped by officials before they return to docks.

If one boat is cited for not having TEDs in its nets, then the other boats want it known they don't have TEDs either, Dubois said.

The strategy is meant to emphasize shrimpers' opposition to the use of TEDs, devices designed to set free any sea turtles inadvertently trapped in shrimp trawls. Sea turtles are close to extinction and classified as endangered species, protected by the Endangered Species Act.

Fishermen claim the devices cause them to lose as much as half their catch.

The National Marine Fisheries Service is requiring all shrimp boats more than 25 feet long and fishing in offshore waters to use TEDs in their trawls. The regulation went into effect May 1, but shrimpers had a two-month warning period. Enforcement began Saturday.

As of Wednesday, no shrimper off the Louisiana coast had been cited for a TED violation, although some received warnings during the warning period, fisheries service special agent Tom Shuler said.

The Coast Guard has not embarked upon any specialized fisheries patrols to catch violators, Shuler said. Those patrols would be done with Shuler on board. He is the only fisheries service agent in the Louisiana-Mississippi-Alabama area, he said.

"We haven't done that this year," he said. "I can't tell you when we're going to do a boarding. It could be within hours or days."

Until that happens, Coast Guard patrols will be routine, including all kinds of vessels in the Gulf of Mexico and covering a wide range of maritime regulations, Lt. Mike Leonard of the New Orleans Coast Guard operations office said.

JUL -9 -89

## First company cited for not using TED

BAYOU LA BATRE, Ala. (AP) — Southeastern Fisheries of Bayou La Batre faces a fine of up to \$12,000 as the first company cited for operating a shrimp boat without a turtle-excluding device.

As enforcement of a national regulation mandating use of the devices begins, shrimpers' organizations have launched a new protest against them, saying the devices, known as TEDs, do not work when seaweed clogs the nets.

The National Marine Fisheries Service recently ordered shrimpers to begin using TEDs to allow endangered sea turtles to escape the shrimp nets.

Sea turtles, amphibious creatures which need to surface to breathe, are often caught in the nets and drown as they are dragged through the water.

The citation against Southeastern Fisheries was for a shrimp haul Thursday night. It was the first issued since the end of a 60-day grace period, said Suzanne Montero, special agent in charge of enforcement for the Southeastern region of the National Marine Fisheries Service.

During the grace period, which ended July 1, shrimpers were given only warnings for operating without turtle-excluders, Ms. Montero said.

The maximum administrative fine for not using TEDs is \$12,000, but first offenders will probably be fined about \$8,000, she said.

Shrimpers who are cited will later be notified of the fine amount, and then are allowed 30 days to appeal to a traveling administrative law judge.

But Southeastern Fisheries general manager Janelle Savage said TEDs jam when seaweed or plastic clogs the net and the shrimp escape.

That has shrimpers concerned, because large patches of seaweed have been clogging waters in the Gulf of Mexico this season.

Tee John Mialjevich, president of Concerned Shrimpers of America, said Friday that with current conditions, the seaweed-clogged TEDs are not letting turtles escape, but do let shrimp catches out of the nets.

Mialjevich said shrimpers don't have a choice under those conditions.

"They can go out of business because they're not fishing or they can go out of business because they can't pay the fine," he said.

Mialjevich's group, based in Louisiana, and other groups on the Gulf coast had fought the TEDs regulation, and some shrimpers threatened to ignore the order.

But Mialjevich said he is telling shrimpers not to break the law.

"I'm not saying we're not going to pull the TEDs. I'm saying we can't pull the TEDs because of this grass," he said.

Because the fisheries service did not foresee the problems in operating with TEDs in grassy water conditions, enforcement of the regulation should be delayed further, Mialjevich said.

A U.S. senator from Alabama is also seeking a delay of the regulations. Democrat Howell Heflin has requested a postponement of the regulation pending completion of a study by the independent National Academy of Science.

But Ms. Montero said Friday that fisheries' service agents in the Gulf area had not been told to delay enforcement of the regulations.

JUL 13 1989  
HOUSTON, TEX.  
CHRONICLE  
M - 406,776  
S - 534,771

# Turtle device irks shrimpers

By JOHN TOTH  
Houston Chronicle

**FREERPORT** — Shrimpers and Coast Guard officials are gearing up for the shrimping season in the Gulf of Mexico along the Texas coast amid confusion over enforcement of regulations requiring the use of turtle excluder devices.

The area has been closed for shrimping since June 1 to allow shrimp to migrate from the bays.

Reopening is scheduled for just after midnight Saturday.

Coast Guard officials said that unless ordered to do otherwise, they are prepared to enforce regulations that make trawling in the Gulf illegal without the use of the excluder devices.

The devices are box-like containers woven into nets. A trap door allows sea turtles to escape while the shrimp are netted.

"We've seen reports saying that we're not going to enforce the regulations, but that's not right," said Coast Guard Lt. Scott LaRochelle.

The Coast Guard was ordered Monday to temporarily suspend enforcement along the Louisiana, Alabama and Mississippi coasts after complaints by shrimpers that the devices were catching seaweed and losing shrimp.

The order excludes Texas, but U.S. Reps. Tom DeLay, R-Sugar Land and Greg Laughlin, D-West Columbia, have requested similar suspensions.

Coast Guard officials have assured Texas shrimping industry representatives that a decision on the use of TEDs will be made by Friday.

"It's for real. The seaweed is clogging up the TEDs," said Jan Harper, owner of a Freeport shrimp packing house and president of the Texas Shrimp Association.

Harper said shrimpers who have tested TEDs using small nets that can operate legally in the Gulf during the closure reported heavy infestation of sargassum, a seaweed, off the Texas coast.

Environmentalists claim there are no more heavy patches of seaweed in the Gulf, and no reason to allow shrimpers to avoid using devices.

"It represents a problem, but it's not as bad as shrimpers make it out to be," said Jeff Brown, a biologist at the National Marine Fisheries Service in St. Petersburg, Fla.

In Freeport, most shrimpers already have installed the devices, Harper said.

"They have them, but they'd be more than willing to take them out. The shrimping industry is in tough shape financially. We're not in a position to lose anything," Harper said.

JUL 14 89

# Turtle Excluder Enforcement Delayed <sup>CS</sup>

Associated Press

JACKSONVILLE — A regulation requiring shrimpers to use turtle excluder devices will not be enforced along the East and Gulf coasts until a study reviewing problems with the devices is released, a congressional aide said Thursday.

U.S. Commerce Secretary Robert Mosbacher decided to delay enforcing the regulation Wednesday night after shrimpers claimed the TEDs caused their nets to clog and cut trawling time by 75%, said Floyd Lupton, a spokesman for Rep. Walter Jones, D-N.C.

A study reviewing problems related to TEDs is scheduled to be released next week, Lupton said.

“Sea grass (clogging the nets) is a problem, but the reason these TEDs came out in the first place was to save the turtles — but it has just created a monster.”

— Floyd Lupton

“Sea grass (clogging the nets) is a problem, but the reason these TEDs came out in the first place was to save the turtles — but it has just created a monster,” Lupton said.

TEDs are designed to allow sea turtles to escape the nets through a hatch, but N.C. shrimpers claim TEDs are causing them to lose up

to half their catch this summer during one of the best brown shrimp seasons in years.

Lupton said it is not clear how long it may be before the regulation is enforced again, if it is ever reinstated.

“It is difficult to say how long it will take to review the study and make a decision,” he said.

Bill Hogarth, director of the N.C. Division of Marine Fisheries, said National Marine Fisheries agents participating in the study began trawling off the coast of Sneads Ferry on Wednesday to review the amounts of grass that clog shrimp nets used in North Carolina.

Hogarth said normal trawl times of 60 to 90 minutes have been cut to 15 minutes in North Carolina because shrimpers must pull up their nets often to clean out grass captured by TEDs.

“Grass already gets caught in a regular shrimp net, but you put a TED on it and it clogs it that much quicker, and you’re not getting any shrimp,” he said.

TEXAS  
PRESS CLIPPING BUREAU  
DALLAS

Established 1910

Houston, TX  
Chronicle  
(Cir. D. 393,730)  
(Cir. S. 481,319)

JUL 14 1989

# Coast Guard suspends use of turtle excluder devices

By JOHN TOTH  
Houston Chronicle

59  
FREEPORT — Shrimpers were preparing to start the Texas season without turtle excluder devices after Coast Guard officials Thursday suspended enforcement of the system's regulations.

The shrimpers are taking the action even though no decision has been made on the length of the suspension.

The Gulf along the Texas Coast has been closed to shrimping since June 1 and is scheduled to be reopened Sunday.

The devices are designed to trap shrimp while allowing the endangered sea turtles to escape through a trap door.

Shrimpers have complained that seaweed jams up the device and allows shrimp to escape.

"Right now, they plan to go fishing without them," said Jan Harper of Freeport, president of the Texas Shrimp Association. The boats we are responsible for are going to have them (TEDs) on board, but not in the nets."

'As long as there are no new developments, we will not enforce the regulations.'

Coast Guard Lt. Pat Philbin

Coast guard officials could not say how long the general suspension would remain in effect.

"As long as there are no new developments, we will not enforce the regulations," said Coast Guard Lt. Pat Philbin in New Orleans.

The Coast Guard suspended enforcement on the request of a group of congressmen from Gulf Coast states who met with Secretary of Commerce Robert Mosbacher on Wednesday.

The temporary suspension was requested to determine the effect of seaweed on shrimp catches when using the excluder device, but shrimpers also have asked Mosbacher to suspend enforcement until a National Academy of

Sciences completes a study of turtle deaths in the Gulf.

The study, which was to be completed by April, hasn't even begun, said U.S. Rep. Tom DeLay, R-Sugar Land, in a letter to Mosbacher urging the suspension.

The enforcement postponement upset officials at the Center for Marine Conservation in Washington, D.C., who have been urging regulation enforcement.

"If it's announced that there is an unconditional delay, we'll be in court the next day," said Mike Weber, the center's vice president for programs. "We're still in the frame of mind that the secretary of commerce will come down on the side of the regulations."

Trish Brink, a press aide to DeLay, said Commerce Department officials were trying to arrive at a decision before the Texas closure ends.

Biologists from the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration met with Commerce Department representatives about the seaweed situation Thursday.

HOUSTON, TEX.

POST JUL 14 1989

M - 301,100

S - 347,052

88

## Texas shrimpers don't have to use turtle devices

**B. GUY CANTWELL**  
OF THE HOUSTON POST STAFF

The Coast Guard on Thursday suspended enforcement of regulations requiring Texas shrimpers to use controversial turtle excluder devices, angering environmentalists and delighting shrimpers.

Marydell Donnelly of the Washington, D.C.-based Center for Marine Conservation blasted Coast Guard Adm. Paul Yost's suspension of the regulations off coasts from New Jersey to Texas.

The move widens Monday's suspension of enforcement along the Alabama, Louisiana and Mississippi coasts.

"We are disgusted about an additional delay (of the law)," Donnelly said. "Each day represents more drowning of sea turtles. When will this end?"

Donnelly said if Commerce Secretary Robert Mosbacher doesn't take action backing the regulations

and their enforcement, environmentalists will sue his department and call for national shrimp boycott.

"There's no question; we'll go to court," Donnelly said about fighting for the box-shaped devices, which are woven into nets to allow turtles to escape while shrimp are caught.

However, Texas shrimpers praised the suspension of regulations requiring turtle excluder devices — called TEDs — because seaweed in the Gulf of Mexico would snare the devices.

Ralph Rayburn, executive director of the Texas Shrimp Association, said the shrimping business is suffering and the suspension is "good news and welcome news" for Texas shrimpers.

"There could be a devastating economic impact to the shrimp industry, because of the inefficiency that would be created by the TED itself and the sargassum weed in

the Gulf of Mexico," Rayburn said.

Bob Nailon, marine extension agent for Harris and Chambers counties, said seaweed is the reason the Texas coast was included in the suspension of regulations.

However, environmentalists said seaweed is not present in large amounts in the Gulf of Mexico and a spokesman for the National Atmospheric and Oceanic Administration said the problem is being exaggerated in Texas.

The spokesman, Bryan Gorman, said some shrimpers are using the seaweed as an "excuse not to pull a TED and to mislead people into believing the entire Gulf of Mexico is festooned with gear-plugging grass and that is just not the case."

The National Marine Fisheries Service, a Commerce Department agency, is dragging the devices in the Gulf of Mexico to test seaweed conditions.

The suspension to enforce regulations for the devices was made

amid nine Texas Gulf Coast Congressmen's efforts to lobby Mosbacher for a moratorium on enforcement of the devices.

Trish Brink, a spokeswoman for U.S. Rep. Tom DeLay, R-Sugar Land, said he "would want to do away with the TED regulations," because the devices have not been proven effective by a National Academy of Sciences study that is due in February.

"He believes we shouldn't go ahead and burden the industry with something we don't even know works and which would reduce the shrimp catch and the shrimpers' income," Brink said.

However, Donnelly said the devices have reduced the number of turtle carcasses that wash up on South Carolina beaches and the regulations were intended to protect turtles, not to protect people.

JUL 2 1989

BATON ROUGE, LA  
ADVOCATE

M - 79,533

S - 135,162

88

SUNDAY ADVOCATE, Baton Rouge, La., July 2, 1989

7B

# TED enforcement, fining to begin

HOUMA (AP) — The two-month transition period ended Friday, and the federal government will begin fining shrimpers on Saturday if they are caught trawling without "turtle excluder devices."

Only warnings have been issued during the two-month period since the TEDs were required, and the Coast Guard said only about 15 percent of the boats were pulling the cage-like devices that are supposed to deflect turtles out

of nets while allowing shrimp to be trapped.

"Quite a few fishermen had them but were waiting for the 60-day warning period to end to put them in the nets," said Lt. Pat Philbin, a Coast Guard spokesman in New Orleans.

Tom Shuler, a National Marine Fisheries Service special agent, said he expects trawlers off Louisiana without TEDs to get caught.

"As I see it, Grand Isle is going to be

— I don't want to say in non-compliance — but a lot of cases are going to be made down there," he said.

The Coast Guard had figures for May only, but said in that month 53 fishing vessels were boarded off Louisiana, Alabama and Mississippi. Nine were ticketed, Philbin said.

The Coast Guard boarded another 36 boats that did not have the devices, Philbin said. But since the boats were not "actively engaged" in shrimping, no citations were issued.

The boat has to be actively engaged in fishing — the nets must to be in the water — for it to violate the regulations, Shuler said.

There are no plans to step up enforcement efforts for the devices, Philbin said. The Coast Guard will enforce the TED regulations just as it does many other maritime laws.

The fine for the first violation is \$8,000, Shuler said. The second fine is \$12,000.

People who knowingly violate the regulations may also face criminal charges. If convicted under the Endangered Species Act, a person may be fined up to \$25,000 and sentenced to

six months in jail.

Despite this, many shrimpers have vowed not to use the devices, which have a grid to divert turtles out of trap doors so they aren't drowned. The regulations are specifically aimed at saving sea turtles, some of which are endangered species.

Houston Trahan of Chauvin said the devices will end shrimping as a way of life.

"They're trying to make the Gulf of Mexico a sanctuary," Trahan said.

The regulations are now in effect in offshore waters — everything from the beach out. They will go into effect in inshore waters — the bays, inlets and lakes, on May 1, 1990.

# Amid Threats, U.S. Not Ensuring Turtles' Safety

By William Booth  
Washington Post Staff Writer

Attorneys for Commerce Secretary Robert A. Mosbacher said in federal court yesterday that the agency is not enforcing its regulations to protect endangered sea turtles because it fears violent confrontations with shrimpers who blockaded Texas ports last weekend and threatened to kill anyone who boarded their boats.

The shrimpers were protesting a law that requires them to use special nets to prevent catching and, thus, drowning five species of sea turtles that are threatened by extinction.

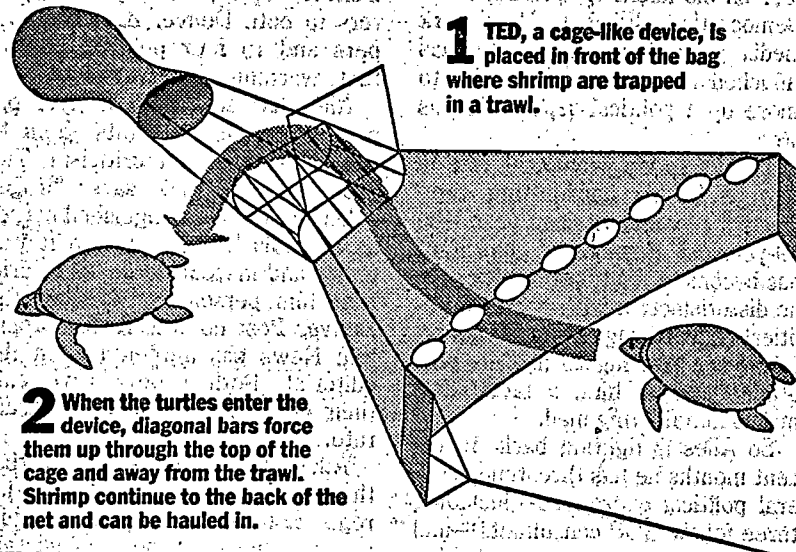
Environmental groups, led by the National Wildlife Federation, sought a temporary restraining order yesterday from U.S. District Judge Thomas Hogan that would have forced Mosbacher to require "turtle excluder devices" on all shrimp trawlers along turtle territory in the Gulf Coast and South Atlantic.

Hogan did not grant the temporary action, instead scheduling a broader hearing Thursday. Hogan indicated that the environmentalists had presented a strong case and that the government had offered no legal reasons to ignore its own regulations except fear of the shrimpers. Hogan said that it sounded as if Mosbacher was prepared "to give in to mob rule."

The day in court marked another twist in a tale of on-again, off-again enforcement of the regulation on

## HOW THE TURTLE EXCLUDER WORKS

Turtles can be trapped by shrimp fishermen who drag "trawls," or long nets, behind their boats. The "Turtle Excluder Device" (TED) is designed to prevent the accidental capture of sea turtles.



BY PETER HOEY—THE WASHINGTON POST

turtle excluder devices, which Congress mandated in 1988 following almost a decade of debate. The devices are designed to allow sea turtles caught in a shrimp trawler's net to escape.

The devices were scheduled to be in use by May 1. In the spring, Mosbacher granted a 60-day relaxation of the regulation to give shrimpers more time to purchase the nets. Enforcement would begin

on July 1. However, following a meeting on July 12 with members of Congress from Gulf Coast and South Atlantic states, Mosbacher indicated that his agency would place a temporary moratorium on enforcement of the special nets because shrimp fishermen complained that the devices were becoming clogged with sea grass and were too dangerous and expensive to operate. A survey at 250 locations

around the Gulf of Mexico by scientists with the National Oceanic and Atmospheric Administration found only five sites that harbored heavy accumulations of sea grass. Another NOAA study of the devices, which cost \$60 to \$400, found that even inexperienced captains and crews can operate the devices and suffer a loss of no more than 5 percent of their shrimp.

Upon the advice of his attorneys and scientists, Mosbacher last week announced that his agency would again enforce the use of excluders. In a letter to Rep. Bob Livingston (R-La.), Mosbacher wrote that he was in a "legal straitjacket" and did not have the authority to suspend enforcement of the special nets.

Mosbacher also wrote that "the best scientific advice from NOAA" concluded that "any significant modification of the [turtle excluder device] regulations would jeopardize the continued existence of the Kemp's Ridley turtles as a species."

Mosbacher's announcement was greeted by protests last weekend by shrimp fisherman in several Texas ports. Hundreds of trawlers blocked ship traffic in the Houston ship channel and other shipping lanes along the Texas Gulf Coast. Fearing violence, Mosbacher announced a "cooling-off" period and temporarily suspended enforcement of the net regulation.

At one point, "there was an attempted ramming of a Coast Guard vessel by shrimp vessels," according to the Coast Guard.

THIBODAUX, LA.

BOX 66061

D.R., LA. 70806

METROPOLITAN

Press Clipping Bureau of La.

JUL -24-89

# Officials trying to end controversy

The Associated Press

GALVESTON, Texas — Shrimpers who ended their blockade of ship channels along the Texas coast Sunday said they were ready to move back into the trenches today if officials fail to answer concerns about costly new devices meant to protect sea turtles.

The shrimpers lifted anchors and yielded to traffic in the ship channels Sunday, but hundreds waited nearby today as their representatives prepared for a requested meeting with national fisheries officials.

Coast Guard Adm. William F. Merlin, commander of the 8th Coast Guard District in New Orleans, continued meeting with shrimpers' representatives Sunday and assured them he would try to arrange a meeting today with federal officials.

The Coast Guard said U.S. Commerce Secretary Robert Mosbacher agreed to a meeting Monday with Texas and Louisiana congressional leaders in Washington.

A Commerce Department spokesman could not be reached but a spokeswoman for U.S. Rep. Tom DeLay, R-Sugar Land, confirmed that such a meeting was being planned.

"That had already been promised before, but he (Merlin) just reaffirmed it, and he is really helping us and working to set up these meetings to try and satisfy the demands of the shrimpers," said Tee John Mialjevich, president of the Concerned Shrimpers of America.

About 200 shrimp boats on Saturday crowded the deep-water Houston ship channel, which passes between Galveston Island and Bolivar Peninsula, and about 300 shrimpers jammed Port Aransas, gateway to the Port of Corpus Christi.

Similar blockades in smaller Texas and Louisiana ports also

"No threats that were made by the Coast Guard or anybody else made us back down from this blockade."

Tee John Mialjevich

ended Sunday. Two recreational boaters were hospitalized briefly for minor injuries after trying to run the blockade Saturday in Cameron.

Gunfire was reported in both states and four shrimpers were arrested in Texas. There were no injuries, officials said.

Shrimpers who clogged the ship channels Saturday were protesting new Commerce Department regulations requiring that they use devices intended to protect endangered Kemp's Ridley sea turtles.

The devices are designed to allow the turtles to escape shrimpers' nets, but the shrimpers complain that they cause them to lose shrimp, and are bulky, dangerous and expensive to operate.

The devices, which range in price from \$60 to several hundred dollars, are made of wire mesh and come in various shapes and sizes. However they usually are cylindrical in shape and slightly larger than a crab trap.

Mialjevich, whose group argues that the devices don't really save endangered turtles, said he would propose that federal officials instead consider a requirement that shrimpers perform fows no longer

COMET

THIBODAUX, LA.

BOX 66061

D.R., LA. 70806

**METROPOLITAN**

*Press Clipping Bureau of La.*

JUL -24-89

**End**

Continued from 1A

than 90 minutes. He said that by checking nets more often, they could avoid killing turtles and save their valuable shrimp.

Many of the shrimpers who filled shipping channels Saturday with booms outstretched to widen their stance also went ashore for a symbolic burning of the turtle protection devices they vowed not to use despite potential fines of \$8,000 to \$25,000 and six months in jail.

They ended their blockades, including an armada of about 200

boats in the Houston Ship Channel and another 300 at Port Aransas, after Coast Guard officials issued warnings that they would not allow continued blockage of the channels. However, shrimpers said they chose to postpone their protests in a good-faith effort prior to today's talks.

"No threats that were made by the Coast Guard or anybody else made us back down from this blockade," Mialjevich said. "We just didn't see any more sense in it. If it continued, it would only be detrimental to our efforts to change this bad regulation."

He and other shrimpers warned that the blockades would return by

Tuesday if their concerns are not addressed.

"If something is not done, there'll be shrimpers in all of these channels and there'll probably be violence," Marvin Hickman, a shrimper from Tarpon Springs, Fla., said Sunday. "The tempers are running very high out there."

The Coast Guard said more than 50 ships were unable to pass through Texas channels during the weekend because of the protests.

The shrimpers also forced officials to halt operations of the Galveston-Bolivar ferry for several hours Saturday, but operations resumed Sunday morning.

JUL 25 1989  
HOUSTON, TEX.  
CHRONICLE  
M - 406,776  
S - 534,771 88

16A

Houston Chronicle

Tuesday, July 25, 1989

# 'Everybody's going fishing!'

## Shrimpers ecstatic after winning a reprieve from TEDs

By MARY ANN KREPS  
Houston Chronicle

**GALVESTON** — The impatience and controlled anger that had simmered among several hundred shrimpers gathered outside the gates of the Coast Guard compound bubbled over into victorious relief Monday when they heard the message — no TEDs for now.

"Everybody's going fishing!" exclaimed John Hardy, 32, of Crystal Beach, who has had two boats sitting idle while the controversy raged over TEDs, or turtle excluder devices.

"It's great. We set out to do just what we got. Finally we got somebody to listen to us. And there won't be any violence tomorrow," Hardy said.

For more than four hours Monday, shrimpers and their families, including many from Florida, Alabama, Mississippi and Louisiana, milled outside the Coast Guard station gates, awaiting news of their fate.

A Coast Guard official refused to open the gates even for some news

media, saying it would be a "provocative act to open the gates right now."

Signs and T-shirts urging "No TEDs" dotted the crowd. Six small boys camped in front of the gate carrying crude signs saying, "U.S. Constitution for people, by people, not turtle" and "TEDs kill my Dad."

The sign did not mean one of the devices had actually killed someone, explained the father of four of the children, shrimper Thanh Nguyen, 33, of Friendswood. However, if he is forced to use a TED, which shrimpers say can result in a loss of up to 50 percent of their catch, he fears he will lose his livelihood. "If we pull a TED, we can't make money," he said. "My family will be broke."

Most shrimpers vowed they were ready to repeat the blockade, which had stumped commercial shipping traffic on the Houston Ship Channel Saturday. But few were advocating the violent tactics that one shrimper yelled throughout the crowd.

"When they come to my boat, I'm going to kill 'em. We ain't going to give it up," said Monroe Gray, 45, of Cameron, La., who urged shrimpers

to arm themselves.

"He scares me," murmured one shrimper as he watched Gray move from group to group.

"He's not speaking for everybody," said Ray Vaughn, 35, of Freeport. "We're doing this in a peaceful manner."

Most shrimpers waited calmly but were anxious to vent their frustrations and spoke vehemently about their dislike of the devices, claiming that the turtles faced more dangers from other forces.

"They should get (Commerce Secretary Robert) Mosbacher on one of these boats for 20 days in 40-mile-per-hour winds and see how he likes these TEDs," said June Driggers, 49, wife of a Freeport shrimper.

Shrimpers contend the TEDs are dangerous because they can swing back and hit crew members, pull them overboard or damage the boat.

The TEDs are large metal cages, equipped with spring-loaded trap doors and attached to shrimp trawl nets. Turtles accidentally caught in the nets are diverted to the cages and released through the trap doors.

CLASSIFIED ADS BEGIN ON PAGE 2B

# Shrimpers vow more blockades to protest turtle-saving devices

By The Associated Press

**GALVESTON, Texas** — Shrimpers who ended their blockade of ship channels along the Texas coast say they will renew their protest if officials don't address their concerns about costly new devices meant to protect sea turtles.

The shrimpers lifted anchors and yielded to traffic in the ship channels Sunday, but hundreds waited nearby today as their representatives prepared for a requested meeting with national fisheries officials.

"If something is not done, there'll be shrimpers in all of these channels and there'll probably be violence," Marvin Hickman, a shrimper from Tarpon Springs, Fla., said Sunday. "The tempers are running very high out there."

About 200 shrimp boats Saturday crowded the deep-water Houston ship channel, which passes between Galveston Island and Bolivar Peninsula, and about 300 shrimpers jammed Port Aransas, gateway to the Port of Corpus Christi.

Similar blockades in smaller Texas and Louisiana ports also ended Sunday. Two recreational boaters were hospitalized briefly for minor injuries after trying to run the blockade Saturday in Cameron, La.

Gunfire was reported in both states and four shrimpers were arrested in Texas. There were no injuries, officials said.

Coast Guard Adm. William F. Merlin, commander of the 8th Coast Guard District in New Orleans, met with shrimper representatives Sunday. A meeting between shrimpers, Coast Guard officials,

representatives of the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service was scheduled for this afternoon.

The Coast Guard said U.S. Commerce Secretary Robert Mosbacher agreed to a meeting with Texas and Louisiana congressional leaders in Washington.

A Commerce Department spokesman could not be reached.

Shrimpers were protesting new Commerce Department regulations requiring that they use devices intended to protect endangered Kemp's and Ridgway's turtles.

The devices are designed to allow the turtles to escape shrimpers' nets, but the shrimpers complain that they let shrimp out too and are bulky, dangerous and expensive to operate. The devices cost from \$60 to several hundred dollars.

Tee John Mialjevich, president of the Concerned Shrimpers of America, said he would propose an alternative requirement that shrimpers perform tows no longer than 90 minutes. He said that by checking nets more often, they could avoid killing turtles and not lose shrimp.

He and other shrimpers warned that the blockades would return by Tuesday if their concerns are not addressed.

Many of the shrimpers went ashore for a symbolic burning of the turtle protection devices. They vowed not to use them despite potential fines of \$8,000 to \$25,000 and six months in jail.

The Coast Guard said more than 50 ships were unable to pass through Texas channels during the weekend because of the protests. The Galveston-Bolivar ferry also was halted for several hours Saturday.

JUL 25 1989

HOUSTON, TEX.  
 CHRONICLE  
 M - 406,776  
 S - 534,771 88

**TEDless and feeling terrific**



President of Concerned Shrimpers of America, Tee John Mialjevich, center, who negotiated with federal officials on behalf of disgruntled Gulf shrimpers, celebrates in Galveston, after the government decided to suspended rules requiring use of turtle excluder devices or TEDs. The device works as an escape hatch for endangered Kemp's ridley sea turtles, caught in fishing nets. Steve Uecker/Chronicle

**Shrimpers triumph over TEDs**  
 Environmentalists angry as Mosbacher suspends rules

By JUDY WIESSLER and KEVIN MORAN  
 Houston Chronicle

Gulf shrimpers won the latest round of their battle with environmentalists Monday as Commerce Secretary Robert Mosbacher suspended rules requiring them to use devices to protect endangered sea turtles.

Shrimpers — who last weekend blockaded area ship channels protesting the rules — cheered word of the suspension, but enraged envi-

- Shrimpers ecstatic after winning a reprieve: Page 16A.
- Environmentalists shocked, vow court fight: Page 16A.

ronmentalists threatened to take the matter to court.

Denying that he was bowing to threats of violence from shrimpers, Mosbacher said in Washington that he will place a 45-day moratorium on enforcement of federal regulations that require shrimpers to use the turtle excluder devices, commonly known as TEDs.

After the 45 days, an interim rule will require shrimpers to pull up their nets after 90 minutes, but enforcement will be limited to warnings, not the monetary penalties that can be imposed under regulations of the Endangered Species Act.

Asked whether the change was in response to the blockades staged over the weekend, Mosbacher said: "No, no, no. This is because we feel it's the right thing to do."

Gray Castle, commerce undersecretary-designate, announced the rules' suspension in Galveston to

the cheers of scores of shrimpers who helped blockade the Galveston, Texas City and Houston ship channels over the weekend, forcing federal officials to the negotiating table.

The 45-day cooling-off period during which no regulations will be enforced is the height of the shrimping season. Except for a shrimping ban in state and federal waters offshore of Texas from June 1 to July 15, shrimp can be taken all

See SHRIMPERS on Page 6A.

# Shrimpers

Continued from Page 1A.

year in the Gulf of Mexico.

"We're happy," said Tee John Mialjevich, president of Concerned Shrimpers of America, who was in Galveston trying to negotiate with federal officials. "We can live with what we agreed on. There'll be no more blockade, and we're going out and start making a living.

"We have not won," said Mialjevich of Gretna, La. "When we win is when we get rid of this entire regulation or alter it in a fashion that we can live with permanently."

The turtle excluder devices, which cost from \$60 to several hundred dollars, are made of wire mesh and have a hinged door through which a trapped turtle can escape. But shrimpers complain that the TEDs are bulky, dangerous, expensive to operate and cause them to lose too much of their catch.

Lawmakers said the compromise provision was based on the fact that turtles can survive for 90 minutes underwater if trapped in a net. Conservationists had hoped the TEDs would help save the endangered Kemp's ridley sea turtle in the Gulf waters. There are several other sea turtle species described as either endangered or threatened.

A new, permanent regulation will not be imposed until after a National Academy of Sciences study is completed next February.

Although Mosbacher said he hoped conservationists would agree to the plan, they clearly did not.

"The conservationists would like to hear more about the enforcement and how you came about that decision and maybe why we weren't consulted prior to this decision," said a press conference questioner who

identified himself as Tom Miller of the Center for Marine Conservation.

The center says more than 22,000 threatened and endangered turtles have died in shrimp nets since the TED regulations were proposed two years ago.

Other environmentalist groups said they would immediately begin considering a lawsuit to force the government to enforce the TED regulations.

For the Coast Guard, the compromise prevented some potentially violent confrontations with shrimpers who vowed to continue violating federal law by blockading ports if they were forced to use TEDs this season.

"We can go back to our normal duties," said Rear Adm. William F. Merlin, who traveled from his 8th District headquarters in New Orleans to oversee blockade operations in Galveston.

Mialjevich was to have met with Castle and high-ranking National Oceanographic and Atmospheric Administration officials at the Galveston Coast Guard base at 1 p.m. Monday. He angrily refused to start the meeting after government officials barred journalists from the proceedings.

Mialjevich said he believes the government backed down on the regulation enforcement because the weekend blockades turned public opinion in the shrimpers' favor.

"Public opinion had been against us because we were portrayed as the villains," he said. "I think the world and the nation knows now that we were innocent victims instead."

The shrimpers, who called off blockades pending the outcome of the Mosbacher meeting, had a permit to demonstrate outside the NOAA laboratories in Galveston at 10 a.m. A dozen Galveston policemen were on hand to provide security for

the agency, but none of the fishermen showed up.

Texas members of Congress who appeared with Mosbacher for the announcement were all smiles.

The 90-minute rule "is one the shrimpers can live with," said Sen. Phil Gramm, R-Texas. "We know the turtle will live for 90 minutes, so if they bring their net up after 90 minutes the turtles will not be killed by this. Having a warning system until we've done a real study ... makes sense," he said.

Rep. Tom DeLay, R-Sugar Land, said the plan is "a reasonable approach" that will give time for shrimpers and environmentalists to "work out solutions like incentive programs that would pay shrimpers ... to save turtles."

Although it was not part of the agreement reached Monday, DeLay said he supports a program to shrimpers financial incentives to save turtles, rather than impose financial penalties on them for accidentally capturing turtles.

He said the shrimpers could revive any turtles that were trapped in their nets, tag them through a system coordinated with the environmentalists and then be paid for any turtles they saved.

Rep. Greg Laughlin, D-West Columbia, said: "It's a reasonable compromise. We're hopeful that everyone involved can live with it." He said forcing TEDs on U.S. shrimpers is unfair while their foreign competitors are free to shrimp without the devices.

Rep. Jack Fields, R-Humble, said the Gulf-area members of Congress, in a private meeting with Mosbacher before the public announcement, "brought out the need to direct attention toward Mexico," where U.S. shrimpers say the turtle is being destroyed for a meat source. He said Mosbacher made no commitments.

# Mosbacher orders shrimpers to use controversial device to protect turtles

BY KEN LAMTERMAN  
OF THE HOUSTON POST STAFF

GALVESTON — Commerce Secretary Robert Mosbacher ordered the U.S. Coast Guard to immediately begin enforcing the controversial turtle excluder device rule for offshore shrimpers Thursday, prompting cries of joy from conservationists and wails of woe from shrimpers.

"I can't believe it. I simply can't believe it," said an elated Carole Allen of the Houston-based Held Endangered Animals-Ridley Turtles HEART. "I'm absolutely thrilled. It's about time."

"That man's nuts, he's absolutely nuts," said Pat Henry, owner of Boliver Fisheries and operator of three offshore shrimping vessels. "He must think we carry those things around in our... pockets."

What has Henry and other shrimpers miffed is the apparent suddenness of Mosbacher's decision to lift a suspension on enforcement that has been in effect since July 10.

Mosbacher ordered the suspension to give himself time to consider an appeal from a U.S. congressional delegation seeking an extended suspension. During the suspension, the offshore Texas

shrimp season began and many shrimpers left port without their TEDs.

Compounding the problem, Henry said, is that many offshore shrimpers stay out up to a month and come in only when absolutely necessary — especially now at the beginning of the season when the best shrimp are plentiful.

"The last thing on their minds was if they had their TEDs on board," Henry said of the eager shrimpers. "My boats are down around Aransas now and eight

Please see TURTLES, A-23

Press Intelligence, Inc.  
WASHINGTON, D. C. 20005

Front Page  
Edit Page  
Other Page

HOUSTON, TEX.

POST

M - 301.100

S - 347.052

JUL 21 1988

## TURTLES: Mosbacher orders angry shrimpers to use TEDs

From A-15

hours off shore. If they had to come back here (Port Bolivar), it'd take at least a week before they could go back out."

However, Allen said the shrimpers should have already had the trap-door devices that allow endangered sea turtles to escape sewn into their nets before they left port, had them sewn into other nets and stowed on board or brought them with them and sewed them in while at sea since the law requiring the TEDs

has been in effect since May 1

It has only been the enforcement of the rule that has been on-again-off-again. Allen added Mosbacher first imposed a 60-day suspension from May to July to give the shrimpers a grace period of sorts.

"I felt bad for the Texas shrimpers when the (Mosbacher) suspended enforcement this last time (July 10)," Allen said. "A lot of them were ready to go, ready to begin using the TEDs. It had to be confusing for them. But they should have been prepared this time."

That argument, however, doesn't hold water for Texas Shrimp Association President Ralph Rayburn.

"We expect to get that argument from the conservationists," Rayburn said. "Our folks were gearing up when the (July) suspension came, but a lot of shrimpers just couldn't afford to leave the TEDs in their nets. They needed to get out early and get as many good licks in as possible."

Nor is Rep. Tom DeLay, R-Sugar Land, too pleased with Mosbacher's decision.

"Evidently, he's listening to the wrong people," DeLay said. "I hope to get with him in the next few days to find out what he based his decision on. It doesn't seem to be too objective of a decision, considering there are scientific studies still going on."

A National Academy of Science panel is researching the causes of turtle mortality. Conservationists contend up to 11,000 turtles each year drown in shrimpers' nets. Shrimpers contend they very seldom — if at all — find dead turtles in their nets.

# Years of talks led to mandate for turtle protection

By BILL DAWSON  
Houston Chronicle

When Commerce Secretary Robert Mosbacher suspended turtle-protection rules after shrimpers illegally blockaded Houston-area ship channels, he lifted a mandate that scientists had recommended. Congress had approved and the

courts had upheld. Federal officials issued the regulations for shrimp-net devices that help endangered sea turtles evade accidental drowning after years of unsuccessful efforts to persuade shrimpers to use them voluntarily. Mosbacher's action halting that requirement dismayed and angered scientists and environmentalists last week.

"It's a bad precedent — a fairly small minority of people being able to frighten and threaten and politically coerce a change in federal regulations," said one government biologist, who requested anonymity. "Not speaking as a government official, but just as an American, I think that really borders on anarchy," the scientist said.

"Very few environmental regulations have gone through as protracted and exhaustive a review as these have," said Michael Weber, vice president of the Center for Marine Conservation, which has led environmentalists' push for the rules. "Most people don't realize that this is a problem that's been identified for 20 years, that people have

been working on a solution for eight years, and that these regulations have been under consideration for 2½ years," Weber said. The problem — sea turtles drowning accidentally in shrimp trawls — is one that federal scientists say affects all five turtle species in U.S. waters in the Atlantic. See TURTLES on Page 2C.

## Turtle

Continued from Page 1C.

tic and Gulf of Mexico, especially the severely endangered Kemp's ridley. When the Kemp's ridley's only major nesting beach was discovered in Mexico in 1947, more than 40,000 females were observed there on one day alone. But killing of turtles, along with egg-gathering, decimated the species' population. Recently, only 500 to 600 females a year have arrived to lay eggs where armed Mexican Marines now guard a nature sanctuary.

The legendary sea turtle biologist Archie Carr noted turtle ensnarement in shrimp nets as early as the 1950s, and in 1973 Mexican and American scientists identified shrimping as the major remaining threat to the Kemp's ridley. The United States designated it as an endangered species in 1970, and under the new Endangered Species Act, federal attention was directed toward finding a way to keep Kemp's ridleys and other turtles from being snagged in shrimp nets.

Meanwhile, the National Marine Fisheries Service (NMFS) was trying

to develop a mechanism for reducing "bycatch" in shrimp trawls — the several pounds of largely unmarketable finfish that shrimpers catch with every pound of shrimp. This bycatch adds up to hundreds of thousands of tons of wasted fish each year in the northern Gulf of Mexico alone, according to federal estimates. With the twin concerns about trawls snaring sea turtles and finfish, it made sense to consider deflecting turtles with the same device being considered to get rid of bycatch, said Ralph Rayburn, executive director of the Texas Shrimp Association.

Gradually, NMFS officials modified their design along the lines of an apparatus called the "cannonball shooter" that shrimpers were already occasionally using to rid their nets of clumps of jellyfish. Much lighter variations would be developed in ensuing years, as shrimpers complained early turtle excluder devices, or TEDs, were cumbersome and potentially dangerous. Large numbers of dead turtles washed onto beaches in the southeastern United States in 1980, persuading NMFS officials that TEDs should be introduced into the U.S.

shrimping fleet. The next year, they decided to try to secure voluntary use. Weber and Rayburn co-chaired a committee that worked toward that end, but by 1983, environmentalists decided they weren't seeing enough progress. A deadline was set — half the fleet pulling TEDs by 1986. NMFS promoted TEDs as "trawling efficiency devices," but in 1985, federal officials said less than 1 percent of shrimp boats had them. Rayburn told environmentalists he could never guarantee 50 percent voluntary compliance by a set date, because shrimpers are fiercely independent.

The Center for Marine Conservation next said it would sue to secure mandatory TED use. NMFS drafted regulations in 1986 but agreed to delay implementation so the conservation and shrimping communities could conduct mediated negotiations. All shrimping representatives signed the eventual agreement but one — Tee John Mialjevich, the leader of Concerned Shrimpers of Louisiana (and later, of Concerned Shrimpers of America). Other participants in the talks said they had stood Mialjevich would also

sign if environmentalists made requested concessions. Mialjevich launched a speech-making campaign that galvanized shrimpers' sentiments against TEDs. Eventually, the Texas Shrimp Association renounced the mediated accord, along with other industry groups whose representatives had signed it. The TED controversy dominated congressional debate over renewing the Endangered Species Act in 1987 and 1988. Environmentalists' backers cited a 1987 federal study estimating 11,000 turtle deaths a year in U.S. shrimp nets, and shrimpers' supporters disputed the estimate on the basis of many shrimpers' claim that they seldom if ever netted turtles. Congress decided in 1988 to phase in the TED rules, and federal courts turned down shrimpers' challenges to the regulations, setting the stage for the showdown last weekend when trawler crews blockaded shipping and Mialjevich negotiated on their behalf. The continuing debate over TED has increasingly focused on whether the devices are needed and whether they reduce shrimpers' harvests appreciably.

*Press Intelligence, Inc.*  
WASHINGTON, D. C. 20005

Front Page	Edit Page	Other Page
------------	-----------	------------

HOUSTON, TEX.  
CHRONICLE  
M - 406,776  
S - 534,771 .. 88  
JUL 30 1989

# Mosbacher suggests lengthening time shrimpers can deploy TED-free nets

By JUDY WIESSLER  
Houston Chronicle Washington Bureau

WASHINGTON — Commerce Secretary Robert Mosbacher announced in a legal brief filed Tuesday that he will propose new rules that would increase the amount of time shrimpers could extend their nets without using controversial turtle exclusion devices.

The new proposal, which Mosbacher said was more easily enforceable, would allow shrimpers to extend their nets for specific 105-minute intervals, replacing a 90-minute limit he announced on June 24 as part of a suspension of TED regulations.

The legal brief is part of litigation against Mosbacher by the National Wildlife Federation, which seeks to have rules re-instated that require shrimpers to carry devices that allow turtles to escape the nets.

There was a swift and angry reaction to Mosbacher's latest proposal by Carole Allen, founder and chairman of HEART, a Houston-based group that supports efforts to help the endangered Kemp's ridley turtle species and campaigned for the TED requirements.

"I look to Secretary Mosbacher to enforce the law we worked for and not give in to mob action, which is what he's doing," Allen said.

Mosbacher claimed he had legal authority to suspend turtle-protection rules last week because of a public safety emergency brought on by "a recalcitrant industry" of shrimpers, according to the brief filed in federal district court here.

Angry shrimpers blockaded several Gulf coast ports and threatened violence on July 22, prompting Mosbacher to issue his order suspending the TED regulations.

After a 45-day suspension of turtle-protection rules, Mosbacher will

propose for public comment the 105-minute trawl limit.

The new rule should save more endangered sea turtles, Mosbacher argued, because the 90-minute limits were "burdensome and time consuming" to enforce. Authorities had to watch a boat continuously for more than 90 minutes to detect a violation.

Under the new plan, specific 105-minute periods will be set out when trawling is allowed — between certain times of day. Then, 30-minute intervals will be set when no trawling is allowed unless a TED is used.

Using authorized starting times for trawling, combined with periods in which none is allowed, "simplifies enforcement" since all boats would be subject to the same rules all day, he said. "Similar restricted time schemes are successfully employed

See TURTLES on Page 25A.

Press Intelligence, Inc.

WASHINGTON, D.C. 20005

Front Page Edit Page Other Page

AUG 2 1989

HOUSTON, TEX.

CHRONICLE

M - 406,776

S - 534,771

81

## Turtles

Continued from Page 17A.

in other fisheries."

But Allen contended that the proposal to allow 105-minute trawl times "is really worsening the situation for the turtles."

"Many scientists feel that 90 minutes is too long to pull turtles in a net," she said. "If 90 minutes is too long, then this is worse."

On July 22, several key scientists

of the National Marine Fisheries Service — the Commerce Department agency that prepared the TED regulations — wrote in a memorandum that the substitution of a 90-minute trawl time for TEDs "will jeopardize the continued existence of Kemp's ridley, loggerhead, hawksbill, leatherback and green turtles."

The federal government's so-called "jeopardy standard" holds that the Endangered Species Act prohibits federal agencies from taking actions that "jeopardize an endangered or threatened species." Jack Woody, national sea turtle

coordinator of the U.S. Fish and Wildlife Service, which has jurisdiction over sea turtles on land, said last week that the 90-minute proposal was "not biologically sound and not enforceable."

The idea that pulling up a net after 90 minutes will keep an ensnared turtle from drowning "assumes that it just filled its lungs and was caught immediately afterward," Woody said. "In other cases, it's a dead animal."

Mosbacher contended the new plan "provides protection to sea tur-

ties while decreasing the economic burden on shrimp fishermen."

Citing "the refusal of certain segments of the shrimping community to install TEDs," Mosbacher said the proposed rule "will as a practical matter do more to conserve sea turtles than would a TED requirement which is being ignored."

Mosbacher said shrimpers are more likely to comply with tow-time restrictions than with TED requirements.

On the more immediate issue in the lawsuit — whether Mosbacher

had the power to suspend the TED regulations on July 24 — the secretary said federal law allows such actions "for good cause" and that protesting shrimpers posed an emergency.

He cited "the high level of unrest that existed throughout Texas and Louisiana waterways after it was announced that TED enforcement would begin immediately," and submitted to the court a videotape of the shrimper blockade of sea lanes near Galveston.

"When faced with a recalcitrant

industry which has been involved previously and intensely with the regulatory process, the secretary's announcement of an immediate suspension to deal with an emergency should be found to be within his authority," the government argued.

"While the secretary cannot countenance lawlessness, he could not ignore the large scale and widespread threats to public safety," the brief said.

Chronicle staff writer Bill Dawson also contributed to this report.

NEED A FAMILY DENTAL PLAN?

APR 4 1979

# Shrimpers to get choice in amended TED rule

BY JUAN R. PALOMO  
POST WASHINGTON BUREAU

NOAA

WASHINGTON — Commerce Secretary Robert Mosbacher intends to amend the controversial turtle excluder device rule to allow shrimpers in offshore waters to choose between continuing to use the TEDs or restricting towing times to specified 105-minute periods, according to court documents filed here late Tuesday.

Mosbacher's intention was included in a brief filed by the Justice Department in federal court here arguing against a motion by environmentalists to mandate use of the TEDs.

The National Wildlife Federation and other environmental groups last week asked U.S. District Judge Thomas Hogan to grant a temporary restraining order that would force Mosbacher to immediately cancel his 45-day moratorium on enforcing the use of the devices.

On Friday, Hogan ordered the Justice Department to file a more thorough brief by Tuesday and set Thursday morning as a new hearing date.

Mosbacher, on July 24, suspended for a year penalties for shrimpers who do not use the TEDs after threats of sea lane blockades and violence by irate shrimp fishermen.

But environmentalists claimed Mosbacher had no authority to suspend enforcement of the rules and that he violated several federal laws in doing so.

In its brief, the Justice Department said the 45-day suspension is an interim measure while Mosbacher studies the various alternatives to the TEDs and said the action was taken in response to an emergency situation brought about by shrimp protests in the Gulf of Mexico.

The brief said Mosbacher intends to modify the existing regulations in compliance with federal law.

Responding to Hogan's concerns that threats of violence should not be used as a reason for failure to enforce laws, the Justice Department argued that the threats "were not idle ones — it was clear that the shrimpers intended more than merely inconveniencing the public to bring attention to their cause."

It asked Hogan to view submitted news video tapes of incidents occurring during the weekend of July 22-23.

"While the secretary cannot countenance lawlessness, he could not ignore the large-scale and widespread threats to public safety," it said.

□ Texas Parks and Wildlife Department offers plan to boost shrimp industry/A-16

Under the suspended regulation, shrimpers would have been required to use the TEDs that are designed to prevent them from catching endangered sea turtles in their nets. Failure to use the device would have been punishable by fines of \$8,000 to \$25,000 and six months in jail.

Shrimpers protested that the TEDs do not work and they lost too much of their catch using them.

The 105-minute drag time differs from the 90-minute limit Mosbacher said he would allow after the 45 days moratorium. Ninety minutes is the amount of time it takes a turtle to drown once it is trapped.

The brief says the new tow-time restriction differs significantly from the previously considered ones "because it incorporates authorized starting times as well as periods during which no trawling is authorized unless TEDs are used."

Mosbacher believes enforcement will improve — and more turtles will be saved — under the uniform trawling times, the brief stated.

"While the TED regulations continue to be the preferred option, at least on paper, for providing the best protection for sea turtles, it is an academic exercise if a majority of the shrimping fleet refuses to use them," it added.

"The unpleasant reality is that segments of the regulated community refuse to pull a TED," it continued. "No matter how much enforcement effort is directed at compliance, there is no possibility that every shrimper could be observed and every violation detected."

The document explains that the 105-minute time would be easier to enforce because under the 90-minute rule — which applied to inshore waters and vessels under 25 feet offshore — a boat would have to be observed continuously from the beginning to the end of a 90-minute period to determine if there was compliance.

But under the proposed rule, throughout a 24-hour period, 105-minute periods are prescribed when trawling is allowed and are followed by 30-minute intervals where no trawling is permitted unless a TED is being used, it explained.

A spokesman for the National Wildlife Federation said the organization would have no reaction to the brief until its lawyers had an opportunity to study it.

AUG 3 1989

HOUSTON, TEX.

POST

M - 301,100

S - 347,052

88

# Groups attack Mosbacher TED proposal

BY JUAN R. PALOMO  
POST WASHINGTON BUREAU

WASHINGTON — Attorneys for environmental groups said Wednesday that Commerce Secretary Robert Mosbacher's proposal to modify the controversial regulation requiring shrimpers to use turtle excluder devices would further weaken efforts to protect the endangered creatures.

The groups are seeking to force Mosbacher to enforce regulations he suspended last week after protests from shrimpers along the Gulf Coast.

Their argument was made in a brief filed in federal court here responding to the Justice Department's brief Tuesday that revealed Mosbacher intends to amend the rule. The change proposed by Mosbacher would allow shrimpers in offshore waters to chose between continuing to use the TEDs or restricting towing times to specified 105-minute periods.

Mosbacher had earlier said he

would propose a 90-minute trawl time.

The brief stated that the proposed 105-minute tow time would result in substantial turtle killings, "far more than those which will result from enforcement of the TEDs regulations."

Lawyers for the National Wildlife Federation and other groups, who last week asked U.S. District Judge Thomas Hogan to grant a temporary restraining order forcing Mosbacher to immediately cancel his 45-day moratorium on enforcing use of the devices, said the amended proposed rule was "hastily concocted" and does not achieve Congress' intent to protect the turtles.

Hogan could rule today on the

NOAA  
"To suspend the law to preserve order is an invitation to anarchy..."

— Brief filed by environmental groups

motion for the restraining order after he hears final arguments from both sides.

"To suspend the law to preserve order is an invitation to anarchy and does not achieve Congress' intent to protect threatened and endangered species," the brief said.

Congress set the terms for modifying the TEDs regulations, according to the brief, and it "clearly did not intend for the violent and illegal protests of shrimpers to provide the sole basis for good cause to abandon the TEDs regulations which — after years of scientific research and public and judicial scrutiny — still stand as the government's only proven means of ensuring the conservation" of the

turtles.

The brief also states that Mosbacher was obligated to try to enforce the regulations before capitulating to the shrimpers and cited government efforts to enforce the law in the early 1980s when Indo-Chinese fishermen were being threatened by members of the Ku Klux Klan of the Texas coast.

About Mosbacher's argument that there aren't enough law-enforcement personnel available to force the shrimpers to comply with the law, the brief states that Mosbacher fails to demonstrate how the same personnel will be better able to enforce trawl time restrictions than TED requirements or why recalcitrant fishermen who have violated federal law protecting navigation are likely to comply with tow time restrictions.

"Indeed," it goes on, "nowhere does the secretary provide any evidence that this minority of shrimp fishermen is committed to observing the proposed restrictions."

DALLAS, TEX.

NEWS AUG 4 1989

M - 3 4 984

S - 529,984

38

## TEXAS & SOUTHWEST

# Judge threatens action to protect sea turtles

By Todd J. Gillman  
Staff Writer of The Dallas Morning News

A federal judge in Washington threatened to order shrimp fishermen to use turtle excluder devices in their nets unless the Commerce Department implements new rules protecting endangered sea turtles by Monday.

Environmentalists claimed victory Thursday after U.S. District Judge Thomas Hogan ruled that Commerce Secretary Robert Mosbacher overstepped his authority when he suspended a requirement that shrimpers use the devices, known as TEDs.

The judge did not specify what the new rules need to be, but environmentalists said they would not be satisfied unless the regulations require TEDs.

Shrimpers said they might resort again to blockades of Gulf of Mexico ports that prompted Mr. Mosbacher to suspend TED rules last month.

"We view his (Mr. Mosbacher's) decision on Monday as a litmus test

**"We certainly hope this will be the end of the legal action. It's certainly better to have acceptable enforcement that people will abide by than none at all."**

— Reed Boatright,  
Commerce Department

for the Bush administration's commitment to protecting the environment and upholding the laws protecting endangered species," said Thomas Miller, a spokesman for the Center for Marine Conservation.

"Who knows what these fishermen will decide to do? Who knows? They've had enough. They can't operate with a 20 percent loss," said Patrick Henry, a director of Concerned Shrimpers of America who runs a dock in Port Bolivar, Texas.

TEDs are meant to allow the endangered Kemp's ridley sea turtle and other threatened species to escape from nets, but shrimpers claim the devices also allow 10 percent to 30 percent of their shrimp catch to swim away.

national organization would have no part in organizing illegal action.

TED proponents claim the devices allow only a few shrimp to escape, and point out that fishermen in the Atlantic Ocean have used them for years without complaint.

Judge Hogan said he would impose his own rules if Mr. Mosbacher takes no action.

The Commerce secretary said in a statement that he intends to publish regulations which would permit shrimpers to either limit their trawling times or use TEDs before the judge's decision.

"We certainly hope this will be the end of the legal action," said Commerce Department spokesman Reed Boatright. "It's certainly better to have acceptable enforcement that people will abide by than none at all."

Mr. Mosbacher suspended the TED rules and called for a 45-day "cooling-off period" after hundreds of shrimp trawlers on July 22 blockaded the Houston Ship Channel and other Gulf Coast ports to protest the TEDs.

The National Wildlife Federation, which brought the action against the Commerce Department, will continue to push for TED requirements, said spokesman Steven Moyer.

"We're not going to buy the 90-minute or 105-minute schemes," he said, adding that studies show a 4 percent mortality rate among sea turtles towed in nets for 90 minutes. The Commerce Department had proposed limiting trawling times as an alternative to TED requirements.

However, Mr. Moyer said he believes any new regulations will not require TEDs. In that event, he said, "We're going to contest that in court."

The Concerned Shrimpers of America, a trade group, joined the suit as a defendant — making it an uneasy ally of the Commerce Department whose regulations it has sought to avoid.

Donald Lirette of Dulac, La., a Concerned Shrimpers of America board member and president of the Terrebonne Parish Concerned Shrimpers, said shrimpers might resort to blockades again if the Commerce Department reinstates TED requirements. He said, however, the

AUG 8 1989

HOUSTON, TEX.

POST

M - 301,100

S - 347,052

88

# TEDs or cut trawling Mosbacher

## Secretary buys time to find alternative

BY KATHY KIELY AND KEN LANTERMAN  
POST-WASHINGTON BUREAU

WASHINGTON — Trying to buy time to defuse a very volatile situation, Commerce Secretary Robert Mosbacher Monday temporarily ordered Gulf Coast shrimpers to use turtle excluder devices or limit trawling while he seeks less

controversial ways to protect endangered sea turtles. Mosbacher's order took effect at 12:01 this morning after it was filed here in U.S. District Judge Thomas Hogan, who last week ordered Mosbacher to come up with a plan to protect the sea turtles within a week later this week on whether today's action is acceptable.

At least one environmental group, the National Wildlife Federation, will ask Hogan to reject the temporary regulations. Spokesman Steve Moyer called Mosbacher's order "totally unacceptable" and said attorneys for the federation will be

Shrimp boycott may not hit intended targets/A-14

in court, possibly as early as today, to ask Hogan to order stronger protections for the turtles.

Greenpeace, another environmental organization, is planning a demonstration in front of the Commerce Department this morning to demand Mosbacher require the use of turtle excluder devices.

In his filing with the court, Mosbacher said the new shrimping orders will remain in effect only

Please see TED, A-11

## while seeking an alternative

From A-1

until Sept. 7.

He said he will spend the next four weeks trying to come up with a compromise to a bitter controversy which has pitted environmentalists against Gulf Coast shrimpers.

In the meantime, shrimpers will be required to either use turtle excluder devices or limit their trawling time to certain specified hours. The regulation will apply to all shrimpers, no matter what size their vessel.

An earlier version of the order, which Mosbacher rescinded, would have required all boats 25-feet in length or longer to use TEDs. Now fishermen aboard larger vessels will have the option of reducing trawling time instead.

At no time will shrimpers not using the so-called TEDs be permitted to trawl for more than 105 minutes. This is to insure that any turtles that become entangled with their catch reach the surface in time to get the oxygen they need to survive.

Environmentalists say the shrimpers' refusal to use turtle excluder devices on their nets is causing the drowning of Kemp's ridley turtles, which are believed to be on the verge of extinction.

But shrimpers contend use of the turtle excluder devices will put them on the endangered species list by drastically reducing their catch.

In his brief to the court, Mosbacher expressed sympathy with this argument.

Noting that questions have been raised over the effects of turtle conservation on the livelihoods of shrimp fishermen, the commerce secretary, a Houstonian and an avid sailor, said he wants time to explore alternative methods of conserving sea turtles that may have less serious economic impacts on the industry.

He argued that his temporary order permitting shrimpers to limit trawling time instead of using TEDs will result in more turtles being saved because it will provide those shrimp fishermen who have adamantly opposed TEDs and would undoubtedly present a serious compliance problem with an alternative.

Galveston shrimper Mike Bussey said no regulation would be acceptable to him, but that if he was forced to choose between TEDs and a 105-minute trawl time, he preferred the trawling limits.

"To catch a turtle is a rarity," Bussey said. "And as for catching a (Kemp's) ridley, I don't know of a shrimper who has."

Though the conservationists complained that enforcing a limit on trawling times would be unenforceable, Bussey said he believed shrimpers would abide by the time limit.

Pat Henry, a Port Bolivar shrimper and an officer for both the Texas Shrimp Association and the Concerned Shrimpers of America, said shrimpers accustomed to trawling three and four hours at a time won't like the limit.

"But what choice do we have?" he asked. "The TEDs are financial suicide. We'll lose some time (under the 105-minute rule), but it won't be near what would have been lost pulling a TED."

Both shrimpers said they liked Mosbacher's request for suggestions from shrimpers.

Henry suggested the adoption of a "Turtle stamp" program, whereby shrimpers would be assessed a shrimping fee that would go to fund a turtle replenishment program run by conservationists.

"We are the experts out on the

Gulf, and the conservationists are experts at raising turtles," Henry said. "Let everybody do what they know how to do best."

Henry held out the possibility that there would be a replay of July's blockade of the Houston Ship Channel if Hogan requires the use of TEDs.

Bussey disagreed, saying he didn't think shrimpers would be able to mount another blockade.

"I don't know what would happen," Bussey said. "But, the Coast Guard is not going to allow another blockade. There might be violence. I hope, though, that if the judge goes against us something might be done in the courts."

Carole Allen, chairman of the Houston-based Help Endangered Animals — Ridley Turtles, said she was "disgusted" with Mosbacher's plan.

"He doesn't need more input from shrimpers," Allen said. "We don't need any more alternatives. We need TEDs. As the judge said last week, his options are no good. The man (Mosbacher) has abandoned the turtles."

Allen said she and members of her organization have appealed to President Bush to intervene.

"If he (Bush) meant what he said during the campaign, that he was a conservationist, he could make a difference now," Allen said.

"Other people might have given up, but we are not going to give up on the turtles."