

escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

As a result of their primarily pelagic existence, leatherbacks normally occur outside of areas where they would be subject to taking by shrimp trawlers. During most months of the year, leatherbacks are not abundant in shrimping areas, and only isolated incidents of taking by trawlers occur. However, the coastal waters of northern Florida, Georgia, South Carolina, and North Carolina experience relatively high abundance levels of leatherbacks as a periodic winter and spring phenomenon. When leatherback abundance is high and shrimp trawlers are fishing, leatherback stranding pulses have been documented on adjacent beaches. A NMFS Biological Opinion prepared for a revision to the sea turtle conservation regulations, published in the **Federal Register** on December 4, 1992, (57 FR 57348), specifically addressed episodic stranding events from Florida through North Carolina, and required NMFS to develop and implement a contingency plan to solve this problem.

A contingency plan for protection of leatherback turtles on the Atlantic seaboard that can be implemented, if necessary, was prepared in cooperation with State officials from Florida, Georgia, and South Carolina. The necessity for implementation of protective measures for leatherback turtles is expected to be on an annual basis but only for short periods of time in relatively small, specific areas at any one time. The plan considers several options to provide protection, and any or all of them may be implemented, if necessary. These options include: Closure of areas to all fishing, use of restricted tow times in lieu of TEDs, mandatory observers, and use of NMFS-approved TEDs with escape openings large enough to exclude leatherback turtles.

Aerial surveys have been conducted for sea turtles off the Florida and Georgia coasts since 1988 and off the coast of South Carolina since 1993. Beginning in December or January each year, concentrations of leatherback turtles occur in northeastern Florida waters. During the month of March, leatherbacks begin moving north and usually enter Georgia waters in late March or early April. Peak concentrations occur in Georgia waters during April and May and by mid-June the concentrations have left Georgia. Leatherback concentrations occur in waters off South Carolina from late

April generally through the first part of June.

Shrimping occurs year round in northeastern Florida waters, but the activity levels during any given month may vary from year to year. Shrimp fishing is closed in the State waters of Georgia until June 1 of each year, but shrimping begins in Federal waters off Georgia generally in April or early May. The State of South Carolina opens its waters to shrimping between May 15 and June 30, depending upon the presence of shrimp. Shrimping in Federal waters off South Carolina generally begins in early May. Based upon leatherback turtle concentration information and normal shrimp fishing activities, the most likely period for shrimp vessel interactions with leatherbacks in the leatherback conservation zone is January through June each year.

Each spring for the last 2 years, NMFS has issued temporary 30-day restrictions establishing a leatherback conservation zone (58 FR 28790, May 17, 1993; 59 FR 23169, May 5, 1994; 59 FR 29545, June 8, 1994). The only comment received in response to those rules is addressed below:

*Comment:* A mechanism for imposing immediate, short-term gear modifications, closures, and observer requirements in areas of potential high conflict between commercial fisheries and endangered species should be implemented on a systematic basis as part of NMFS fisheries management and protected species programs. A permanent solution should be adopted.

*Response:* NMFS agrees. Accordingly, NMFS is proposing the permanent establishment of the leatherback conservation zone and a procedure for imposing short-term restrictions based on specified criteria. However elsewhere in this **Federal Register** volume, an interim rule is being promulgated to address the immediate need to protect leatherbacks this season, and will be superseded upon promulgation of a final rule as a result of comments received upon this rule.

#### Proposed Rule

This rule would establish a framework whereby short-term closures may be instituted on an expedited basis in order to protect leatherbacks. Specifically, the rule would establish all inshore and offshore waters of the Atlantic area from Cape Canaveral, FL (28°24.6' N lat.), to the North Carolina-Virginia border (36°30.5' N lat.) as the "leatherback conservation zone."

During the months of January through June, NMFS would conduct weekly aerial surveys of the leatherback

conservation zone. If sightings of leatherback turtles during such surveys exceed 10 animals per 50 nautical miles (nm) (92.6 km) of trackline, the survey would be replicated within 24 hours, or as soon as practicable thereafter, to ensure that leatherback turtle presence is persistent in the area. If surveys demonstrate the continued presence of large concentrations of leatherbacks, NMFS would prohibit shrimp fishing in these specific areas by any shrimp trawler required to have a NMFS-approved TED installed in each net rigged for fishing, unless the TED installed is one of the NMFS-approved TEDs described below. Those TEDs have been determined to have escape openings large enough to exclude leatherbacks. In addition, owners and operators of vessels operating in closed areas with an allowed TED, as described below, would be required to register with the Director, Southeast Region, NMFS (Regional Director) in accordance with 50 CFR 227.72(e)(6)(iv) (A) through (F). Upon written request by the Regional Director, they would be required to carry a NMFS-approved observer aboard such vessel(s). A shrimp trawler in the leatherback conservation zone would be required to comply with the terms and conditions specified in such written request, as well as provide information on trawling hours, gear modifications and turtle captures.

Notice of specific area closures would be published in the **Federal Register** and would be effective upon filing of such notice for public inspection at the Office of the Federal Register. Closures would be announced immediately on the NOAA weather channel, in newspapers, and other media. Areas with high leatherback abundance, as documented by the aerial surveys, would be closed for a period of 2 weeks. A closed area would include all, or a portion of, inshore and offshore waters 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 1° lat. coinciding with the trackline. Shrimp trawlers in the leatherback conservation zone would be responsible for monitoring the NOAA weather channel for closure announcements. Shrimp trawlers may also call (813) 570-5312 for updated area closure information.

#### NMFS-Approved TEDs With Escape Openings Large Enough for Leatherback Sea Turtles

NMFS has approved modifications to the Taylor and the Morrison TEDs, as well as a modification to the single-grid hard TED, that will allow leatherback turtles to escape the trawl. Descriptions