(Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

*4. Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*5. Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 17, 1996.

Russell F. Price,

*Acting Regional Director, Western Regional Coordinating Center.*

[FR Doc. 96–10056 Filed 4–23–96; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 217 and 227

**[Docket No. 950830222–6103–02; I.D. 011696D]**

**RIN 0648–AH89**

## Sea Turtle Conservation; Revisions to Sea Turtle Conservation Requirements; Restrictions to Shrimp Trawling Activities; Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; hearings; request for comments.

**SUMMARY:** NMFS proposes to amend the regulations protecting sea turtles to enhance their effectiveness in reducing sea turtle mortality resulting from shrimp trawling in the Atlantic and Gulf Areas in the southeastern United States. Proposed amendments to strengthen the sea turtle conservation measures are: Removal of the approval of the use of all soft turtle excluder devices (TEDs) effective December 31, 1996; requiring by December 31, 1996, the use of NMFS-approved hard TEDs in try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m); establishing Shrimp Fishery Sea Turtle Conservation Areas (SFSTCAs) in the northwestern Gulf of Mexico consisting of the offshore waters out to 10 nautical miles (nm)(18.5 km) along the coasts of Louisiana and Texas from the Mississippi River South Pass (west of 89°08.5′ W. long.) to the U.S.-Mexican border, and in the Atlantic consisting of the inshore waters and offshore waters out to 10 nm (18.5 km) along the coasts of Georgia and South Carolina from the Georgia-Florida border to the North Carolina-South Carolina border; and, within the SFSTCAs, removing the approval of all soft TEDs, imposing the new try net restrictions, and prohibiting the use of bottom-opening hard TEDs, effective 30 days after publication of the final rule.

**DATES:** Comments on this proposed rule must be submitted on or before June 10, 1996.

**ADDRESSES:** Comments on this proposed rule and requests for a copy of the environmental assessment (EA) prepared for this proposed rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, 813–570–5312, or Therese A. Conant, 301–713–1401.

**SUPPLEMENTARY INFORMATION:**

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of shrimp trawling activities have been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions set forth at 50 CFR 227.72. The incidental taking of turtles during shrimp trawling in the Gulf and Atlantic Areas is excepted from the taking prohibition if the conservation measures specified in the sea turtle conservation regulations (50 CFR part 227, subpart D) are employed. The regulations require most shrimp trawlers operating in the Gulf of Mexico and Southeast U.S. Atlantic to have a NMFS-approved TED installed in each net rigged for fishing, year round.

1994–95 Events

Beginning in April 1994, coinciding with heavy nearshore shrimp trawling activity, unusually high numbers of dead sea turtles stranded along the coasts of Texas, Louisiana, Georgia, and northeast Florida. The strandings continued through May and occurred in highest numbers where shrimping activity was heaviest. Texas waters were closed to shrimping from May 13 through July 7, 1994. During that time, Texas strandings decreased, but again increased when Texas waters reopened. In response, NMFS increased enforcement efforts and technical assistance. Subsequently, strandings again decreased. Finally, when NMFS resumed normal enforcement efforts, high numbers of dead turtles again stranded on northern Texas beaches. As

a result of these strandings, NMFS reinitiated consultation on the shrimp fishery pursuant to section 7 of the ESA, and concluded in its November 14, 1994, Biological Opinion (Opinion) that the long-term operation of the shrimp fishery, resulting in mortality of Kemp's ridleys at levels observed in 1994, was likely to jeopardize the continued existence of the Kemp's ridley population and could prevent the recovery of the loggerhead population. The major apparent cause of the 1994 strandings was determined to be the improper use of TEDs by shrimpers in the Gulf of Mexico. Other causes identified were: (1) Certification of TEDs that are ineffective or incompatible with net types; and (2) intensive ''pulse'' fishing in areas of high sea turtle abundance during the spring and summer of 1994. The simultaneous occurrence of intensive fishing effort and Kemp's ridley sea turtles may have led to the repeated submergence of individual turtles in short time periods, which may have contributed to the high level of mortality.

The Opinion contained a reasonable and prudent alternative and Incidental Take Statement that required NMFS to develop and implement a Shrimp Fishery Emergency Response Plan (ERP) to respond to future stranding events and to ensure compliance with sea turtle conservation measures. As a general statement of policy, the ERP provided for elevated enforcement of TED regulations in two areas: The Atlantic Interim Special Management Area, which included shrimp fishery statistical Zones 30 and 31 (northeast Florida and Georgia); and the Northern Gulf Interim Special Management Area, which included statistical Zones 13 through 20 (Louisiana and Texas from the Mississippi River to North Padre Island). The ERP also identified stranding levels comprising the incidental take level required with the Opinion, and identified management measures to be implemented in the event of elevated strandings or observed noncompliance with the regulations. A detailed discussion of the ERP was first published in a notice of availability (60 FR 19885, April 21, 1995) and again when it was revised (60 FR 52121, October 5, 1995), and is not repeated here.

With the onset of nearshore shrimping in Texas in April 1995 and in Georgia in June 1995, sea turtle strandings again climbed to high levels. Temporary requirements to reduce sea turtle mortality were placed on shrimp trawling in nearshore waters along two sections of the Texas and Louisiana coast on April 30, 1995 (60 FR 21741, May 3, 1995), and on the Georgia coast on June 21, 1995 (60 FR 32121, June 20, 1995). The 30-day requirements included the prohibition of soft TEDs and bottom-opening hard TEDs, prohibition of the use of a webbing flap completely covering the escape opening on a TED, and prohibition of large try nets (over 12 ft (3.6 m) headrope length) without a NMFS-approved TED installed. Compliance with the regulatory requirements was observed to be high, and turtle strandings decreased after restrictions were implemented in both the Gulf and Atlantic. A detailed discussion of those restrictions, and reasons therefor, is provided in the preamble to those rules and is not repeated here.

Every year, offshore waters along Texas boundaries are closed to shrimp fishing out to 200 nm (370.6 km) for 6 to 8 weeks in the late spring and early summer. The Texas closure is coordinated each year by State and Federal fishery managers to allow shrimp to grow to more valuable sizes and increase profits in the fishery. The exact dates of the closing and reopening is set by the State of Texas, which monitors shrimp sizes and distributions to determine the optimum time to open the fishery. Generally, the closure begins around May 15 and ends around July 7. In 1995, the waters off Texas were closed to shrimp fishing from May 15 to July 15. The closure period is usually marked by low levels of sea turtle strandings, and is followed by very large increases in strandings when waters reopen to shrimping, with many shrimpers from Texas and other states participating. For example, during the period between 1990–94, stranding data suggest an 8–1/2 fold increase in sea turtle strandings in Texas between the reopening of the waters off Texas to shrimping and the period of the closure. A detailed discussion of the strandings and events is provided in the preamble of a proposed rule to temporarily implement additional restrictions on shrimp trawlers (60 FR 31696, June 16, 1995) and is not repeated here.

Although a repeat of the 1994 stranding levels had been possible, NMFS did not take restrictive actions before Texas waters reopened in 1995 to attempt to reduce strandings, because of several factors: (1) NMFS gear experts observed that the deployment of high-quality, properly installed TEDs in the Texas shrimp trawl fleet was greatly improved over 1994; (2) enforcement reports and contacts with shrimp industry participants indicated that a large proportion of shrimpers would voluntarily use NMFS's preferred gear for turtle escapement (top-opening hard TEDs); and (3) the 1995 reopening did not occur until July 15, the latest date in recent years. Pre-opening surveys conducted by Texas indicated that shrimp off Texas were abundant but widely distributed and shrimp trawl effort would, therefore, not likely be concentrated in small areas. Thus, the proposed rule was withdrawn (60 FR 43106, August 18, 1995).

The 1995 Texas opening produced the expected heavy level of shrimping effort but significantly fewer strandings than were documented in the week following the opening in 1994: 18 strandings were reported in 1995 compared with 49 in 1994. However, in those areas where strandings were high, law enforcement information revealed differing levels of cooperation with NMFS' request to use top-opening hard TEDs. The United States Coast Guard (USCG) District Eight Office of Law Enforcement summarized boarding information for NMFS and reported that soft TED use was much more common in those NMFS shrimp fishery statistical zones where strandings were highest. In Zones 19 and 20, soft TEDs were seen on 20 and 34.3 percent, respectively, of the shrimp trawlers boarded, while in Zones 17, 18, and 21, soft TEDs were in use on only 0.0, 1.6, and 9.7 percent, respectively, of the trawlers boarded. Aerial surveys of shrimping effort following the Texas opening conducted by LGL Ecological Research Associates showed that shrimping effort in close proximity to the beach, i.e., within 1 mile (1.6 km), was highest in Zones 19 and 20, where strandings were also highest. The low nearshore effort in Zones 18 and 21, along with the insignificant use of soft TEDs (as mentioned previously), was likely a contributor to the low turtle strandings in those zones upon reopening.

Temporary requirements were imposed in coastal waters along Georgia and the southern portion of South Carolina on August 11, 1995 (60 FR 42809, August 17, 1995). In the temporary requirements, NMFS allowed the use of bottom-opening hard grid TEDs while prohibiting the use of soft TEDs and larger try nets without hard TEDs due to comments received objecting to the imposition of multiple gear restrictions in previous actions. The commenters stated that the relative contribution of soft TEDs and bottom-opening hard TEDs to sea turtle strandings could not be distinguished and that use of bottom-opening hard TEDs should be allowed to determine their effectiveness.

In an unrelated action, a Federal District Court imposed temporary requirements upon shrimpers in a

portion of the Gulf as a result of a motion for temporary injunctive relief filed by plaintiffs in *Center for Marine Conservation* v. *Brown*, No. G–94–660 (S.D. Tx, Aug. 1, 1995). NMFS published a rule (60 FR 44780, August 24, 1995) that mirrored these restrictions, imposed along the entire Texas coast and the western portion of Louisiana effective on August 3, 1995. A description of the ruling, restrictions, and reasons therefor, is provided in the preamble to the rule and is not repeated here. However, the restrictions imposed in both the Gulf and Atlantic areas were similar in that soft TEDs were prohibited while bottom-opening hard grid TEDs were allowed.

Strandings in Texas and South Carolina were generally low while the rules prohibiting soft TEDs were in effect. In Georgia, however, strandings were elevated, with 27 sea turtles stranding on Georgia offshore beaches over the 4-week period from August 13, 1995 to September 9, 1995. This difference in effectiveness of the two rules in the two areas may be attributable to the preference of Texas shrimpers for top-opening TEDs, whereas Georgia shrimpers generally prefer bottom-opening hard TEDs.

Advance Notice of Proposed Rulemaking and the Texas Shrimp Association Petition for Rulemaking

On September 13, 1995 (60 FR 47544), NMFS published an Advance Notice of Proposed Rulemaking (ANPR), which announced that it was considering proposing regulations that would identify special sea turtle management areas in the southeastern Atlantic and Gulf of Mexico and impose additional conservation measures to protect sea turtles in those areas. The ANPR was in response to the need for such measures identified in NMFS' biological opinions on shrimp trawling, as well as the 1995 stranding and regulatory events and additional information regarding the need to more effectively protect sea turtles from incidental capture and mortality in the shrimp trawl fishery. At the same time, NMFS also announced receipt of a petition for rulemaking from the Texas Shrimp Association (TSA) to revise the current sea turtle conservation requirements for the shrimp trawl fishery in the southeastern United States. The petition was based on a report: ''Sea Turtle and Shrimp Fishery Interactions—Is a New Management Strategy Needed?'' prepared by LGL Ecological Research Associates, Inc., for TSA (LGL Report). NMFS solicited public comment on the LGL Report and information on sea turtles and shrimp trawling and the need for identification of certain areas in the southeastern United States that require special management measures, and what those measures should be.

Comments on the ANPR and the TSA Petition for Rulemaking

NMFS received over 900 responses to the request for comments on the ANPR and the petition for rulemaking based on the LGL Report (60 FR 47544, September 13, 1995). NMFS has reviewed all comments received. Comments are grouped according to general subject matter, and references are made only to some organizations or associations, and not to all of the groups or private individuals who may have made similar comments.

*Soft TEDs*

*Comment 1*: Shrimp industry associations, environmental organizations and a state agency support prohibiting the use of soft TEDs. These commenters cite problems with soft TED efficiency in excluding turtles and the inability to enforce proper installation and use of soft TEDs. However, many industry representatives supported the LGL Report, which does not specify prohibiting soft TEDs. Several other industry groups stated that, since soft TEDs are certified to exclude 97 percent of the turtles encountered and TED compliance has approached 100 percent, soft TEDs should be allowed and that shrimpers should be educated on correct installation to improve soft TED effectiveness.

*Response*: NMFS agrees that documented TED compliance has generally been excellent. NMFS also recognizes that some soft TEDs have performed well in certification trials and are currently approved for use. However, even though soft TEDs must be constructed exactly to the specifications in the regulations, soft TEDs are more difficult than hard TEDs to construct and install properly to achieve proper turtle exclusion. Soft TEDs are frequently installed incorrectly and are installed in certain types of trawl nets that can cause the soft TEDs to pocket or bag and, thus, entangle sea turtles. Consequently, soft TEDs that may release turtles under controlled, pristine conditions, such as the certification trials, might not release turtles in actual open-water use. Hard TEDs by comparison are less subject to variability, and therefore are more consistent in their effectiveness at turtle exclusion. For further detail see the discussion below, under the heading ''Eliminate Soft TEDs as Approved TEDs.''

Recent stranding data also indicate that soft TEDs are entangling sea turtles. Analysis of strandings and compliance rates following the July 15, 1995, opening of Texas offshore waters to shrimping indicates that strandings were highest in areas where the use of soft TEDs was prevalent. Although other factors, particularly the distribution of shrimping effort, may have contributed to the observed stranding patterns in Texas, the data suggest that prohibiting the use of soft TEDs would provide more effective protection for sea turtles.

NMFS also agrees that enforcement of requirements for soft TEDs is highly problematic. Thorough inspection of a soft TED on board a shrimp trawler at sea is virtually impossible. The inspection of large areas of soft TED webbing inside a wet, heavy, slack trawl filled with debris and bycatch in the confined area of a trawler's aft deck is difficult, and it requires a great deal of time to examine the panel completely to determine whether it is properly attached, meets regulatory specifications, and is free of holes. Even then, it is impossible for an enforcement officer to determine whether the soft TED will achieve a proper shape during actual use. Also, the long time spent inspecting a soft TED can represent significant lost fishing time for the shrimper.

Furthermore, because of the inherent complications and difficulties in installing soft TEDs, they can be improperly installed even before they are used. This may be due to misunderstandings regarding what constitutes a legal soft TED. Recently, the USCG training center in New Orleans ordered trawl nets with three types of soft TEDs from a major soft TED manufacturer to use in USCG training sessions. Upon receipt, the USCG and NMFS determined that none of the soft TEDS met the specifications set forth in the regulations.

In summary, NMFS has observed that soft TEDs are difficult to manufacture and install properly and that, even if installed properly, they stretch, bag and pocket with use, and thus entangle turtles. Accordingly, NMFS proposes to remove its approval of the use of soft TEDs in order to help alleviate shrimping-related mortality of sea turtles.

*Comment 2*: The South Carolina Department of Natural Resources (SCDNR) provided comments advocating the elimination of soft TEDs on the basis of the same problems cited in the response to Comment 1, but also stated that some South Carolina shrimpers prefer to use soft TEDs in the fall because of their ability to reduce

menhaden bycatch. The commenter recommended allowing the use of soft TEDs in the fall, but prohibiting their use during the rest of the year.

*Response*: NMFS recognizes that TEDs offer shrimpers various benefits, including the reduction of fish bycatch. The primary purpose of TEDs, however, is the exclusion of sea turtles incidentally captured in trawls. For the reasons already discussed, NMFS does not believe that soft TEDs in commercial use are sufficiently effective at turtle exclusion. Encouraging shrimpers to remove and re-install soft TEDs in their nets in different seasons would likely increase the potential for improper soft TED installations. There are other bycatch reduction devices, specifically created to eliminate finfish bycatch, that are compatible with hard TED designs.

*Try Nets*

*Comment 3*: Several commenters from the shrimp industry stated that TEDs do not exist for try nets and that most industry participants use 15–18 ft (4.6 - 5.5 m) headrope try nets. One state agency recommended limiting the size of legal try nets to 16 ft (4.9 m) in footrope length to be consistent with proposals from the South Atlantic Fishery Management Council on the use of bycatch reduction devices in try nets. Commenters from the environmental community recommended TEDs in try nets greater than 12 ft (3.6 m) headrope and one group recommended that all try nets be required to have TEDs.

*Response*: Although try nets 20 feet or less in headrope length have been exempted from the TED requirements because they are only intended for use in brief sampling tows not likely to result in turtle mortality, NMFS has documented that turtles are caught in try nets, and either through repeated captures or long tows, try nets contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including two deaths, have been documented by NMFS, and anecdotal accounts suggest multiple sea turtle captures in try nets are occurring in Georgia waters. Law enforcement personnel stated that a fisherman reported that another individual caught 25 sea turtles in a try net with a headrope length of 20 ft (6.1 m) in 2 days of fishing. For further detail see the discussion below, under the heading ''Reduce the Size of Try Nets that are Exempt from TED Use.''

NMFS is proposing to require the installation of NMFS-approved TEDs in try nets with a headrope length greater than 12 ft (3.6 m). NMFS proposes a 15 ft (4.5 m) footrope length cut-off as the appropriate corresponding dimension for a 12 ft (3.6 m) headrope length net. Phone interviews with net shops in the northern Gulf of Mexico suggested that try nets of this size were readily available. Try nets of this size have only a small tail bag to accumulate shrimp catch, and there would be little incentive to use it longer than necessary to monitor shrimp catch rates. NMFS believes that a try net of this size is less likely to capture a sea turtle and would unlikely to be fished long enough to kill a turtle if it were captured. This size net, however, would still be large enough for shrimpers to monitor shrimp catch rates. NMFS also believes that a NMFS-approved TED can and should be installed in the larger try nets should shrimpers elect to monitor their catch rate with larger net sizes.

*Shortened Webbing Flaps over TED Escape Openings*

*Comment 4*: Shrimpers objected to the requirement to shorten webbing flaps over TED escape openings implemented by emergency restrictions in 1995, citing excessive shrimp loss. Other commenters stated that shortened webbing flaps should be required at all places and times, or in response to high levels of sea turtle strandings. SCDNR commented that requiring shortened webbing flaps would cause concern among shrimpers because of the perceived loss of large amounts of shrimp, but suggested that shortened flaps be required only on bottom-opening TEDs, if necessary.

*Response*: NMFS recognizes that many shrimpers are extremely concerned over shrimp loss through TEDs with shortened flaps, and some shrimpers may have experienced real shrimp losses due to shortened flaps under the temporary restrictions. Properly installed webbing flaps do not hinder turtle release, although TEDs with shortened flaps appear to allow turtles to escape more quickly. NMFS required shortened webbing flaps in response to stranding events where heavy shrimp trawling effort was present and non-compliance (i.e., sewing down full-length webbing flaps) may contributed to strandings. While shortened flaps would make it more difficult to sew closed the escape opening of a TED, instances of egregious non-compliance were not frequent. Consequently, NMFS does not believe that the TED regulations should be changed to require shortened webbing flaps on top- or bottom-opening hard TEDs. With bottom-opening TEDs, webbing flaps may be held shut if the TED rides on the bottom due to insufficient flotation or heavy loading of the cod end, but turtle escape would still be impossible with a shortened flap if the escape opening were blocked by the sea bottom.

*Accelerator Funnels*

*Comment 5*: SCDNR suggested that turtles could become entangled in accelerator funnels, which are allowable modifications to hard TEDs.

*Response*: NMFS has conducted exhaustive research of TEDs equipped with accelerator funnels and has not documented any turtle entanglements associated with their use in any certification testing or trials. The required dimensions for accelerator funnels are even larger than the required dimensions for hard TED escape openings. Furthermore, NMFS believes that accelerator funnels enhance shrimp retention and are a valuable option for shrimpers. NMFS does not intend to propose prohibiting the use of accelerator funnels with hard TEDs, unless other information becomes available that indicates that accelerator funnels are problematic.

*The LGL Report*

Almost all commenters provided comments regarding the management plan in the LGL Report. Most indicated general support, but many others rejected the management proposal in the LGL Report and its analytical basis, either in part or completely.

*Comment 6*: Numerous commenters asserted that the LGL Report represented the best available information on shrimp trawling-sea turtle interactions in the Gulf of Mexico and should therefore be implemented.

*Response*: NMFS has considered and incorporated all new information from the LGL Report and other sources in its analysis and biological opinions on the shrimp trawling-sea turtle interaction problem. The LGL report, however, does not contain any novel research data; rather, it reanalyzes previously collected data. NMFS agrees with some of the conclusions of the LGL Report, particularly that nearshore shrimp trawling is associated with sea turtle mortality and strandings. NMFS reached this same conclusion in its November 14, 1994, Biological Opinion.

*Comment 7*: A large number of commenters from within the shrimp industry indicated that they did not support the large area closures mandated in the LGL Report when sea turtle strandings rise. These commenters stated that shrimp fishery management needs greater stability, and areas where capture of turtles is most likely should be subject to permanent, special regulations, but not closures. Other members of the shrimp trawling

industry commented that closures should not be considered until other alternatives have been examined. Still other comments from within the shrimp industry supported closures that also shut down operation of other activities, such as oil and gas exploration, oil rig removal, boating, and other commercial and recreational fisheries.

*Response*: NMFS does not consider closures of the shrimp fishery to be an acceptable management measure to protect sea turtles, accept as a measure of last resort, only to be considered in the most extreme situation, when other alternatives are ineffective. No shrimp fishery closures have been implemented by NMFS to protect sea turtles, as NMFS has sought to implement sea turtle conservation measures that would allow shrimp fishing to continue while providing adequate protection for sea turtles.

NMFS believes that closures that include other, unrelated activities, are inappropriate when the other activities are not implicated as significant causes of turtle strandings. However, NMFS does review other Federal activities and applies necessary, activity-specific restrictions to protect sea turtles through the section 7 process of the ESA. As a result of section 7 consultations, seasonal restrictions are imposed on hopper dredging activities in the Atlantic, and observers are required for dredging and explosive rig removals in the Gulf of Mexico. When listed species takes are anticipated, incremental modifications to activities are required. Through the section 7 process and through research conducted or funded by NMFS, NMFS is continually striving to identify and reduce other non-shrimp-trawling sources of sea turtle mortality.

*Comment 8*: Several environmental organizations, numerous private individuals, and the Department of the Interior's Office of the Secretary objected to the LGL Report's proposal that TED requirements be eliminated beyond 10 km offshore in the Gulf of Mexico. Some stated reasons included: (1) The LGL Report fails to consider impacts on sea turtle species other than the Kemp's ridley; (2) Even though turtle catch rates in deep water may be lower than nearshore, shrimpers do catch turtles offshore; (3) Turtles caught in offshore waters are more likely to be large adults, which are more valuable to populations by virtue of their reproductive status; and (4) Trawl times in deep water are much longer than in nearshore waters, and mortality rates are likely much higher for captured turtles. Commenters from the shrimp industry stated that fishing should be allowed when and where turtles are not abundant without expensive and unnecessary restrictions.

*Response*: NMFS agrees that the LGL Report did not fully consider and discuss the impact of offshore shrimp trawling on sea turtles or biologically justify removing the TED requirements for shrimp trawlers beyond 10 km from shore. The LGL Report focused largely on the lack of correlation between deep-water trawling and sea turtle strandings as indication that no interaction was occurring. Numerous sources of data indicate that sea turtles are present in offshore waters and are captured and killed by shrimp trawling, but the carcasses of those sea turtles would be highly unlikely to float far enough to become stranded and thereby be counted by the stranding network. Instead, such mortality would likely go undetected. The LGL Report estimated that 4,653 sea turtles per year would be captured in shrimp trawls in offshore waters with no means of escape. NMFS has not verified this estimate, but believes that such a high level of take and subsequent mortality is not acceptable when reasonable measures to reduce the level of lethal take exist and are already in place.

*Comment 9*: Commenters from the fishing industry and the conservation community called for peer review of the Shrimp Fishery Emergency Response Plan (ERP) (60 FR 19885, April 21, 1995; 60 FR 52121, October 5, 1995), the Opinion, and the LGL Report.

*Response*: The Opinion itself required NMFS to assemble a team of population biologists, sea turtle scientists, and life history specialists (the Expert Working Group) to compile and examine information on the status of sea turtle species. The Expert Working Group, including scientists from government and academia as well as scientists selected by the shrimp industry and conservation community, has been convened to analyze Kemp's ridley and loggerhead sea turtle population status and dynamics. Their findings will be used to reexamine the basis for and the conclusions of the ERP, the Opinion, and the LGL Report.

*Special Sea Turtle Management Areas*

*Comment 10*: Numerous suggestions for different sea turtle special management areas were received. One industry association supported the area identified in the LGL Report (i.e. inshore and offshore waters of the Gulf of Mexico out to 10 km from shore, except for areas off of Sabine Pass and the Tortugas where the zone would extend to 18 km), but recommended that further analysis be conducted to determine whether other areas should be added or removed from the proposed sea turtle conservation zone. A sea turtle conservation organization recommended a ''turtle safe migratory swimway'' in the Gulf of Mexico from shore out to 15 fathoms depth. Two environmental organizations proposed an area which would include Statistical Zone 18 and half of Zones 17 and 19, from shore out to 15 fathoms depth. Another conservation group recommended the interim special management areas identified in the ERP be retained and expanded to include inshore and offshore waters out to 10 nm (18.4 km) in Statistical Zones 12–21, Zones 30–31, Zone 5 on the west coast of Florida, and Zones 27–28 on the east coast of Florida—with consideration given to including South Carolina because of high strandings in 1995. Smaller areas of special protection were proposed by an individual and by SCDNR for the areas immediately offshore of Sea Rim State Park, TX and Cape Island, SC to protect juvenile Kemp's ridleys and nesting female loggerheads.

*Response*: At this time, NMFS does not believe that Gulf of Mexico waters east of the Mississippi River South Pass need to be included in a sea turtle conservation area that addresses turtle mortality resulting from shrimp trawling.

Most of the recommended special conservation areas focused on protecting Kemp's ridley sea turtles in the nearshore waters of the Gulf of Mexico. NMFS agrees with the critical importance of this area in terms of its habitat value for juvenile Kemp's ridley turtles and the interaction of such turtles with shrimp trawl activities. At this time, NMFS does not believe, however, that all nearshore waters of the Gulf of Mexico need to be included in special conservation areas for shrimp fishery management. The nearshore waters of the eastern Gulf do provide important Kemp's ridley habitat, but there is little evidence of a shrimp trawl interaction problem there. The eastern Gulf shrimp fishery behaves quite differently and is subject to different state restrictions than the western Gulf fishery.

At this time, NMFS does believe that special conservation areas are necessary in the Atlantic, too, although relatively fewer comments were received to that effect. Shrimp trawl-related sea turtle strandings have remained a perennial problem in Georgia, South Carolina, and northeast Florida. In the Atlantic, sea turtle habitat and shrimping grounds overlap in a much more restricted area than in the Gulf, and the relatively

fewer shrimp trawlers in the Atlantic have the potential to impact sea turtles heavily there. NMFS agrees with the comment that the waters near the important loggerhead nesting beaches at Cape Romain, SC, should be included in the conservation area. NMFS believes that a shrimp fishery-sea turtle conservation area in South Carolina should include waters along the entire coast, instead of just Zone 32, in order to include waters off Cape Island. Further, inshore waters of Georgia and South Carolina should be included in a special management area. State management of shrimping in South Carolina and Georgia already prohibits shrimping in almost all the bays and sounds. The state definitions of bay and sound waters differ, however, from inshore waters defined by the COLREGS lines. During the temporary gear restrictions in Georgia and South Carolina, some parts of the bays and sounds that were open to shrimping were subject to different gear requirements, creating a confusing situation and undermining sea turtle protection efforts. At this time, NMFS believes that these small inshore areas should be included in an Atlantic conservation area to ensure uniformity of regulatory requirements over what is essentially one fishery.

NMFS, at this time, does not believe that inshore waters should be included in special conservation areas in the Gulf of Mexico, on the other hand. Although inshore waters do represent important turtle habitat in the Gulf, they do not appear to require additional management measures to address shrimp fishery interaction problems. In the Gulf of Mexico, while sea turtle interactions do occur in inshore waters, the problem does not appear to be as severe as in nearshore waters, as evidenced by the relatively few sea turtle strandings encountered in inshore waters. NMFS does not agree with the assertion of the LGL Report that a significant portion of sea turtle strandings on offshore beaches in Texas is the result of inshore shrimp fishing. Inshore waters of the western Gulf, particularly Texas bays, are separated from the open Gulf by barrier islands and connected to the Gulf in only a few narrow passes. The limited fishing areas and resulting shortened tow times in inshore waters probably mitigate problems of sea turtle interactions. In addition, intensive pulses of fishing effort, which have been a problem in nearshore areas, do not generally occur in inshore waters. Shrimp fishermen in inshore waters tend to use only restricted, local areas and normally do not migrate en masse to aggregate in limited areas. Lastly, shrimpers in Texas inshore waters are subject to restrictions on hours fished and daily catch limits and to an effort limitation program that restricts entry into the fishery and prohibits new entrants with boats greater than 60 ft (18.3 m) in length.

*Comment 11*: Recommendations on the measures to be taken within special management areas also varied among commenters. Proposed actions for special management areas included: Permanent closures of special areas to shrimp trawlers; closures of areas to shrimp trawlers until November 30, 1996, to allow Kemp's ridleys to recover from the 1994 mortality levels; increased enforcement efforts; prohibition of nighttime shrimp trawling; gear restrictions or area closures implemented in response to sea turtle strandings.

*Response*: At this time, NMFS believes that permanent closures of large areas to shrimp trawling are not necessary to achieve adequate sea turtle protection and believes that the adverse economic impacts of such actions would be unjustifiably extreme. Small area closures may be more appropriate when there is biological evidence requiring additional sea turtle protection efforts and only when effects from shrimp trawling cannot be mitigated in any other way. NMFS considers fishery closures to be a last resort response (see Comment 7).

NMFS agrees that effective and concentrated enforcement of TED requirements in special management areas is necessary. In 1995, NMFS created and deployed a TED law enforcement team that focused NMFS enforcement efforts in the interim special management areas and areas where sea turtle strandings or reported non-compliance were high. NMFS and the USCG intend to continue vigorous enforcement of TED requirements in the future and the TED law enforcement team will continue to augment existing enforcement efforts.

Prohibiting nighttime shrimping is a means to reduce shrimp trawling effort and enhance sea turtle protection, but NMFS does not believe that it should be employed at this time. In the Gulf of Mexico, the major fisheries for pink and brown shrimp are conducted mainly at night in deeper waters, when the target species are active, and nighttime closures would be incompatible with these fisheries. Trawling for white shrimp, on the other hand, is mainly done during the day in nearshore waters. Therefore, where white shrimp are the primary target species, nighttime closures may be compatible with operation of the fishery. Texas, Georgia, and South Carolina already have nighttime closures for management of shrimp stocks in some nearshore waters. A specific proposal was received, which recommended that NMFS coordinate with the States of Georgia and South Carolina to implement nighttime closures in Federal waters, concurrent with nighttime closures in State waters. Enforcement of closed areas would be greatly enhanced by cooperating Federal action. Coordinated state-Federal closures may also be a boon to local, primarily daytime shrimpers, by reducing the pressure to fish round the clock. This proposal may provide additional protection for sea turtles, and NMFS will investigate further whether closures in Federal waters offshore of Georgia and South Carolina would be consistent with State management goals and the interests of local shrimpers.

NMFS implemented special gear restrictions in response to high stranding levels several times in 1995. Emergency restrictions on gear types proved to be disruptive to the shrimp industry, with some shrimpers losing time fishing while re-gearing to comply with the new requirements. NMFS agrees with the comments (see Comment 7) that greater stability is needed in shrimp fishery management. NMFS, therefore, believes that gear types that are known to be problematic for sea turtles should be restricted through permanent measures imposed through the notice and comment rulemaking process, instead of through temporary emergency actions.

NMFS has reservations about using sea turtle strandings to trigger area closures on a long-term basis. Monitoring strandings provides the best available information on levels and sources of sea turtle mortality in a cost-effective manner. There are, however, problems inherent in using stranding information to implement specified measures in response to certain events. Under the guidance of the ERP in 1995, NMFS had to quickly review all available information to determine whether other natural or anthropogenic sources of mortality were significantly contributing to the strandings before imposing restrictions on the local shrimp fishery. Strandings represent nearshore mortality, identify the problem after it has begun, provide minimum indication of total mortality, and are contingent upon local environmental conditions and beach accessibility. Permanent rulemaking, improved industry communication, and industry cooperation are needed to provide effective, long-term protection to sea turtles without relying on

continual emergency rulemaking. Additionally, new indicated take levels (mathematical interpretations of historical stranding levels) are being developed that attempt to identify when strandings are occurring at unusual levels. The new indicated take levels are likely to include cumulative levels in addition to weekly levels. NMFS is committed to continuing to monitor closely sea turtle strandings and identify when nearshore mortality is occurring at an unusual and potentially unsupportable level. NMFS has already established a procedure for restricting shrimp trawling and other types of fishing activities if necessary to protect sea turtles. This procedure is set forth at 50 CFR 227.72(e)(6). While the ERP provided concrete triggers based on stranding levels to determine when rulemaking under this procedure should be invoked, this rule does not propose such a framework. Rather, NMFS will monitor strandings, and if necessary, invoke the procedure specified at 50 CFR 227.72(e)(6) to promulgate emergency, temporary rules to address the threat to sea turtles. Use of this authority has been upheld recently in the *Center for Marine Conservation* v. *Brown*, No. G–94–660 (S.D. Tx., Feb. 23, 1996).

*Reduce Intensive Nearshore Fishing Effort*

*Comment 12*: One environmental organization commented that overcapitalization in the Gulf of Mexico shrimp fishery causes excessive shrimp fishing effort, which exacerbates sea turtle interaction problems as well as other environmental problems. That organization and two others recommended implementing restricted entry programs in the shrimp fishery.

*Response*: Overcapitalization and associated overfishing have been problems in many fisheries. NMFS concurs that the Gulf of Mexico shrimp fishery is overcapitalized, with possibly as many as three times more shrimp vessels operating than necessary to harvest the same amount of shrimp annually (Ward, 1989). This situation does create heavy pressures on the natural and economic resources of Gulf shrimpers. In the state of Texas, shrimpers and resource managers have developed a limited entry program for the inshore fishery to address these problems. NMFS believes that economic considerations and economic consequences should be the driving concerns in the development of any plan that would systematically limit entry throughout the Gulf of Mexico. Any such limited entry program should, therefore, be implemented either through actions of the states or through the Gulf of Mexico Fishery Management Council. The socio-economic consequences, both beneficial and adverse, of a Gulf-wide limited entry program would be extensive. NMFS believes that use of the ESA to reduce overcapitalization of the shrimp industry is inappropriate without compelling biological considerations that outweigh the socio-economic considerations. Even then, effort reduction measures should be targeted at problem areas where additional sea turtle protection is required, and not necessarily applied generally.

*Comment 13*: A shrimp industry association and an environmental conservation organization commented that the relocation of shrimping effort from other states into Texas waters caused by the Texas Closure is detrimental to sea turtles. The shrimp industry association proposed discontinuing the Texas Closure to avoid this problem. Both groups proposed the alternative of expanding the Texas Closure Gulf-wide. A Gulf-wide closure would relieve the shrimp fishing effort in Texas upon reopening, because most shrimpers would likely stay in their home state waters to take advantage of high shrimp catches there. SCDNR stated that a coordination of opening dates for shrimping in state waters between Georgia and South Carolina would reduce intensive pulses of fishing that occur in nearshore waters off those states when each state's waters open.

*Response*: NMFS agrees that intense shrimping effort before and after the Texas Closure poses a threat to sea turtles, and both of the proposed measures likely would reduce effort in Texas before and after the Closure. The Texas Closure period does, however, provide a complete removal of shrimping effort for a limited period and greatly decreases turtle strandings. A Gulf-wide closure would provide complete protection for sea turtles from shrimp trawling during the closure and would also reduce the pulse of intense shrimping that occurs in Texas after the current Texas Closure ends. Of course, shrimping effort would spike simultaneously throughout the Gulf, not just in Texas, following the end of a Gulf-wide closure. However, the spike may not be as severe, since effort would be dispersed throughout the Gulf rather than concentrated exclusively in Texas.

The rationale for the current Texas Closure is the management of shrimp stocks to increase harvest of larger, more valuable shrimp off Texas, not sea turtle protection considerations. NMFS has been encouraging the other Gulf states to examine the benefits and feasibility of implementing Gulf waters closures that could be coordinated with the timing of the Texas Closure. In addition, the Government of Mexico implemented a Gulf-wide closure of its waters to shrimp trawling in 1995, in concert with the Texas Closure. At this time, however, NMFS prefers not to pursue changes to the established shrimp management regime in the Gulf of Mexico, such as the Texas Closure, and instead has evaluated alternative measures to reduce nearshore shrimping effort (see Comment 14 below). Furthermore, for reasons described in the response to comment 12, such action should occur through the Magnuson Act or state laws.

NMFS agrees with the comment received from SCDNR. Currently, South Carolina opens most of its State waters to shrimping in mid-May, while Georgia State waters do not open until June. Consequently, many trawlers from each state take advantage of both openings and effort becomes highly concentrated. In both Georgia and South Carolina during 1995, the level of trawling activity as determined by aerial surveys was 2–3 times higher during the first week after each state's opening than during any other week of the season. A coordinated opening date would allow local shrimpers to stay in their home state waters to take advantage of the local opening. Concentration of effort in nearshore waters would be greatly reduced, and impacts to sea turtles would also likely be substantially reduced. NMFS is encouraging the appropriate resource management agencies in each state and the local shrimp industry to move forward with coordinated opening dates, as this action is within state authority to achieve. The benefits of the resulting reduced fishing effort upon openings may be significant for sea turtles and could mitigate concerns over the adverse effects on sea turtles of repeat captures.

*Comment 14*: The LGL Report and TSA petition presented a specific proposal incorporating varying gear requirements and maximum net sizes designed to reduce nearshore shrimping effort. LGL has proposed a revision to its plan, subsequent to the TSA petition, which further specifies that vessels with a length greater than 60 ft (18.3 m) would also be excluded from fishing in the nearshore waters of the entire Gulf. Most commenters indicated general support for efforts to reduce nearshore shrimping effort either throughout the Gulf of Mexico or in waters off Texas, but SCDNR expressed skepticism that efforts to reduce the number of shrimp

vessels could be reasonably implemented. As addressed previously (see Comments 7 and 8), commenters disagreed on other aspects of the LGL plan, such as the use of closures and the removal of TED requirements in most offshore waters.

*Response*: The Opinion found that intensive pulses of nearshore shrimp trawling effort contributed to the high level of sea turtle strandings and mortality in 1994, and strandings in 1995 again demonstrated this relationship when strandings in Georgia, South Carolina, and Texas jumped sharply upwards immediately following the opening of nearshore state waters to shrimp trawling. Consequently, reduction of nearshore shrimping effort could provide additional protection for sea turtles. In general, however, management attempts to reduce effort in fisheries by restrictive gear requirements have not been successful when unaccompanied by other means to limit entry or allocate catch. NMFS has examined various plans intended to reduce intensive levels of nearshore shrimping effort that occur in the Gulf of Mexico to determine their possible effectiveness, including plans that make only gear requirement changes and plans that also have vessel-size requirements.

The effects of the various proposals on shrimping effort were evaluated using the General Bioeconomic Fishery Simulation Model (GBFSM) developed by Dr. Wade Griffin at Texas A&M University. This computer model describes the behavior of the Gulf shrimp fleet in response to economic and biological factors in the fishery. The plans evaluated included absence of any TED requirements, the status quo sea turtle conservation regulations, the TSA petition/LGL plan, the LGL plan as subsequently modified by LGL to exclude boats greater than 60 ft (18.3 m) in length from nearshore waters, and the modified LGL plan reduced in scope to be effective only in nearshore Texas waters for a time period approximately 3 weeks prior to and 3 weeks after the Texas Gulf shrimp fishery closure and with offshore TED requirements maintained. The GBFSM predicted the following: The LGL plan would increase nearshore shrimping effort slightly; the modified LGL plan would reduce nearshore shrimping effort by approximately 65 percent throughout Texas and Louisiana; and the reduced scope, modified LGL plan would reduce nearshore shrimping effort off of Texas by approximately 60 percent only in the period shortly before and after the Texas Closure. A more thorough discussion of these evaluations can be found in the EA for this proposed rule. While NMFS has evaluated the potential for effort changes in the various proposals, the extent of effects on turtles have not been determined. These effort reduction proposals have generated significant controversy within the shrimping industry. NMFS will continue to evaluate the feasibility and benefits of various means to reduce intense nearshore shrimping effort, but does not believe that current information on biological benefits and socio-economic impacts is sufficient to justify implementing these effort reduction measures at this time.

*Other Measures*

*Comment 15*: A shrimp industry association stated that NMFS needs to continue research on the size of Kemp's ridley sea turtle populations. Results of this research should be made available to the shrimping industry and the general public.

*Response*: NMFS agrees. The Expert Working Group is tasked with evaluating existing information to provide the best possible estimates of the Kemp's ridley population and rates of population decline or recovery. The Expert Working Group is making some recommendations for better sea turtle population assessments. NMFS considers continued and improved stock assessment a priority in its sea turtle research program.

The results of NMFS research are public information. This comment, however, underscores the need for improved communications between NMFS and those affected by the sea turtle conservation regulations. NMFS has an extensive industry outreach program that focusses on the critical issues of proper TED use and maximization of gear efficiency. NMFS must consider whether this forum is appropriate for dissemination of sea turtle population status information or whether other communication avenues should be explored.

*Comment 16*: A conservation group commented that gill netting should be banned in sea turtle special management areas in order to remove an unnecessary threat to sea turtle recovery.

*Response*: Gill nets can and do entangle and kill sea turtles. Several Gulf of Mexico states have taken action to address gill net bycatch problems—which include not only sea turtles, but many species of finfish. Florida and Texas currently ban the use of gill nets in their State waters, which extend out to 9 nm (16.7 km) in the Gulf of Mexico. Louisiana has recently developed a partial ban on gill nets, and there are anti-gill net initiatives underway in Mississippi. Because of these existing gill net restrictions, NMFS does not believe that a gill net ban imposed by NMFS for the protection of sea turtles is presently warranted in waters generally subject to the jurisdiction of the states, although NMFS will continue to evaluate impacts to sea turtles from state-regulated fisheries. For federally-managed marine fisheries, NMFS is required to conduct consultations in accordance with section 7 of the ESA. Through the consultation process, NMFS can evaluate and restrict, as necessary, federally-managed fisheries and their fishing gear that impact sea turtles. Additional permanent NMFS regulations restricting gill netting do not appear necessary at this time.

*Comment 17*: A conservation group commented that user fees of $100 to $200 should be required annually from shrimp trawlers that operate in the exclusive economic zone (EEZ). Additionally, recreational fishermen in the EEZ should be required to pay a $30 annual user fee. Funds raised from these user fees would be applied for education and conservation efforts.

*Response*: NMFS does not believe that this proposal is feasible or advisable at this time. Although the concept of user fees supporting the management and conservation of public resources has been the subject of recent Congressional interest and debate, NMFS does not believe the ESA authorizes the assessment of user fees as proposed by this commenter.

*Comment 18*: Two environmental organizations commented that NMFS should implement a vessel registration system for shrimp trawlers in the Gulf of Mexico and the southeastern U.S. Atlantic. A vessel registration system would help determine the number of vessels participating in the fishery and would help facilitate emergency restrictions and enforcement against repeat offenders.

*Response*: Development of a vessel registration system for shrimp trawlers is a requirement of the November 14, 1994 Opinion, and NMFS is developing a proposed rule to implement shrimp trawler registration in 1996. A vessel registration system would provide NMFS with invaluable information on the number and characteristics of shrimp vessels operating in the southeastern United States. This information would substantially increase NMFS' ability to manage the sea turtle-shrimp trawl interaction problem with the greatest effectiveness and the least impact to shrimpers. Vessel registration would also allow NMFS to contact all shrimpers to inform

them of any changes in regulations. Shrimpers have stated repeatedly in the past that they did not feel they had received sufficient notice of regulation changes and that compliance with sea turtle conservation requirements was therefore difficult. Additionally, vessel registration would provide NMFS a means to penalize offenders for multiple or flagrant ESA violations. Lastly, registration of participants in the shrimp fishery would facilitate selection of individuals who could serve as representatives for their peers to advise NMFS on technical and policy issues relating to the shrimp industry and the sea turtle conservation regulations (see the discussion under the heading ''Shrimp Industry Advisory Panel''). The use of a registration system to improve communications between NMFS and the shrimp industry may be the single-most important benefit of such a system.

*Comment 19*: A shrimp industry association called on NMFS to continue to develop better communication ''among all user groups and all concerned parties,'' and another industry group recommended that conservation measures be developed in consultation with all stakeholders.

*Response*: NMFS agrees that good communication is critical to resolving many of the problems affecting sea turtle recovery. NMFS works with numerous agencies and concerned parties in the evaluation and management of a variety of threats to sea turtles, and NMFS recognizes that the need for better communication is most extreme in the shrimp fishery. A large number of individuals are involved in the shrimp fishery, and their diverse, multilingual backgrounds, their demanding work schedules, and their mobility throughout the southeastern U.S. shrimping grounds complicate communications. NMFS believes that industry feedback and contribution can improve the regulatory process relating to TEDs and sea turtle conservation. (See the discussion under the heading ''Shrimp Industry Advisory Panel'')

*Comment 20*: An industry group called for a revision to the November 14, 1994, Opinion pursuant to the requirement for reinitiation of consultation found at 50 CFR 402.16.

*Response*: NMFS has reinitiated consultation several times during the 1995 shrimp fishing season to address takings exceeding the incidental take statement and new information revealing a change in impacts to the listed species from actions not previously considered. Much of the November 14, 1994 Opinion has been revised by the Opinion accompanying this action (see **ADDRESSES**) and has incorporated all new available scientific and commercial data.

In addition to the comments addressed above, NMFS received some comments that were not germane to the request for comments on the ANPR and the petition for rulemaking based on the LGL Report. Those comments have been noted by NMFS but are not responded to here.

Provisions of the Proposed Rule

NMFS intended the ERP to guide its actions and to ensure compliance with sea turtle conservation regulations when strandings approached or exceeded the identified incidental take levels. In addition, the November 14, 1994, Opinion requires that NMFS identify areas requiring special sea turtle management consideration, due to high sea turtle abundance or important nesting or foraging habitats and that NMFS propose permanent management measures to mitigate the impacts of intensive nearshore shrimping and of repeated incidental capture of individual turtles. Thus, NMFS proposes the following measures to replace the guidance provided by the ERP.

*Eliminate Soft TEDs as Approved TEDs and Eliminate the Provision of the Regulations Allowing Soft TEDs to be Approved*

NMFS proposes that all soft TEDs be removed from the list of approved TEDs, effective December 31, 1996. This delayed effective date should ensure no adverse impact to shrimpers using soft TEDs. Since soft TEDs generally must be replaced annually, shrimpers will have ample notice to replace their soft TEDs with hard TEDs prior to December 31, 1996, without significantly shortening the usage they may get out of their existing soft TEDs.

Even though soft TEDs have been certified and approved for use, pursuant to the testing protocols, they have been identified as ineffective at releasing sea turtles under normal fishing conditions, even when new and professionally installed. The use of soft TEDs by the shrimping fleet has been associated with elevated sea turtle strandings following the Texas Closure to shrimp fishing. Because of the inherent properties of synthetic webbing, soft TEDs are difficult to install properly. Installation procedures for soft TEDs must be changed for every type and size of trawl net, and some soft TEDs cannot be installed properly in some nets without major modifications requiring underwater observations. Once installed, their actual in-water configuration, shape, and performance cannot be determined even by professional net makers. Furthermore, changes made by a trawler captain to the fishing configuration of a net to match fishing conditions—such as changing door sizes or angles, adding flotation to the headrope, or adjusting center bridle tension on tongue or bib trawls—and the accumulation of catch and debris in the trawl will all affect the shape of the soft TED and thus its effectiveness at releasing turtles. In actual use, soft TEDs are easily damaged by bottom debris and bycatch, particularly sharks and dogfish. Broken meshes in the soft TED excluder panel can entangle a turtle or even allow a turtle to pass directly through the TED and be captured in the cod end of the net.

NMFS has developed two certification protocols for the approval of TED designs. These protocols were published on June 29, 1987 (52 FR 24244) and on October 9, 1990 (55 FR 41092), along with detailed descriptions of the testing and evaluation criteria. Both protocols target a 97 percent turtle exclusion rate. The process through which most soft TEDs were certified removed most of the confounding conditions mentioned above, as testing was conducted under ideal conditions necessary for net observation, but not reflective of commercial trawling conditions. The certification process also fails to simulate actual field performance because design sponsors have the opportunity to fine-tune and adjust their installations with the assistance of NMFS gear experts and underwater videotapes of soft TED deployment. From the 1994 evaluation of various commercially available soft TEDs, it is clear that some installations of the same soft TED design will entangle turtles, indicating that the fine-tuning made during certification, but not necessarily included in the regulatory specifications, may have been critical to their passing testing. Because of these problems, NMFS is evaluating possible changes to the certification protocols which would better determine and account for actual commercial trawling conditions, and would eliminate the fine-tuning that takes place in the certification process but may not necessarily be reflected in the TED specifications. Such fine-tuning may improve the apparent performance of poor candidate TEDs under testing conditions. Although NMFS is reviewing the certification and approval process for new TED designs, currently there is ample evidence that indicates that soft TEDs do not exclude turtles

under actual trawling conditions despite their certification and previous approval. On the basis of this evidence, NMFS is proposing with this rule, to prohibit the use of soft TEDs currently approved and rescind their approvals, while undertaking a review of its general certification protocols.

In addition, soft TEDs have high shrimp loss rates. NMFS has determined, both through in-house and outside testing, that all soft TED designs lose significant amounts of shrimp. The high shrimp loss rates of soft TEDs may be posing a problem for sea turtles. While the shrimp loss rates of well-tuned hard TEDs are only about 1 percent (Renaud *et al*., 1991), shrimp loss rates for approved soft TEDs are much higher. The approval of TEDs that lose shrimp, however, may have worked to the detriment of shrimpers and turtles. Shrimpers may not have the resources to make their own comparisons of TED effectiveness and may lack the information needed to make a change to more efficient TED types. Some shrimpers may respond to the high loss of shrimp experienced with soft TEDs by disabling or modifying their soft TED. By limiting NMFS approval to only hard TEDs—those types that have the highest rates of shrimp retention—the incentive for shrimpers not to fully comply with the TED requirements should be reduced.

A perceived advantage of soft TEDs over hard TEDs is their lower cost. An installed soft TED at a net shop typically costs $50–$100. A hard TED fully installed in webbing typically costs $250–$300; uninstalled hard TEDs may be as inexpensive as $75. NMFS estimates, however, that soft TEDs require replacement on an annual basis, whereas hard TEDs last 2–3 years or more. In addition, the high shrimp retention rates of hard TEDs compared to soft TEDs likely will make up any cost difference through better shrimp catches.

### Morrison Soft TED

The Morrison TED is the soft TED of choice in the Atlantic shrimp fishery.

Gear specialists observed that some Morrison TEDs have shortened escape openings that could prevent the release of a turtle. Other TEDs had escape openings that were of the proper size, but twine or rope was laced through the webbing along the sides of the exit hole cut. Since the escape opening of a Morrison TED consists of a single slit that requires the flow of water to push the loose webbing on the sides of the cut apart to form an escape opening, reinforcing the edges of the cut would prevent the webbing from opening wide enough to allow a turtle to escape. On several Morrison TEDs, the webbing of the excluder panel was cut or broken so that a turtle might pass directly through the TED into the tailbag of the net. Other Morrison TEDs had large openings at the sides of the panel where the panel was improperly sewn to the trawl net or the attachment between the TED and the trawl was worn away and not repaired. These holes might also allow a turtle to pass directly through the TED, or cause it to become entangled in loose webbing. Lastly, on some TEDs that appeared to be in good condition, gear experts noticed that the excluder panel had slack areas. When water flows through the excluder panel, excess webbing can form pockets instead of a smooth, taut ramp of webbing, that could entangle turtles. Statements made to gear specialists by shrimpers confirmed that turtles were in fact becoming entangled in pockets in soft TED excluder panels.

A particular concern regarding soft TEDs was the variability of their construction and installation and that, even with proper construction according to regulations, commercially available soft TEDs were not effectively releasing turtles because of incompatibilities of the TED design with various net sizes and designs. In order to examine this concern, NMFS purchased seven trawl nets equipped with Morrison soft TEDs installed by five primary suppliers from the southeastern United States Three different trawl types were studied: The mongoose trawl, the straight wing flat trawl, and the tapered wing flat trawl. These nets were observed and video-taped underwater by NOAA divers as the nets were fished in various configurations. This diver evaluation revealed that pockets could form in legally installed Morrison soft TEDs. This tendency was especially noticeable in mongoose and straight-wing flat trawls.

These distortions in TED shape would lead to turtle capture, as was discovered in further testing. Experimental trawling in the Cape Canaveral ship channel was conducted to evaluate turtle exclusion for the soft TEDs. A straight-wing flat net captured five sea turtles—three through entanglement in the TED panel— in 21 experimental tows of 1 hour or less. A straight wing flat net and two mongoose nets were tested and did not capture turtles. A turtle was observed remaining in one of the mongoose net tows, but it escaped as the trawl was retrieved. In later tests at Panama City, FL, in October 1994, a total of 24 small turtles were introduced by divers into three of the test nets: eight were captured, for an average escape rate of only 66 percent from trawls with commercially available and legally installed soft TEDs.

Prior to certification of the Morrison TED, the University of Georgia Sea Grant Program evaluated the Morrison TED for shrimp retention. In testing under commercial fishing conditions against a trawl not equipped with a TED, the Morrison TED was shown to have a shrimp loss rate of 17 percent. NMFS observers aboard commercial trawlers in South Carolina documented a 7 percent loss rate from Morrison TEDs.

### Parrish Soft TED

The Parrish soft TED was approved for use in 1987 following successful certification trials at the Cape Canaveral ship channel. The Parrish TED passed the certification trials based on turtle exclusion rates, but the Parrish TED-equipped net had a reduction in shrimp catch compared to the control net ranging from 26 percent to 79.5 percent. The Parrish TED never became widely accepted in the shrimp industry. The developer and only manufacturer of the Parrish TED has ceased sales and production of the design. NMFS does not believe that any Parrish TEDs are currently in use.

### Andrews Soft TED

The Andrews TED is the primary bottom-opening soft TED in use today and is the most popular soft TED in the southwest Florida shrimp fishery. Some shrimp industry members have stated that the bottom-opening, Andrews soft TED is the optimum TED for the Sanibel-Tortugas fishing grounds of southwest Florida because of its ability to exclude the large loggerhead sponges that occur there.

The Andrews TED's 5–inch (12.7–cm) mesh size is the smallest mesh excluder panel of the soft TEDs. In response to shrimpers who stated that they needed a bottom-opening soft TED with a larger mesh size for better shrimp retention, NMFS conducted certification testing on 8–inch (20.3–cm), 7–inch (17.8–cm), 6–inch (15.2–cm), and mixed mesh sizes. None of these designs passed the TED certification standards. Nonetheless, enforcement efforts have found many instances of Andrews style TEDs illegally constructed of large-mesh webbing. Some shrimpers using these illegal TEDs stated that the TEDs were legal Parrish TEDs, which have an 8–inch (20.3–cm) mesh, but the TEDs met none of the criteria of a Parrish TED. It appears that there is some confusion among shrimpers and misrepresentation by manufacturers as to the legal

dimensions of the Parrish and Andrews TEDs. The use of a TED with illegal dimensions would adversely affect turtles by increasing the possibility of entanglement. Also, if the Andrews TED funnel is excessively long, slack webbing and pockets would appear that would have the potential for trapping turtles.

The Andrews TED 5–inch (12.7–cm), when compared to a bottom-opening hard TED, had a shrimp loss of 23 percent. The larger mesh sizes, despite not passing TED certification standards, were tested for shrimp loss. Rates in those comparisons ranged from 5 to 12.25 percent shrimp loss in Andrews soft TEDs versus nets without TEDs.

Taylor Soft TED

NMFS believes that the Taylor TED has only very limited use in the shrimp fishery.

The Taylor TED is a top-opening soft TED with a 6–inch (15.2–cm) mesh excluder panel. The minimum length of the Taylor TED is 10 ft (3 m) to allow its installation in small trawls. The Taylor TED design was certified in a 30–foot (9.1–m) headrope semi-balloon trawl net and became an officially approved TED in May 1993. Because the Taylor TED is a relatively recent design, NMFS gear specialists have not encountered many examples of the Taylor TED in use or documented installation problems specific to the Taylor TED. It is, however, a similar design to the Morrison TED in that it is a sloping, top-opening, single-panel TED and would be likely to have the same problems of pocketing and loose webbing if installed improperly.

Taylor TEDs in actual use in the commercial shrimp fleet have in fact been found to be ineffective at sea turtle exclusion. In 1,174 hours of observed trawling with Taylor TED-equipped nets, 3 sea turtle captures have been documented. This rate of sea turtle capture with the Taylor TED exceeds the sea turtle capture rate calculated by Henwood and Stuntz (1987) for shrimp trawlers in the Gulf of Mexico operating without any TEDs.

NMFS has little data on shrimp retention rates of the Taylor TED; in limited testing of the Taylor TED and another TED with a similar apex design, the University of Georgia Sea Grant program reported an overall shrimp loss of about 16 percent.

Reduce the Size of Try Nets that are Exempt from TED Use

NMFS proposes to reduce the size of try nets that are exempt from the TED-use requirement, effective December 31, 1996. Instead of the present exemption for try nets 20 ft (6.1 m) (50 CFR 227.72(e)(2)(ii)(*1*)) or less in headrope length, only try nets 12 ft (3.6 m) or less in headrope length and 15 ft (4.6 m) or less in footrope length would be exempt.

Try nets are small nets that are deployed by shrimp trawlers before and during tows with the main nets to determine the presence and catch rates of shrimp, bycatch, and debris. Shrimpers use try nets to help decide the location and duration of tows with the main nets. Try net tows of 15–30 minutes appear sufficient to determine fishing conditions and catch rates.

NMFS has been collecting information that challenges the assumption that try nets up to 20 ft (6.1 m) do not pose a threat to sea turtles because of their small size and short tow duration. Specifically, the larger try nets do capture turtles. Recent analysis of observed commercial trawling in the Gulf of Mexico indicates that catch rates (per foot of headrope) of turtles in large try nets (approx. 20 ft (6.1 m) headrope length) are approximately the same as those calculated in the 1987 report (Henwood & Stuntz), a figure that the National Academy of Sciences used in their 1990 report recommending the required use of TEDs in shrimp trawls. Further, in the regional bycatch observer program from 1992 through 1995, try nets accounted for 43 percent of the observed turtle captures. The assumption that try nets are only towed for short periods of time also may be invalid. In addition to numerous anecdotal reports from shrimpers to this effect, NMFS gear specialists have observed shrimpers regularly towing try nets for periods well over an hour. Since long try net tows defeat their purpose of assessing catch rates, the apparent intention of these long tows is to use the try nets as auxiliary nets to increase the overall shrimp capture, using a TED-less net. Such use of try nets may be seriously contributing to turtle capture, mortality, and strandings.

While the large try nets (up to 20 ft (6.1 m)) currently exempted from TED requirements pose a threat to sea turtles, NMFS believes that small try nets likely do not. In experimental trawling at the Cape Canaveral ship channel, conducted in September 1994, the capture of sea turtles in try nets of two different sizes was assessed. One loggerhead was captured in a 15 ft (4.0 m) (originally reported as 13 ft) headrope length try net in 59 tows, while nine loggerheads were captured in a 20 ft (6.1 m) headrope length try net in 57 tows. The try nets used in these trials were tongue trawls, meaning that the net is towed via a third towing bridle (in addition to those attached to the doors) attached to a triangle of webbing in the center of the headrope. The headrope length measurement includes the length along this additional triangle of webbing; thus, a 15 ft tongue trawl try net is approximately the same as a 13 ft standard trawl in door-to-door distance. In order to clarify the applicability of the 1994 study regarding try net headrope length, NMFS intends to repeat a similar study during the comment period for this proposed rule. Information gathered in that study may result in a modification to the try net headrope length exemption adopted in the final rule. Nonetheless, these results suggest that small try nets have a much lower sea turtle catch rate, even when adjusted for headrope length, than large try nets and primary shrimp trawls. In the May 18, 1995 (60 FR 26691) modification to the emergency restrictions to shrimp trawling in some areas of the Gulf of Mexico, NMFS determined that the use of try nets with headrope lengths of 12 ft (3.6 m) or less and footrope lengths of 15 ft (4.6 m) or less did not pose a serious risk to sea turtles, even in areas where shrimp trawler-related mortality of Kemp's ridley sea turtles was high.

Installation of TEDs in try nets with headrope lengths of 12 ft (3.6 m) or less and footrope lengths of 15 ft (4.6 m) or less appears to be impracticable. The proposed delayed effective date should provide the necessary time for shrimpers to acquire hard TEDs and install them in the larger try nets or to adjust to estimating catch rates with smaller try nets.

Establish Shrimp Fishery Sea Turtle Conservation Areas (SFSTCAs)

NMFS proposes to establish two permanent Shrimp Fishery-Sea Turtle Conservation Areas (SFSTCAs) with special conservation requirements to reduce the mortality and subsequent strandings of sea turtles associated with intensive shrimp trawling in nearshore waters.

As mentioned previously, the November 14, 1994, Opinion contained a reasonable and prudent alternative that required action to mitigate the impacts of intensive nearshore shrimping effort on sea turtles, including the identification of areas requiring special sea turtle management considerations. The ERP identified interim special management areas, based on nearshore habitat for endangered Kemp's ridleys, in which NMFS specified a policy of heightened TED law enforcement efforts and management response to elevated sea turtle mortality.

The SFSTCA in the northwestern Gulf of Mexico would consist of the offshore waters out to 10 nm (18.5 km) along the coasts of Louisiana and Texas from the Mississippi River South Pass (west of 89°08.5′ W. long.) to the U.S.-Mexican border. The Atlantic SFSTCA would consist of the inshore waters and offshore waters out to 10 nm (18.5 km) along the coasts of Georgia and South Carolina from the Georgia-Florida border to the North Carolina-South Carolina border. The Gulf SFSTCA would be similar to the Gulf interim special management area of the ERP, but it would add waters off statistical Zone 21 in south Texas. Strandings of Kemp's ridleys in Zone 21 tend to include adult and large sub-adult individuals compared to the primarily juvenile and sub-adult animals in northern Texas, and the extreme importance of adults, particularly reproductive females, to the recovery of Kemp's ridleys appear to warrant the inclusion of Zone 21 in the SFSTCA.

The Atlantic SFSTCA was identified based on the distributions of sea turtle strandings and the shrimp trawl fleets. The proposed Atlantic SFSTCA would differ from the Atlantic interim special management area by excluding northern Florida and including nearshore waters of South Carolina and by adding waters inshore of the COLREGS lines. In 1995, NMFS did not determine that shrimp trawler related mortality and strandings in northeast Florida were excessive and required emergency action. The State of Florida prohibited the fishing by large shrimp trawlers within 1 nm (1.9 km) of the beach on the east coast of Florida, effective July 1, 1995. Sea turtle strandings in Zone 30 in Florida declined progressively from June through August, possibly as a result of the State restrictions on trawling. NMFS believes that the State restrictions on net fishing in northeast Florida represent existing measures mitigating the impacts of nearshore shrimping, and that inclusion of northeast Florida in the SFSTCA is not warranted at this time. Sea turtle strandings in 1995 did, however, necessitate emergency gear restrictions twice along the Georgia coast and once in Zone 32 in South Carolina. South Carolina waters opened to shrimping on May 16, 1995, and Georgia waters opened on June 1, 1995. In the week following the opening, significant spikes in sea turtle strandings occurred in both States. In Georgia, statewide strandings increased from 6 the week prior to the opening to 21 in the week following the opening. In Zone 32 in South Carolina, strandings increased from 0 in the week prior to the opening to 6 in the first week of the opening. The continued association of nearshore shrimp effort with sea turtle strandings in these states demonstrates the need for additional measures to mitigate adverse impacts to turtles. The proposed SFSTCA would also add the northern portion of South Carolina, even though strandings there did not result in emergency actions. The northern border of Zone 32 in South Carolina occurs at Cape Romain—the largest loggerhead sea turtle nesting beach north of Cape Canaveral. Therefore, restriction of the SFSTCA to only Zone 32 could concentrate shrimp effort near Cape Romain and increase the potential for adverse impacts to nesting female sea turtles. By including the entire coast of South Carolina, the borders of the SFSTCA would be simpler and clearer, the Cape Romain area would be included, and relatively few additional shrimpers would be affected, since South Carolina's primary shrimping grounds are in the south and central portion of the state. The proposed Atlantic SFSTCA would also include inshore waters as well as nearshore waters along the Georgia and South Carolina coast. The specification in the ERP that management measures be restricted to offshore waters was not appropriate for that region. The Georgia-South Carolina Low Country is characterized by numerous broad sounds and extremely high tidal ranges. Tidal flow can have a powerful influence on the movement of turtles, their prey, and turtle carcasses. In the 2 months following the opening of Georgia state waters to shrimping on June 1, 1995, 21 sea turtles stranded in inshore areas. In addition, state regulations permit shrimp trawling under the same license inside the COLREGS lines in Georgia and South Carolina, and the fishery is therefore not functionally divided between offshore and inshore components. Extension of conservation measures into inshore waters in Georgia and South Carolina appears necessary to provide protection to turtles wherever they may be vulnerable to capture in shrimp trawls and to ensure even enforceability of the measures near the mouths of the sounds.

Enhance TED Effectiveness in the SFSTCAs

NMFS proposes to implement the elimination of the approval of the use of soft TEDs, the reduction in TED-exempt try net size, and the prohibition on the use of bottom-opening hard TEDs in the proposed SFSTCAs on an accelerated schedule to provide additional protection to sea turtles during the 1996 shrimp season.

The proposed SFSTCAs represent areas that require special management to mitigate the effects of intensive nearshore shrimping effort on sea turtles. These areas have exhibited very high nearshore shrimping activity and high levels of sea turtle strandings. The continuing sea turtle mortality has been determined by NMFS to result from the improper use of TEDs and the use of ineffective TEDs by shrimp trawlers. Therefore, NMFS believes that there is a heightened need to implement measures to improve TED effectiveness in the SFSTCAs.

In addition to the elimination of the approval of soft TED use and the reduction of TED-exempt try net size, NMFS believes that bottom-opening hard TEDs should be prohibited in the SFSTCAs to protect sea turtles from forced submergence.

NMFS gear specialists joined enforcement agents to determine whether problems with TEDs were a factor in the increased levels of strandings that occurred in 1994. Two problems encountered with hard TEDs were TEDs installed at illegally steep angles and bottom-opening hard TEDs without flotation. The lack of flotation on bottom-opening hard TEDs, although then allowed under the existing regulations, caused the TED to drag on the sea floor, holding the turtle escape opening closed. A review of past gear trials with bottom-opening TEDs supported this finding. As a result, NMFS concluded that the lack of flotation on bottom-opening hard TEDs could be a major contributor to sea turtle mortality and amended the regulations to require flotation on bottom-opening single-grid hard TEDs (59 FR 33447, June 29, 1994; 60 FR 15512, March 24, 1995).

In spite of the flotation requirement for bottom-opening hard TEDs, NMFS remains concerned that bottom-opening hard TEDs in commercial use still capture and drown turtles, particularly small turtles, such as juvenile Kemp's ridleys. The amounts of flotation required do not always correctly offset the weight of the TED itself, and the effective buoyancy of closed-cell foam floats, which are the most popular floats in use by the shrimp industry, is reduced with increasing water depths. Furthermore, the accumulation of shrimp catch, bycatch, mud, and debris in the trawl can weigh down the attached flotation and cause the exit of a bottom-opening hard TED to be obstructed by the bottom. Observations by gear specialists of wear and chafing on webbing on the bottom of bottom-

opening TEDs in the shrimp fleet are indicators that the TEDs do periodically ride hard on the bottom. NMFS has received and responded to requests from the shrimp industry to allow modifications to bottom-opening TEDs, such as webbing chafing gear and rollers, to reduce wear and damage to gear caused by contact with the bottom, even with the current flotation requirements.

NMFS gear experts have also found that top-opening TEDs are more efficient at releasing turtles than bottom-opening TEDs, even under ideal conditions. In-water testing of hard-grid TEDs in May 1995 revealed that small turtles require almost twice as long to escape from a bottom-opening TED versus a top-opening TED (an average of 125.6 seconds versus an average of 68.8 seconds). This difference would likely be exaggerated under commercial trawling conditions. Gear experts attribute much of this difference in escape times to the air-breathing turtles' natural tendency to explore the top of the trawl for an escape-opening as they attempt to resurface for air. Small turtles that have been observed entrapped in trawls do spend the majority of their time at the top of the trawl. Physiological studies on small sea turtles of the effects of capture in trawls on stress levels show that high stress levels are developed during short-duration forced submergences and that the turtles may require 7 to 9 hours to recover from the stress effects of submergences no longer than 7.3 minutes (Stabenau *et al*., 1991). Repeat captures and forced submergences in shrimp trawls, compounded by longer release times from bottom-opening TEDs, could be producing stress and blood acidosis levels that are contributing to the mortality of sea turtles, particularly small juveniles and sub-adults.

The implementation of these gear requirement changes in the SFSTCAs is proposed to occur on a more rapid schedule than the requirements outside the SFSTCA because of the more critical need to better protect sea turtles and manage shrimp trawl-sea turtle interactions in these areas. The impact of this faster schedule on the shrimp trawl fleet is expected to be small, though. The proposed SFSTCAs in the Gulf and Atlantic include areas that were either included in the ERP's interim special management areas as potentially subject to gear restrictions or were actually included in gear restrictions implemented during 1995 in response to sea turtle mortality emergencies. Shrimp trawlers subject to any gear restrictions in 1995 will already have been required to purchase hard TEDs and either reduce the size of their try nets or install hard TEDs in their try nets. No additional burden would be imposed on those shrimpers to acquire new gear. In the Gulf SFSTCA, Zones 13–16 were not subject to gear restrictions, but shrimpers in that area were notified of potential additional gear requirements as specified in the ERP. Nearshore shrimpers in Louisiana, however, are reportedly already using primarily hard TEDs and the elimination of the approval of soft TED use should affect only a small proportion of shrimpers. Finally, there is no significant financial burden associated with requiring the use of top-opening TEDs instead of bottom-opening TEDs. Most shrimpers can convert existing bottom-opening hard TEDs to top-opening easily.

## Shrimp Industry Advisory Panel

NMFS wishes to establish a shrimp industry panel to provide individualized advice to the agency on all management aspects of the TED regulations, although NMFS does not have sufficient information to make a specific proposal at this time. Such a panel would convene periodically to bring concerns of the industry and particular problems with regulations to the attention of the agency. It would provide a forum for NMFS to discuss matters such as revisions to gear types, new TED designs, and improvements to the TED regulations. NMFS does attempt to seek input from fishermen regarding its management actions through comment periods, public hearings, TED technology transfer workshops, and informal contacts; however, these means are not optimal for overcoming serious communication barriers between NMFS and shrimpers. Several problems contribute to this communications barrier including distrust on the part of shrimpers that their input is honestly heard, the conflict of shrimpers' work demands with their full participation in a dialogue with fishery managers, and the absence of a forum where open discussions about problems and plans to overcome them can be held. Another difficulty is the large number of participants in the shrimp fishery, and the fact that relatively few of them belong to industry associations that can represent their collective views.

NMFS intends to pursue the creation of a shrimp industry advisory panel, but must first clarify the exact means of doing so. In addition to comments on this proposed rule, NMFS is also seeking comments on implementation of a shrimp industry panel and specifically on methods to identify and select shrimp industry representatives to serve on the panel that would fairly reflect the interests of the various diverse sections of the shrimp trawling fleets. If a feasible way to select membership for the panel can be developed, NMFS will attempt to identify and obtain necessary funding to implement the panel.

## Request for Comments

NMFS will accept written comments (see **ADDRESSES**) on this proposed rule and on the proposed shrimp industry advisory panel until June 10, 1996. In addition, NMFS will conduct ten public hearings on this action.

The hearings are scheduled as follows:

1. May 10, 1996, at 7 p.m., St. Petersburg, FL
2. May 14, 1996, at 7 p.m., Cameron, LA
3. May 15, 1996, at 6 p.m., Thibodaux, LA
4. May 16, 1996, at 6 p.m., Mobile, AL
5. May 21, 1996, at 6 p.m., Port Isabel, TX
6. May 22, 1996, at 6 p.m., Corpus Christi, TX
7. May 22, 1996, at 7 p.m., Bolivia, NC
8. May 23, 1996, at 6 p.m., Galveston, TX
9. May 23, 1996, at 6:30 p.m., Charleston, SC
10. May 24, 1996, at 6:30 p.m., Brunswick, GA

The hearings will be held at the following locations:

1. University of South Florida, Davis Hall, Room 130, 140 7th Avenue South, St. Petersburg, FL 33701
2. Cameron Elementary School, Auditorium, 510 Marshall Street, Cameron, LA 70631
3. Thibodaux Civic Center, Plantation Room, 310 North Canal Boulevard, Thibodaux, LA 70301
4. Mobile Civic Center, Meeting Room 16, 401 Civic Center Drive, Mobile, AL 36601
5. Port Isabel Community Center, Conference Room, 213 Yturria Street, Port Isabel, TX 78578
6. Texas A&M University Agricultural Research & Extention Center, Route 2, Box 589 (Highway 44, 5 miles west of airport), Corpus Christi, TX 78406
7. North Carolina Cooperative Extension Service, Brunswick County Government Center, Agriculture Building, (Foods Lab), 10 Referendum Drive, Bolivia, NC 28422
8. Texas-Galveston County Court House, (Jury assembly room, 1st floor), 722 Moody, Galveston, TX 77550
9. South Carolina Marine Resources Research Institute, (Auditorium), 217

Fort Johnson Road, Charleston, SC 29412

10. University of Georgia Marine Extension Service Office, (Conference room), 715 Bay Street, Brunswick, GA 31520

References Cited

Henwood, T.A. and W.E. Stuntz. 1987. Analysis of Sea Turtle Captures and Mortalities during Commercial Shrimp Trawling. Fishery Bulletin: Vol. 85, No.4, pp. 813–817.

Renaud, M., G. Gitschlag, E. Klima, A. Shah, D. Koi, and J. Nance. 1991. Evaluation of the Impacts of Turtle Excluder Devices (TEDs) on Shrimp Catch Rates in Coastal Waters of the United States Along the Gulf of Mexico and Atlantic, September 1989 through August 1990. NOAA Technical Memorandum, NMFS-SEFC–288.

Ward, J.M. 1989. Modeling Fleet Size in the Gulf of Mexico Shrimp Fishery 1966–1979. NOAA Technical Memorandum NMFS-SEFC–229, 8p.

Stabenau, E.K., T.A. Heming, and J.F. Mitchell. 1991. Respiratory, acid-base, and ionic status of Kemp's ridley sea turtles *(Lepidochelys kempi*) subjected to trawling. Comparative Biochemistry and Physiology A 99:107–111.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have significant economic impact on a substantial number of small entities, because the provisions of the proposed rule would impose only a minor economic burden on shrimpers. The Assistant Administrator for Fisheries, NOAA, (AA) prepared an EA for this proposed rule and copies are available (see **ADDRESSES**).

List of Subjects

*50 CFR Part 217*

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

*50 CFR Part 227*

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: April 19, 1996.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 217 and 227 are proposed to be amended as follows:

## PART 217—GENERAL PROVISIONS

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

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, the definitions for ''Atlantic Shrimp Fishery-Sea Turtle Conservation Area'' and ''Gulf Shrimp Fishery-Sea Turtle Conservation Area'' are added, in alphabetical order, and the definition of ''Approved TED'' is revised, to read as follows:

**§ 217.12 Definitions.**

* * * * *

*Approved TED* means:

(1) A hard TED that complies with the generic design criteria set forth in 50 CFR 227.72(e)(4)(i). (A hard TED may be modified as specifically authorized by 50 CFR 227.72(e)(4)(iv)); or

(2) A special hard TED that complies with the provisions of 50 CFR 227.72(e)(4)(ii); or

(3) Prior to December 31, 1996, a soft TED that complies with the provisions set forth in 50 CFR 227.72(e)(4)(iii).

* * * * *

*Atlantic Shrimp Fishery-Sea Turtle Conservation Area (Atlantic SFSTCA)* means the inshore and offshore waters along the coast of the States of Georgia and South Carolina from the Georgia-Florida border to the North Carolina-South Carolina border extending to 10 nautical miles (18.5 km) offshore.

* * * * *

*Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA)* means the offshore waters along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River to the U.S.-Mexican border extending to 10 nautical miles (18.5 km) offshore.

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## PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

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

4. In § 227.72, paragraphs (e)(2)(ii)(B)(*1*), (e)(4)(i)(F), (e)(4)(iii) introductory text, (e)(5) heading and (e)(5)(i) are revised to read as follows:

**§ 227.72 Exceptions to prohibitions.**

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) * * *

(*1*) (*i*) Effective December 31, 1996, a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net;

(*ii*) Prior to December 31, 1996, in the Gulf SFSTCA or the Atlantic SFSTCA, a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net;

(*iii*) Prior to December 31, 1996, in areas other than the Gulf SFSTCA or the Atlantic SFSTCA, a single test net (try net) with a headrope length of 20 ft (6.1 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net;

* * * * *

(4) * * *

(i) * * *

(F) *Position of escape opening.* (*1*) In areas other than the Gulf SFSTCA or the Atlantic SFSTCA, the entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in its deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.

(*2*) In the Gulf SFSTCA and the Atlantic SFSTCA, the entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. The slope of the deflector bars from forward to aft must be upward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.

* * * * *

(iii) *Soft TEDs (applicable until December 31, 1996).* Soft TEDs are TEDs

with deflector panels made from polypropylene or polyethylene netting. In the Gulf SFSTCA and the Atlantic SFSTCA, soft TEDs are not approved TEDs. Prior to December 31, 1996, in areas other than the Gulf SFSTCA and Atlantic SFSTCA, the following soft TEDs are approved TEDs:

* * * * *

(5) *Revision of generic design criteria, allowable modification of hard TEDs, additional special hard TEDs.*

(i) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (e)(4)(i) of this section, may approve special hard TEDs in addition to those listed in paragraph (e)(4)(ii) of this section, or may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (e)(4)(iv) of this section, by a regulatory amendment, if, according to a NMFS-approved scientific protocol, the TEDs demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Testing under the protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS.

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[FR Doc. 96–10087 Filed 4–19–96; 4:16 pm]

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## 50 CFR Parts 672 and 676

**[Docket No. 960401095–6095–01; I.D. 032596A]**

**RIN 0648–AH61**

## Groundfish of the Gulf of Alaska; Limited Access Management of Federal Fisheries In and Off of Alaska; Improve IFQ Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to amend portions of the regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska. This proposed rule also would eliminate a prohibition pertaining to IFQ sablefish in the regulations governing the groundfish fisheries in the Gulf of Alaska (GOA). After the first year of the IFQ Program's operation, the North Pacific Fishery Management Council (Council) and NMFS recognize aspects of the program that need further refinement. This action is necessary to make those refinements and is intended to improve the ability of NMFS to manage the Pacific halibut and sablefish fixed gear fisheries.

**DATES:** Comments must be received by May 24, 1996.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; Attn: Lori J. Gravel, or deliver to Room 453, 709 W. 9th Street, Juneau, AK.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations codified at 50 CFR part 676 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off of Alaska, under the authority of the Northern Pacific Halibut Act with respect to halibut and the Magnuson Fishery Conservation and Management Act with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is contained in the preamble to the final rule implementing that program published in the Federal Register, November 9, 1993 (58 FR 59375), and in the preambles to subsequent rules amending those regulations.

This action would amend various portions of the regulations implementing the IFQ Program and eliminate a prohibition in the GOA groundfish regulations that pertains to IFQ sablefish. These changes are intended to improve the ability of fishermen to conduct fishing operations under the IFQ Program, to refine NMFS' ability to administer the program effectively, and to make the program more responsive to conservation and management goals for Pacific halibut and sablefish fisheries.

### Elimination of the 72–hour ''Fair Start'' Provision

Section 672.7(k) would be repealed to eliminate the prohibition against deploying fixed gear during the 72–hour period preceding the opening of fixed gear sablefish fishing seasons. Currently, fishermen with hook-and-line gear legally deployed in other GOA fisheries during the 72–hour period immediately before the opening of sablefish seasons are prohibited from participating in those seasons. Under open access, this prohibition was designed to prevent such fishermen from gaining an advantage over fishermen who could not legally deploy hook-and-line gear until the opening of the sablefish season. The regulation, written in conformity with a similar restriction in the Pacific halibut fishery regulations (50 CFR part 301), was necessary under an open access system to ensure that all fishermen in fixed gear sablefish fisheries would have equitable opportunities for harvest during extremely brief fishing seasons. NMFS has determined that this prohibition is no longer necessary. Under the IFQ Program, which lengthened GOA fixed gear sablefish seasons, the race for fish and the preemption of grounds are no longer problems. The regulation at § 672.7(k) would therefore be removed.

### Revision of the Owner-aboard Restriction

Section 676.13(f)(1) would be revised to allow fishermen to leave their vessels during the time between their arrival in port and the beginning of landing operations. Current IFQ regulations require IFQ holders to be aboard vessels used to harvest IFQ fish during all fishing operations. The Council intended this requirement to ensure that the catcher vessel fleet remain primarily an owner-operator fleet and that the IFQ Program not profoundly change the socio-economic character of the fixed gear fishing fleet or the coastal Alaskan communities where this fleet is based. To this end, § 676.13(f)(1) requires IFQ holders to remain onboard vessels containing IFQ harvest until all IFQ species have been offloaded. A provision at § 676.22(d) permits waiving of the owner-aboard restriction in the event of extreme personal emergency.

While continuing to require that IFQ holders be aboard during harvest and landing of IFQ fish, except as allowed by the emergency waiver provision, the Council recognizes that less urgent occasions may oblige an IFQ holder to leave his or her vessel while in port but before offloading of IFQ fish has commenced. Section 676.14(b)(1) allows IFQ landings only between the hours of 0600 and 1800, Alaska local time (A.l.t.). A fisherman who arrives in port after 1800 hours (hrs), A.l.t., must remain on his or her vessel overnight until IFQ landings may commence the following day. Such inconveniences are not necessary to preserve the intent of the Council.