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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 217 and 227

[Docket No. 950427119-5119-01; I.D. 042495C]

RIN 0648-AH98

#### Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawling Activities; Additional Turtle Excluder Device Requirements Within Certain Statistical Zones

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

**ACTION:** Temporary additional restrictions on fishing by shrimp trawlers in nearshore waters along two sections of the Texas and Louisiana coast to protect sea turtles; request for comments.

**SUMMARY:** NMFS is temporarily imposing additional restrictions on fishing by shrimp trawlers in Gulf of Mexico offshore waters out to 10 nautical miles (nm) (18.5 km) from the COLREGS line, along 2 sections of the Texas and Louisiana coasts, between 27° N. lat. and 28° N. lat. and between 95°13' W. long. and 93°20.5' W. long. for a 30-day period. This area includes nearshore waters in shrimp fishery statistical zones 18 and 20, the western portion of zone 17 east to Calcasieu Pass, Louisiana and the extreme northeastern portion of Zone 19. The restrictions include prohibition of the use of soft turtle excluder devices (TEDs), the use of bottom opening TEDs, the use of webbing flaps that completely cover the escape opening of TEDs, and the use of try nets by shrimp trawlers, unless the try nets are equipped with NMFS-approved TEDs other than soft or bottom-opening TEDs. This action is necessary to prevent the continuation of high levels of mortality and strandings of threatened and endangered sea turtles.

**DATES:** This action is effective 12:01 a.m. (local time) on April 30, 1995, through 11:59 p.m. (local time) on May

29, 1995. Comments on this action must be submitted by May 30, 1995.

**ADDRESSES:** Comments on this action and requests for a copy of the environmental assessment (EA) or supplemental biological opinion (BO) prepared for this action 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 Russell Bellmer, 301-713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

All sea turtles that occur in United States (U.S.) waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), 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 sea turtle 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.

The conservation regulations provide a mechanism to implement further restrictions of fishing activities, if necessary to avoid unauthorized takings of sea turtles that may be likely to jeopardize the continued existence of listed species or that would violate the terms and conditions of an incidental take statement or biological opinion (50 CFR 227.72(e)(6)). Upon a determination that incidental takings of sea turtles during fishing activities are not authorized, additional restrictions will be imposed to conserve listed species. These restrictions are effective for a period of up to 30 days and may be

renewed for additional periods of up to 30 days each.

#### November 14, 1994—Biological Opinion

On November 14, 1994, NMFS issued a biological opinion (Biological Opinion), which concluded that the continued long term operation of the shrimp fishery in the nearshore waters of the southeastern U.S. was likely to jeopardize the continued existence of the highly endangered Kemp's ridley sea turtle. This Biological Opinion resulted from an ESA section 7 consultation that was reinitiated in response to the unprecedented number of dead sea turtles that stranded along the coasts of Texas, Louisiana, and Georgia in the spring and summer of 1994, coinciding with heavy nearshore shrimp trawling activity. Pursuant to section 7(b)(4) of the ESA, NMFS provided a reasonable and prudent alternative to the existing management measures that would allow the shrimp fishery to continue without jeopardizing the continued existence of the Kemp's ridley sea turtle. In addition, the Biological Opinion is accompanied by an incidental take statement, pursuant to section 7(b)(4)(i) of the ESA, that specifies the impact of such incidental taking on the species. The incidental take statement provides two levels to identify the expected incidental take of sea turtles by shrimp fishing. The incidental take levels are based upon either documented takes or indicated takes measured by stranding data. Stranding data are considered an indicator of lethal take in the shrimp fishery during periods in which intensive shrimping effort occurs and there are no significant or intervening natural or human sources of mortality other than shrimping conclusively identified as the cause of strandings.

NMFS has established an indicated take level (ITL) by identifying the weekly average number of sea turtle strandings documented in each NMFS statistical zone for the last three years (taking into consideration anomalous years). In Texas and Georgia, where strandings were anomalously high in 1994, the years 1991 through 1993 were used to determine historical levels. The weekly average was computed as a five-week running average (two weeks before and after the week in question) to reflect seasonally fluctuating events such as fishery openings and closures and turtle migrations. The ITL for each zone was set at two times the weekly three year stranding average. For weeks and zones where the historical average is less than one, the ITL has been set at two strandings.

### The Emergency Response Plan

The reasonable and prudent alternative of the November 14, 1994, Biological Opinion and the accompanying incidental take statement required NMFS to develop and implement an Emergency Response Plan (ERP) to respond to future stranding events and to ensure compliance with sea turtle conservation measures. The Assistant Administrator for Fisheries, NOAA, (AA) approved the ERP on March 14, 1995, and published a notice of availability on April 21, 1995 (60 FR 19885). The ERP provides for elevated enforcement of TED regulations in two areas in which strandings of Kemp's ridley sea turtles are historically high. The first, the Atlantic Interim Special Management Area includes shrimp fishery statistical Zones 30 and 31 (northeast Florida and Georgia). The second, the Northern Gulf Interim Special Management Area, includes statistical Zones 13 through 20 (Louisiana and Texas from the Mississippi River to North Padre Island). The ERP also establishes procedures for notifying NMFS of sea turtle stranding events, and provides guidelines for implementation of temporary restrictions to prevent take levels in the Biological Opinion from being exceeded.

As described in the ERP, restrictions in addition to those already imposed by 50 CFR 227.72(e) will be placed on shrimping in the Interim Special Management Areas if 75 percent or more of the ITL is reached for 2 consecutive weeks. The ERP states that the restrictions are expected to be:

1. Prohibition of the use of soft TEDs;
2. Prohibition of the use of bottom opening TEDs;
3. Prohibition of the use of try nets, unless equipped with NMFS-approved TEDs other than soft or bottom-opening TEDs; and
4. Prohibition of the use of webbing flaps that completely cover the escape opening of TEDs, as described in the Requirements section herein.

In addition, when strandings remain elevated for one month in zones outside the Interim Special Management Area, the Director, Southeast Region, NMFS, may determine that management actions, similar to those specified for the Interim Special Management Areas, will be implemented.

### Recent Stranding Events

Sea turtle strandings on offshore beaches in a number of fishery Statistical Zones in Texas have been elevated beyond historical levels in the spring of 1995.

Shrimp effort declined in south Texas waters in early March from unusually high levels of effort in February, and strandings were generally low throughout Texas during March. In Zone 20, 6 turtles stranded between January 1 and March 18, 1995; all 6 carcasses exhibited severed flippers or other straight-edge wounds. During the 2 consecutive weeks beginning on April 9, 1995, 3 turtles stranded per week on the offshore beaches of Zone 20, where the ITL was 4 turtles. Of those 6 turtles, 3 were Kemp's ridleys. One of the loggerhead turtles recovered in Zone 20 exhibited straight-edge wounds. Most recently, during the first 2 days of the week beginning on April 23, 5 turtles, including 3 ridleys, have stranded in Zone 20.

Elevated strandings for two consecutive weeks have been reported for two additional zones in Texas. Within Zone 19, strandings were above historical levels and met or exceeded the established ITL between March 26, 1995 and April 8, 1995. However, only one turtle stranded in each of the two following weeks. In Zone 21, which lies outside the Interim Special Management Areas, stranding levels were at or above the ITL from March 26 to April 15, but fell to only 1 stranding between April 16 and April 22. Because the most recent stranding reports from Zones 19 and 21 have been low, no management action for those zones is being promulgated at this time, but may be required if strandings again rise in those zones.

The most severe stranding rates occurred in Zone 18. Strandings were low in zone 18 until the week beginning April 9, when 12 turtles stranded on offshore beaches, including 9 Kemp's ridleys. A headstarted Kemp's ridley also stranded. For comparison, from 1991-1993, only 1 turtle stranded in Zone 18 during the same time period. During the week beginning April 16, 16 turtles, including 14 Kemp's ridleys, stranded.

### Shrimping Effort and Enforcement

Comprehensive shrimp effort data are not yet available. However, preliminary information regarding activity within observed ports has been collected from NMFS Port Agents and Texas state officials. The data submitted in mid-April, based on landings and port activity, indicated that the fishery active in Texas and Louisiana did not appear to be significantly different from previous years. However, United States Coast Guard (USCG) personnel conducting overflights off Texas during the week of April 23, reported extremely heavy shrimping effort nearshore in Zones 18 and 20. The location and level

of effort has varied, and has been affected, in part, by fluctuating weather conditions. Beach workers have reported concentrations of shrimping vessels in the vicinity of strandings during the week beginning April 9 and April 16. Recent turbulent weather may have shifted effort into nearshore waters where white shrimp are being targeted.

Enforcement efforts have been increased in the Northern Gulf Interim Special Management Area, especially in Zones 17 through 20. The USCG has doubled their normal operating level in response to the increased strandings reported in early April. NMFS TED Law Enforcement Team members have been deployed to the northern Gulf since April 1. Additional NMFS agents were added to enforcement efforts in Texas during the week of April 16-22 due to the continued strandings.

Enforcement efforts have not identified any recurring gear problems in the northern Gulf in 1995. NMFS gear specialists have been conducting informational and training workshops to assist shrimpers use TEDs. They report encountering soft TEDs with escape openings that were too small and hard TEDs with illegal ramps. Two net shops in Alabama were identified that were unaware that hard TEDs with ramps were not legal, and they have stopped manufacturing TEDs with ramps.

### Analysis of Other Factors

NMFS has investigated factors other than shrimping that may contribute to sea turtle mortality in the northern Gulf, including environmental conditions, oil and gas activities, and other fisheries. There is no information to suggest that red tide or other environmental conditions have contributed to sea turtle strandings thus far in 1995. There were no oil platform removals by explosives during March 1995. One platform was removed on April 17 and 18, 30 miles (48.27 km) south of Cameron, LA. No sea turtles were sighted by the NMFS observers monitoring the rig removal. Seismic survey vessels have been operating throughout the northern Gulf, primarily beyond 10 nm (18.5 km) from shore. One vessel was operating from the beach in the center of the Matagorda Peninsula (Zone 19) out to 9 nm (16.7 km) between April 16 and April 18, during a week of low strandings for that zone. Seismic activities will be ongoing from Freeport through the southern end of the Matagorda Peninsula for the rest of the summer. NMFS has no information to suggest that seismic activities result in sea turtle mortalities. While observers on menhaden vessels have never observed the incidental take of a sea turtle, interactions with the

menhaden fishery are possible, but not likely to be fatal. The menhaden fishery opens the third Monday in April in northern Gulf waters (April 17 in 1995), and therefore would not have contributed to any of the strandings documented before that time.

A preliminary analysis of satellite sea surface data for the Gulf of Mexico, indicates that oceanographic conditions along the Texas-Louisiana coast are normal for this time of the year. The normal current flow from northeast to southwest along the Texas and Louisiana coastline is in place.

#### Restrictions on Fishing by Shrimp Trawlers

The Biological Opinion provides that conservation measures are to be implemented as mortality levels approach incidental take levels established in the Incidental Take Statement in order to ensure that shrimping is not likely to jeopardize the continued existence of Kemp's ridley. The Biological Opinion specifically provides that such measures will be implemented immediately when sea turtle takings, indicated or documented, reach 75 percent of the established levels. These measures are intended to allow shrimp fishing to continue, while reducing the likelihood of further sea turtle strandings. The ERP provides further guidance on the nature and geographic scope of such measures. As noted in the foregoing discussion, strandings have met or exceeded the 75 percent threshold of the ITL in zones 18 and 20, therefore conservation measures are being promulgated.

Pursuant to 50 CFR 227.72(e)(6), the exemption for incidental taking of sea turtles in 50 CFR 227.72(e)(1) does not authorize the incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an incidental take statement or biological opinion, and may be likely to jeopardize the continued existence of a species listed under the Act. The AA has determined that continued takings of sea turtles by shrimp fishing are unauthorized, and therefore promulgates this action.

The measures that NMFS is promulgating include:

1. Prohibition of the use of soft TEDs;
2. Prohibition of the use of bottom opening TEDs;
3. Prohibition of the use of try nets, unless equipped with NMFS-approved TEDs other than soft or bottom-opening TEDs; and,
4. Prohibition of the use of webbing flaps that completely cover the escape opening of TEDs, as described in the Requirements section herein.

These restrictions are being applied in the Gulf of Mexico offshore waters seaward to 10 nm (18.5 km) along 2 sections of the Texas and Louisiana coasts, between 27° N. lat. and 28° N. lat. and between 95°13' W. long. and 93°20.5' W. long. Under 50 CFR 217.12, offshore is defined as marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

This area includes the nearshore waters of Zones 20 and 18, where elevated sea turtle strandings are occurring, and the western portion of Zone 17 east to Calcasieu Pass, LA, and the extreme northeastern portion of zone 19. This portion of Zone 17 is included in the affected area for several reasons. The first is the likelihood that some of the carcasses documented in Zone 18 were taken in Zone 17 and carried into Zone 18 by the westward flowing current. Secondly, the areas immediately around Sabine Pass and Calcasieu Pass have been identified as high-use habitat for Kemp's ridley turtles. They are also the sites of heavy shrimping effort. Thirdly, limiting the restricted area to the eastern boundary of Zone 17 may shift some shrimping effort to the east, increasing the already heavy fishing pressure around Sabine Pass and Calcasieu Pass and increasing the threat to sea turtles from intensive shrimp trawling. Finally, in the week beginning April 16, 1995, 2 Kemp's ridley turtles stranded in the Texas portion of Zone 17, which includes only about 8.5 nm (14.8 km) of the 58 miles (93.3 km) of coastline in Zone 17. No strandings have been reported in the Louisiana portion of Zone 17, but most of the shoreline in Louisiana is inaccessible or poorly monitored for sea turtle strandings. As described in the ERP, NMFS may extend conservation measures in any statistical zone to portions of contiguous zones as determined necessary.

These restrictions will allow fishing by shrimp trawlers to continue in these statistical areas despite elevated rates of turtle strandings. Gear types that have the greatest potential for turtle capture are prohibited. Although soft TEDs and bottom opening TEDs are generally approved for use, NMFS believes that they may not be as effective, under some conditions, as top opening hard TEDs at releasing turtles. NMFS has previously promulgated regulations to address and discuss problems with bottom-opening hard TEDs (59 FR 33447, June 29, 1994; 60 FR 15512, March 24, 1995).

Notwithstanding the required use of floats, turtles may be more susceptible to capture in bottom-opening TEDs. Pursuant to 50 CFR 227.72(e)(2)(ii)(B)(1), try nets 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. Turtles are, however, caught in try nets, and either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including one mortality, have been documented by NMFS. Finally, webbing flaps have been permitted to help reduce shrimp loss with TEDs, but may be hindering turtle release. In a top-opening TED, high pressure is generated above the trawl net which forces the webbing flap closed; while in a bottom-opening TED, the weight of the TED grid can pin the webbing flap shut over the escape opening. Additionally, the webbing flap can be sewn shut to disable the TED deliberately. Under these temporary restrictions, only NMFS-approved hard or special hard TEDs with top escape openings may be used in shrimp trawls in the specified areas. If flaps are used, they may not cover the escape opening. Figure 1 illustrates a top-opening hard TED with a shortened webbing flap meeting the dimension requirements of this emergency action.

#### Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12 are applicable to this action, as well as all relevant provisions in 50 CFR parts 217 and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72 (e)(3) or (e)(6).

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that for a 30-day period, starting 12:01 a.m. (local time) on April 30, 1995, and ending 11:59 p.m. (local time) on May 30, 1995, fishing by shrimp trawlers in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, along 2 sections of the Texas and Louisiana coast, the first bounded between 27° N. lat. and 28° N. lat. and the second bounded between 95°13' W. long. and 93°20.5' W. long., is prohibited unless shrimp trawlers comply with the following restrictions to the exceptions for incidental taking in 50 CFR 227.72(e):

1. Use of soft TEDs described in 50 CFR 227.72(e)(4)(iii) is prohibited.

2. Use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

3. Use of try nets with a headrope length of 20 ft (6.1 m) or less is prohibited unless an NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing.

4. Use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing which is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid (see Figure 1). The requirements for the size of the escape opening are unchanged.

All provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(1) (use of try nets), 50 CFR 227.72(e)(4)(iii) (approval of soft TEDs), 50 CFR 227.72(e)(4)(i)(F) (position of escape opening), and 50 CFR 227.72(e)(4)(iv)(C) (webbing flap), that do not conform to these requirements are hereby suspended for the duration of this action.

NMFS hereby notifies owners and operators of shrimp trawlers in the area subject to restrictions that they may be required to carry an NMFS-approved observer aboard such vessel(s) if selected to do so by the Director, Southeast Region, NMFS, upon written notification sent to either the address specified for the vessel registration or documentation purposes, or otherwise served on the owner or operator of the vessel. Shrimp trawlers must comply with the terms and conditions specified in such written notification.

#### **Additional Conservation Measures**

The AA may withdraw or modify the requirement for specific conservation measures or any restriction on

shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day emergency action, will be published in the **Federal Register** pursuant to 50 CFR 227.72(e)(6).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures. If, after these restrictions are instituted, strandings in statistical areas 17, 18, and/or 20 persist at or above 75 percent of the ITL for 2 weeks, NMFS will follow the guidance in the ERP to determine whether to prohibit fishing by some or all shrimp trawlers, as required, in the offshore waters of statistical areas 17, 18, and/or 20 seaward to 10 nm (18.5 km) from the COLREGS line, for a period of 30 days. Contiguous statistical areas or portions of those areas may be included in the closure as necessary. These restrictions may apply to gear types/vessels currently exempted from the TED requirement at 50 CFR 227.72(e)(2)(ii)(A) and/or (B). Area closures will be promulgated through emergency rulemaking notices pursuant to the procedures identified at 50 CFR 227.72(e)(6).

#### **Classification**

The AA has determined that this action is necessary to respond to an emergency situation to conserve and provide adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Because neither section 553 of the Administrative Procedure Act (APA), nor any other law requires that general notice of proposed rulemaking be published for this action, and under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

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

Pursuant to section 553(b)(B) of the APA, the AA finds there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable and contrary to the public interest to provide prior notice and opportunity for comment because unusually high levels of turtle strandings have been reported in shrimp fishery statistical areas 18 and 20 and continue to occur as shrimping continues. Any delay in this action will likely result in additional fatal takings of listed sea turtles.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the 30-day delayed effective date. In addition to the need to protect listed sea turtles, these restrictions are expected to impose only a minor burden on shrimp fishermen. The predominant TED design in use in the affected area is a bottom-opening hard grid TED. Bottom-opening hard grid TEDs can be modified to comply with these restrictions in one to two hours. Any webbing flap over the escape opening can be shortened in less than ten minutes. Trawlers equipped with soft TEDs may be required to move out of the affected area, either offshore or alongshore, or to equip their nets with hard TEDs. Hard grid TEDs are available for as little as \$75.00 and take several hours to install. Finally, some fishermen may not elect to equip their try nets with hard grid TEDs. These fishermen would then be unable to monitor their catch rate during long tows.

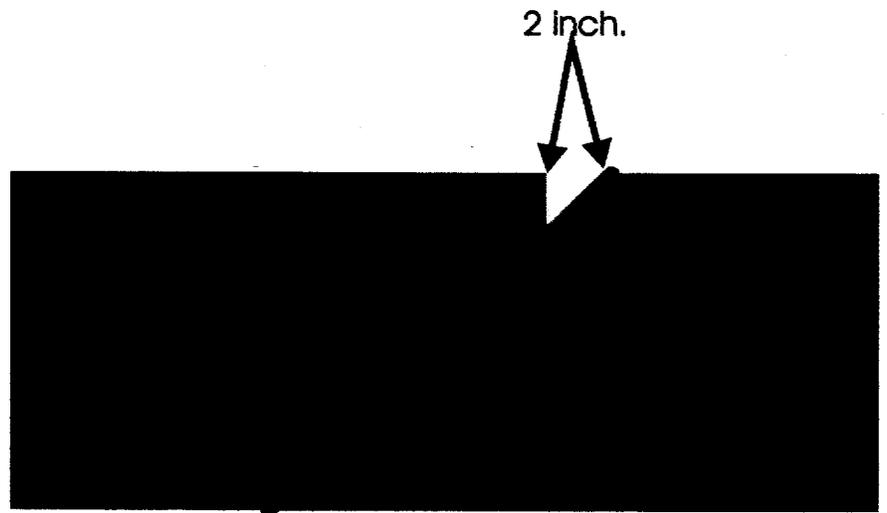
The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and establishing the 30-day notice procedures. A supplemental EA has been prepared for this action. Copies of the EA and the supplemental EA are available (see **ADDRESSES**).

Dated: April 27, 1995.

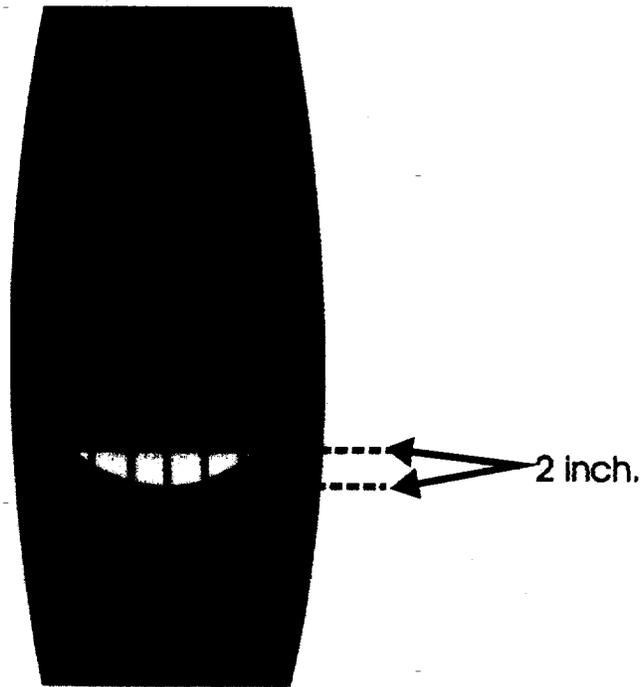
**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

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SIDE VIEW



TOP VIEW

FIGURE 1 SHORTENED WEBBING OVER THE ESCAPE OPENING COMPLYING WITH REQUIREMENT NUMBER 4 OF THIS ACTION.