

itself is ultimately responsible for the development of newly emerging networks or that repeal of the rule will threaten the station base of the new networks. Those favoring repeal of the rule established that the rule unnecessarily limits the programming choices of network-affiliated stations in the Top 50 television markets and discourages investment in network programming, without off-setting public interest benefits.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

#### Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. Sections 154, 303, 334.

#### § 73.658 [Amended]

2. Section 73.658 is amended by removing and reserving paragraph (k).

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-21319 Filed 8-28-95; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 217 and 227

[Docket No. 950427119-5214-06; I.D. 081495A]

RIN 0648-AH98

#### Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawling Activities; Additional Turtle Excluder Device Requirements Within Certain Fishery 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 the inshore and nearshore waters off Texas and a portion of Louisiana to protect sea turtles; request for comments.

**SUMMARY:** NMFS is imposing temporary additional restrictions on shrimp trawlers fishing in all inshore waters and offshore waters out to 12 nautical miles (nm) (22.2 km) from the COLREGS line, between the United States-Mexico border and 93° W. long. This area includes all of the Texas coast and the western portion of the Louisiana coast, and includes NMFS shrimp fishery statistical Zones 17 through 21. The restrictions include prohibitions on the use by shrimp trawlers of: Soft turtle excluder devices (TEDs); try nets with a headrope length greater than 15 ft (4.6 m), unless the try nets are equipped with approved TEDs other than soft TEDs; and a webbing flap that completely covers the escape opening in NMFS-approved top-opening TEDs. This action is based upon a ruling from U.S. District Judge, Southern District of Texas, Galveston Division, in *Center for Marine Conservation v. Brown*, No. G-94-660 (S.D. TX, Aug. 1, 1995) in order to facilitate administration and enforcement of the court order.

**DATES:** This action is effective August 24, 1995 until 30 minutes past sunset (local time) on September 10, 1995. Comments on this action must be submitted by September 26, 1995.

**ADDRESSES:** Comments on this action and requests for a copy of the 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 Phil Williams, 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 (defined in 50 CFR 217.12) 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 and Atlantic Areas 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 (ITS) or incidental take permit. Upon a determination that incidental takings of sea turtles during fishing activities are not authorized, additional restrictions may be imposed to conserve listed species and to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each (50 CFR 227.72(e)(6)).

## Biological Opinion

On November 14, 1994, NMFS issued a BO that concluded that the continued long-term operation of the shrimp fishery in the nearshore waters of the southeastern United States resulting in levels of mortalities observed in 1994 was likely to jeopardize the continued existence of the highly endangered Kemp's ridley and could prevent the recovery of the loggerhead. This BO 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, Georgia, and Florida in the spring and summer of 1994, coinciding with heavy nearshore shrimp trawling activity. Pursuant to section 7(b)(3) 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 BO was accompanied by an ITS, pursuant to section 7(b)(4)(i) of the ESA, that specifies the impact of such incidental taking on the species. The ITS, establishment of the indicated take levels (ITLs), and development of the Shrimp Fishery/Emergency Response Plan (ERP) as required in the reasonable and prudent alternative of the November 14, 1994, BO have been discussed in previous **Federal Register** publications (60 FR 19885, April 21, 1995, 60 FR 21741, May 3, 1995, 60 FR 26691, May 18, 1995, 60 FR 31696, June 16, 1995, 60 FR 32121, June 20, 1995, and 60 FR 42809, August 17, 1995) and are not repeated here.

## Recent Events

### Texas Strandings

The waters off Texas were closed to shrimp fishing on May 15, 1995, for the annual closure that is coordinated by State and Federal fisheries managers to allow shrimp to grow larger and therefore more valuable. The closure period is usually marked by low levels of sea turtle strandings, and during the 8 weeks of the 1995 Texas closure, only 15 sea turtle strandings, including two Kemp's ridleys, were reported on offshore Texas beaches.

On July 15, 1995, Texas waters, out to 200 nm (370.6 km) from shore, re-opened to shrimping. The 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. There were 18 strandings in 1995 versus 49 in 1994. Most of the strandings occurred in Zones 19 and 20, which had 11 and four, respectively, including three Kemp's ridleys. The strandings in Zones 19 and 20 exceeded the established ITLs of three and two, respectively, while strandings in Zones 17, 18, and 21 remained below the ITLs. Only one turtle stranded in Zone 21, two Kemp's ridleys stranded in Zone 18, and none stranded in Zone 17. During the second week following the Texas re-opening, seven sea turtles stranded on Texas offshore beaches. The three strandings in Zone 20 exceeded the ITL for that Zone, and the four strandings in Zone 19 matched 75 percent of the ITL. No turtles stranded in Zones 18 or 21 or the Texas portion of Zone 17. Again, a total of seven strandings compares favorably with the 30 strandings that occurred in Texas during the second week after the re-opening in 1994. During the third week following the Texas re-opening, strandings remained fairly low statewide, with five turtles, all of which occurred in Zones 19 and 21, where the ITLs were met or exceeded.

Enforcement reports indicated significant improvements in TED deployment in the fleet of shrimp trawlers operating in Texas offshore waters in July 1995. Generally, observed TEDs were properly installed, and floats were being used correctly in bottom-opening hard-grid TEDs. Observed compliance has been very high: Out of 361 boardings conducted by U.S. Coast Guard Group Galveston through July 27, only 7 TED violations were documented, for an observed compliance rate over 98 percent.

Since Texas waters re-opened to shrimping, Coast Guard District Eight Office of Law Enforcement summarized boarding information for NMFS and reported that soft-TED use was much more common in the zones of high strandings. 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. Also, 79 percent of the trawlers boarded in Zone 18 were voluntarily using top-opening hard grid TEDs, as had been requested by NMFS. In 1994 and the spring of 1995, Zone 18 had the highest rates of Kemp's ridley strandings in Texas. The two strandings in Zone 18 in the first 2 weeks following the Texas opening, therefore, represents a substantial improvement, related in large part to the voluntary adoption of recommended TED types by shrimpers. However, a relatively large percentage of trawlers operating in Zones 19 and 20, the two zones where stranding levels have been approached or exceeded for two consecutive weeks, are using soft TEDs.

Due to these strandings, NMFS intended to implement emergency restrictions on the shrimp fishery along the entire Texas coast out to 10 nm (18.5 km) identical to those implemented on the shrimp fishery along the coast of Georgia and a portion of South Carolina (60 FR 42809, August 17, 1995), i.e., prohibiting soft TEDs, and requiring hard-grid TEDs in trynets with a headrope length of greater than 12 ft (3.6 m) and a footrope length of greater than 15 ft (4.5 m).

## Court Order

On August 1, 1995, the Federal District Court of the Southern District of Texas, Galveston Division, ordered certain gear restrictions, effective from August 3 through September 10, 1995, in *Center for Marine Conservation v. Brown*. The court order is effective in all inshore waters and offshore waters out to 12 nm (22.2 km) in NMFS statistical Zones 17 through 21, and includes a prohibition on the use of soft TEDs, a requirement to use hard grid TEDs with trynets with a headrope length greater than 15 ft (4.6 m), and a prohibition on the use of full length webbing flaps completely covering the escape opening. The court further noted that proper flotation, as required by existing sea turtle conservation regulations, must be used on bottom-opening hard TEDs. In

addition, the court allowed shrimpers an additional 10 days, until August 11, 1995, to comply with the order, if they would provide an affidavit stating that they could not comply with the order prior to that date because at the time the order was issued either they were at sea or hard-TEDs were not available.

NMFS issued a press release on August 2, 1995, that announced and described the court order. In addition, NMFS has discussed the order in its weekly reports. NMFS is now implementing this temporary action to implement the court order in regulatory form. While this action was not required by the court, NMFS believes that it will facilitate administration and enforcement of the court order, and provide greater certainty and notice to shrimpers as to the requirements of the order. Specifically, NMFS is applying certain regulatory definitions and terms to this court order. Additionally, with this action, U.S. Coast Guard and NMFS enforcement agents will be able to enforce the requirements of the order as authorized by law. The order was effective August 3, 1995, and this rule is being made effective immediately upon filing with the **Federal Register**.

The court explicitly allowed NMFS to use discretion to take any further action necessary to protect sea turtles in addition to the judicial order. However, at this time, NMFS believes that this action, which mirrors the court order, will be adequate to reduce sea turtle strandings to levels required by the relevant BOs, including those issued

November 14, 1994; April 26, 1995; August 8, 1995; and the one accompanying this action. While this action does not include further gear restrictions, it allows NMFS to require owners and operators of shrimp trawlers in Zones 17 to 21 to carry a NMFS-approved observer upon written notification by the Regional Director of NMFS.

#### Requirements

This action is taken under/authorized by 50 CFR 227.72(e)(6), the exemption for incidental taking of sea turtles in 50 CFR 227.72(e)(1) does not authorize incidental takings during fishing activities if the takings violate the restrictions, terms or conditions of an ITS or incidental take permit, or may be likely to jeopardize the continued existence of a species listed under the ESA. Based on the court ruling in *Center for Marine Conservation v. Brown* and the foregoing analysis of relevant factors, the Assistant Administrator for Fisheries (AA) has determined that continued takings of sea turtles by shrimp fishing off Texas and the western portion of Louisiana are unauthorized and therefore takes this action.

All relevant provisions in 50 CFR parts 217 and 227, including the definitions in 50 CFR 217.12 are applicable to this action. 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). Under 50 CFR 217.12, inshore is defined as marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80, and offshore is defined as marine and tidal waters seaward of the 72 COLREGS demarcation line.

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that from August 24, 1995 until 30 minutes past sunset (local time) on September 10, 1995, fishing by shrimp trawlers in all inshore waters and offshore waters seaward to 12 nm (22.2 km) from the COLREGS line along the coast of Texas between the United States-Mexico border through the western portion of Louisiana coast to 93° W. long. (Zones 17 through 21), shall be in compliance with all applicable provisions of 50 CFR 227.72(e) except as modified below:

1. The use of soft TEDs described in 50 CFR 227.72(e)(4)(iii) is prohibited.
2. The use of try nets with a headrope length greater than 15 ft (4.6 m), is prohibited, unless the try nets are equipped with a NMFS-approved hard TED or special hard TED (described in 50 CFR 227.72(e)(4)(ii)). Try nets with a headrope length of 15 ft (4.6 m) or less remain exempt from the requirement to have a TED installed in accordance with 50 CFR 227.72(e)(2)(ii)(B)(1).

3. Use of a webbing flap that completely covers the escape opening in NMFS-approved top-opening TEDs is prohibited. Any webbing that is attached to the trawl forward of the escape opening, must be cut to a length so that the tailing edge of such webbing is at least (5.1 cm) forward of the posterior edge of the TED grid (see Figure 1.).

All provisions of 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(1) (use of try nets), and 50 CFR 227.72(e)(4)(iii) (Soft TEDs), that are inconsistent with these prohibitions 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 are required to carry a NMFS-approved observer aboard such vessel(s) if directed to do so by the Regional Director, 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. Owners and operators and their crew must comply with the terms and conditions specified in such written notification.

#### **Additional Conservation Measures**

In issuing its order in *Center for Marine Conservation v. Brown*, the court explicitly stated that NMFS may impose any additional restrictions if NMFS deems appropriate. Notification of any additional sea turtle conservation measures, including any extension or

modification of this 30-day 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 Texas or affected areas of Louisiana persist at or above 75 percent of the ITL for 2 weeks, NMFS will determine whether to restrict or prohibit fishing by some or all shrimp trawlers, as required, in the inshore and offshore waters of all or parts of NMFS statistical Zones 17 through 21 seaward to 12 nm (22.2 km) from the COLREGS line. Contiguous statistical zones or portions of those zones may be included in the restrictions or closure, as necessary. Expansion of gear restrictions will also be considered as a measure to control sea turtle strandings. Area closures or additional gear restrictions will be implemented through emergency rulemaking notification(s) pursuant to the procedures set forth at 50 CFR 227.72(e)(6).

#### **Classification**

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

Because neither section 553 of the Administrative Procedure Act (APA), nor any other law requires that general notification of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act,

an initial Regulatory Flexibility Analysis is not required.

Pursuant to section 553(b)(B) of the APA, the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. It is unnecessary, impracticable and contrary to the public interest to provide prior notification and opportunity for comment, because the requirements of this action are already in effect as a result of the court order issued on August 1, 1995. Furthermore, regulatory implementation of the court order will facilitate its administration and enforcement and will assist shrimpers to comply with the order. Therefore, this action should not be delayed. Last, by facilitating compliance with the court order, this action will likely mitigate adverse impacts on sea turtles.

Pursuant to section 553(d) of the APA, the AA finds that there is good cause to waive the 30-day delay in effective date. As stated above, the requirements of this action are already in effect pursuant to the court order.

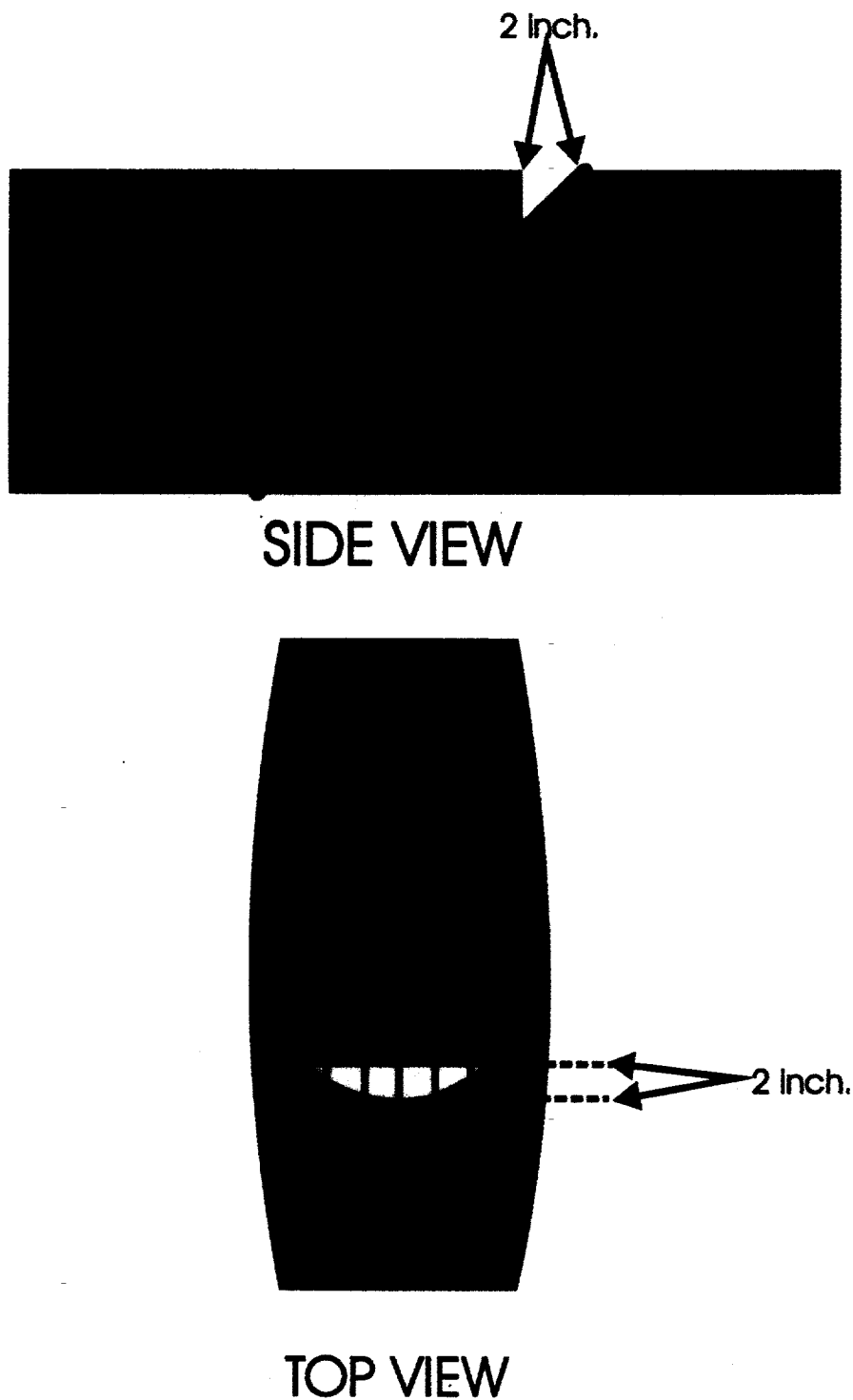
The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and establishing the 30-day notice procedures. Copies of the EA are available (see **ADDRESSES**).

Dated: August 23, 1995.

**Nancy Foster,**

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

**BILLING CODE 3510-22-F**



**FIGURE 1--SHORTENED WEBBING OVER THE ESCAPE OPENING COMPLYING WITH REQUIREMENT NUMBER 3 OF THIS ACTION.**