

with the stipulations in those final regulations. The Service has determined that it has met the requirements of the Beaufort Sea regulations.

Effective Date of Rule

In accordance with 5 U.S.C. 553(d)(1), the Service has determined that this final rule is effective on August 16, 1995. It is considered to be a substantive rule, the provisions of which relieve restrictions on Industry operations in the Beaufort Sea and adjacent northern coast of Alaska (excluding the Arctic National Wildlife Refuge) by authorizing incidental takes of polar bears and walrus during year-round oil and gas operations under provisions of the MMPA. Any delay in the effective date beyond August 16, 1995, could subject the Industry to penalties as provided in the MMPA if it conducted activities that resulted in incidental take of polar bears or walrus.

Required Determinations

During the rulemaking process to develop Beaufort Sea regulations, the Service prepared an Environmental Assessment with a FONSI on Industry's proposed actions. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Service determined the rule would not have a significant economic effect on a substantial number of small entities. Oil companies and their contractors, conducting exploration, development, and production activities in Alaska, were identified as the only likely applicants under the regulations, and these potential applicants were not identified as small businesses. Furthermore, the final rule was not expected to have a potential takings implication under Executive Order 12630 because it authorized incidental, but not intentional, take of polar bears and walrus by Industry and thereby exempted them from civil and criminal liability. The rule also did not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612. The above identified required determinations associated with the Service's original rulemaking process associated with the Beaufort Sea are still valid for this current final rule.

The collections of information associated with this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018-0070.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, Part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 continues to read as follows:

16 U.S.C. 1361 *et seq.*

2. Section 181.121 is amended by correcting the typographical error in the second sentence as follows:

The phrase “* * * Outer Continental Shelf waters east of * * *” is revised to read “* * * Outer Continental Shelf waters east of * * *”

3. Section 18.122 is revised to read as follows:

§ 18.122 Effective dates.

Regulations in this subpart will continue in effect through December 15, 1998, for oil and gas exploration, development, and production activities.

4. Sections 18.123(b) of subpart J is revised to read as follows:

§ 18.123 Permissible methods.

* * * * *

(b) The methods and activities identified in § 18.123(a) must be conducted in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and walrus, their habitat and on the availability of these marine mammals for subsistence uses.”

Dated: August 14, 1995.

Robert P. Davison,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427119-5203-05; I.D. 080195D]

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 nearshore waters off Georgia and a portion of South Carolina to protect sea turtles; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, additional restrictions on shrimp trawlers fishing in offshore waters out to 10 nautical miles (nm) (18.5 km) from the COLREGS line between 30°45' N. lat. and 33°00' N. lat. in the Atlantic Area. This area includes all of the Georgia coast and the southern portion of the South Carolina coast, which includes all or a portion of Zones 30 through 32. The restrictions include prohibitions on the use by shrimp trawlers of soft turtle excluder devices (TEDs) and try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with approved TEDs other than soft TEDs. This action is necessary to ensure protection for sea turtles and to prevent the continuation of high levels of mortality and strandings of threatened and endangered sea turtles.

DATES: This action is effective from 12:01 a.m. (local time) August 11, 1995, until 11:59 p.m. (local time) on September 9, 1995. Comments on this action must be submitted by September 13, 1995.

ADDRESSES: Comments on this action and requests for a copy of the environmental assessment (EA) or 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 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 (as 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 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 by NMFS observers or enforcement personnel, 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 the 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 3 years (taking into consideration anomalous years). In Texas and Georgia, where strandings were anomalously high in 1994 and represent a jeopardy situation for Kemp's ridleys, the years 1991-93 were used to determine historical levels. The weekly average was computed as a 5-week running average (2 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 2 times the weekly 3-year stranding average. For weeks and zones where the historical average was less than one, the ITL was set at two strandings.

As discussed below, consultation was again reinitiated as a result of high levels of strandings in the Gulf this year, and concluded with the issuance of BOs on April 26, 1995 and June 14, 1995. These BOs reaffirmed the reasonable and prudent alternative and ITS provided in the November 14, 1994, BO. A BO has also been prepared in conjunction with this action and the elevated strandings prompting it.

The Emergency Response Plan

The reasonable and prudent alternative of the November 14, 1994, BO and the accompanying ITS 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). Comments on the ERP have been accepted since its official distribution on March 17, 1995. Comments have come from written correspondences and

public statements made during meetings with the industry and conservation communities. The ERP provides for elevated enforcement of TED regulations in two areas in which strandings of Kemp's ridley sea turtles historically have been 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 BO 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 restrictions originally identified in the ERP (60 FR 19885, April 21, 1995) and imposed in certain statistical areas in the Gulf of Mexico (60 FR 21741, May 3, 1995) were modified subsequently (60 FR 26691, May 18, 1995). A detailed discussion of those restrictions, the modification, and reasons therefor, is provided in those notices and is not repeated here.

As described in the ERP, when strandings remain elevated for 1 month in zones outside (Zones 1 through 12, 21, 24 through 29, 32 through 36) the Interim Special Management Areas, NMFS, upon the determination of the Director, Southeast Region, NMFS (Regional Director), may implement management actions, similar to those specified for the Interim Special Management Areas.

Recent Events

Sea turtle strandings on offshore beaches in a number of NMFS fishery statistical zones in the southeastern United States have exceeded the established ITLs specified in the November 14, 1994, BO, during 1995. Temporary restrictions on shrimp fishing were imposed in some zones of Texas and western Louisiana on April 27, 1995 (60 FR 21741, May 3, 1995; as modified 60 FR 26691, May 18, 1995) and in Georgia on June 21, 1995 (60 FR 32121, June 20, 1995), in response to elevated strandings within those zones. Recent strandings in Georgia, and South Carolina have again exceeded the established ITLs, as delineated below.

South Carolina Strandings

South Carolina waters, which fall within NMFS statistical Zones 32 and 33, were opened to shrimping on May 16, 1995. By May 20, strandings had reached the ITL in Zone 32. The following week, strandings exceeded the ITL in Zone 33. In subsequent weeks, strandings in South Carolina exceeded the ITLs several times in Zones 32 and 33, but weeks of high strandings generally alternated with weeks of low strandings and no additional management measures to protect turtles were taken. In the past 4 weeks, however, strandings in Zone 32 have remained elevated. Three turtles stranded in Zone 32 between July 2 and July 8. The next week, 8 turtles, including 2 Kemp's ridleys stranded in Zone 32. Seven more turtles stranded in the 2 weeks ending on July 29, 1995. Taken together, 18 turtles have stranded on the offshore beaches of Zone 32 over a 4 week period for which the combined ITL was 17.

NMFS has increased enforcement efforts in South Carolina in response to the elevated sea turtle strandings there. Enforcement observations early in the season suggested that compliance with the TED requirements was high in South Carolina; however, soft TEDs were observed in almost 50 percent of the nets inspected in South Carolina waters this year, and all hard-grid TEDs observed had bottom-escape openings. Shrimp fishing effort off South Carolina has been fairly high, with over 100 trawlers observed in South Carolina waters during weekly aerial surveys over the past 2 months.

Georgia Strandings

Georgia waters were opened to shrimping on Thursday, June 1, 1995, and high rates of sea turtle strandings followed immediately with weekly strandings of 21, then 28, then 17 sea turtles on offshore Georgia beaches, prompting NMFS to implement an emergency rule to protect sea turtles. On June 21, 1995, additional gear requirements became effective in offshore waters along the Georgia coast out to 10 nm (18.5 km) from the COLREGS line which prohibited the use of soft TEDs, bottom-opening TEDs, large try nets without TEDs installed, and webbing flaps completely covering the escape opening of TEDs. However, during the first week the emergency rule was effective, nine sea turtle strandings were reported on offshore Georgia beaches. Two and six offshore strandings were reported in the 2 subsequent weeks. The promulgation of the rule was also accompanied by a

marked decrease in shrimping effort in the affected area. Georgia strandings rose again during the week of July 9 to 10 turtles. Although strandings exceeded the ITL in Zone 30 that week, NMFS did not extend the gear restrictions in Georgia, as the overall reduction in strandings had been very encouraging. The emergency restrictions expired on July 20, 1995, and an additional eight turtles stranded on offshore Georgia beaches during the week ending July 22. Between July 23 and July 29, 11 turtles stranded on Georgia offshore beaches, with an additional four strandings just inside the mouths of the bays. These most recent strandings have now met or exceeded 75 percent of the ITL for 3 consecutive weeks in Zone 30 and for 2 consecutive weeks in Zone 31.

Florida Strandings

Although approximately three-fourths of the coastline of Zone 30 lies in Florida, the majority of the past 3 weeks' strandings have occurred in Georgia. Only 1 stranding was reported from the Florida portion of Zone 30 in the week ending July 29. Furthermore, shrimp trawling in Florida is already restricted by a State constitutional amendment which bans most shrimping within 1 nm (1.9 km) of shore.

Analysis of Other Factors

NMFS and state personnel have investigated factors other than shrimping that may contribute to sea turtle mortality in Georgia and South Carolina, including other fisheries and environmental factors. Gillnet effort in North Carolina waters is being investigated in association with strandings in North Carolina as well as in northern South Carolina. Shrimp fishermen have suggested that crabbers in Georgia waters may be intentionally killing sea turtles based on their belief that sea turtles cause damage to crab pots. Three loggerheads have stranded in Georgia with apparent gun shot wounds. Georgia law enforcement personnel are investigating these reports but currently have no information identifying participants of any particular fishery in these intentional mortalities. In summary, no new activity or environmental condition has been identified in the nearshore southeast U.S. Atlantic waters to account for high stranding levels except for continued shrimping effort in South Carolina and Georgia waters. Shrimping effort levels will increase in South Carolina and Georgia in August as the late summer white shrimp season begins.

Comments on the Temporary Additional Restrictions on Shrimp Trawlers in Georgia (60 FR 32121, June 20, 1995)

The June 21 gear restrictions in Georgia prompted verbal comments in a meeting held with the industry on June 28, 1995, and written comments from Georgia Fisherman's Association (GFA), Earth Island Institute (EII), and the Center for Marine Conservation (CMC).

Comment GFA stated that NMFS should address all the causes of turtle mortality, not just the shrimping industry.

Response NMFS recognizes there are non-shrimp related causes of turtle mortality and continues to investigate these sources. Section 7 consultations have been conducted on, but not limited to, seismic activities, dredging operations, and other commercial fisheries.

Comment All commenters agreed that the banning of soft TEDs was warranted as they are not as effective as hard TEDs.

Response NMFS believes that the use of improperly configured soft TEDs and repeated capture of turtles in large try nets pose the greatest threats to turtles in the Atlantic Area. NMFS gear specialists conducted evaluations of soft TEDs installed in various trawl designs purchased from a number of suppliers during September 1994. All the devices met the regulatory requirements for soft TEDs. Trawl evaluations of the TEDs were conducted in the Canaveral ship channel. Seven TED/net configurations were tested. Five turtles were observed upon net retrieval in 21 tows with one configuration; one turtle was observed in 20 tows with another configuration. Three of the configurations also were evaluated for small turtle exclusion through the release of eight captive-reared loggerhead turtles into the nets. Entanglement in the TED panels occurred in two of the three configurations tested. These tests indicate that proper soft TED installation is critical to turtle release.

Comment GFA objected to the prohibition on bottom-opening hard grid TEDs and requested that NMFS rescind it. GFA asserted that Georgia shrimpers were having problems with top-shooting hard TEDs claiming that they lose shrimp, gather debris, are less effective at excluding turtles, and they twist and roll when installed with floats. Additionally, GFA asserted that NMFS would be unable to assess the effectiveness of the gear restrictions implemented in Georgia on June 21, 1995, because too many variables had been changed and the relative roles of soft TEDs and hard TEDs in contributing

to turtle mortalities and strandings could not be determined. EII also urged NMFS to modify its temporary restriction as requested by GFA. CMC also was uncertain about evidence that bottom-shooting hard grid TEDs play a significant role in sea turtle mortalities in Georgia.

Response Fishermen in the Atlantic have predominantly not used top-opening hard TEDs in recent years and may be having particular difficulty adapting to a new gear type. NMFS has also received verbal reports from Georgia fishermen that debris accumulates in the top-opening TEDs, thus hindering the release of turtles. Furthermore, analysis of recent strandings and compliance rates in the Gulf indicate that in areas where shrimpers were using predominately top or bottom-opening hard grid TEDs, there was no difference in documented strandings and that soft TED use was a contributing factor to elevated strandings. Therefore, NMFS believes that implementing only the soft TED and try net restrictions described in the ERP would protect sea turtles and help determine the effectiveness of each restriction.

The ERP identifies four restrictions that NMFS will impose in the event that the stranding thresholds are met. However, the ERP also provides that any rulemaking will be undertaken pursuant to 50 CFR 227.72(e)(6), and justification for the rule will be provided with the rule itself. Furthermore, changes to the prescriptions of the rules would also be explained at the time the rule is promulgated. Lastly, all actions will be predicated on maximizing protections to sea turtles. Consequently, NMFS is not implementing the full suite of restrictions under the ERP in Georgia and South Carolina. However, continued elevated strandings following the implementation of these conservation measures may result in increased gear restrictions or area closures, as set forth in the ERP.

Restrictions on Fishing by Shrimp Trawlers

The November 14, 1994, BO provides a reasonable and prudent alternative requiring conservation measures be implemented as mortality levels approach those established in the ITS to ensure that shrimping is not likely to jeopardize the continued existence of the Kemp's ridley. The BO specifically requires that such measures 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. As noted in the foregoing discussion, strandings have reached or exceeded 75 percent of the ITL in Zone 31 for 2 consecutive weeks, in Zone 30 for 3 consecutive weeks, and in Zone 32 over the past 4 weeks; therefore, conservation measures are being implemented in the waters along the entire coast of Georgia, and in Zone 32 in the waters off South Carolina. NMFS has determined that additional conservation measures are not necessary in the Florida portion of Zone 30 at this time and has limited the extent of the additional conservation measures in Zone 30 to the Georgia portion of that zone.

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 incidental takings during fishing activities if the takings would 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 foregoing analysis of relevant factors, the AA has determined that continued takings of sea turtles by shrimp fishing off Georgia, and in Zone 32 in South Carolina are unauthorized and therefore takes this action.

The measures that NMFS is implementing include:

1. Prohibition of the use of soft TEDs; and
2. Prohibition of the use of try nets, with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with NMFS-approved hard or special hard TEDs.

These restrictions are being applied in offshore waters seaward to 10 nm (18.5 km) along the Georgia and South Carolina coast, between 30°45' N. lat. (the Georgia-Florida border) and 33°00' N. lat. (the northern boundary of Zone 32). The affected areas include the nearshore waters in NMFS fishery statistical Zones 31 and 32 and approximately 18 miles (29.0 km) of the northern portion of Zone 30. 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 NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

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, and anecdotal accounts suggest multiple sea turtle captures in try nets are occurring in Georgia waters. Twenty-foot (6.1 m) try nets are reportedly preferred to smaller try nets by the Atlantic shrimp fleet. During the Canaveral ship channel evaluations, conducted in September 1994 and discussed above, 1 loggerhead was captured in a 13-ft (4.0-m) headrope length try net in 59 tows, while 9 loggerheads were captured in a 20-ft (6.1-m) headrope length try net in 57 tows. Therefore, NMFS has determined that hard-grid TEDs temporarily should be required in try nets with a headrope length greater than 12-ft (6.1-m) or a footrope length greater than 15 ft (4.6 m) in the specified areas.

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 at 12:01 a.m. (local time) August 11, 1995, through 11:59 p.m. (local time) September 9, 1995, fishing by shrimp trawlers in offshore waters seaward to 10 nm (18.5 km) from the COLREGS line along the coast of Georgia and part of South Carolina, between 30°45' N. lat. (the Georgia-Florida border) and 33°00' N. lat. (the northern boundary of Zone 32) is prohibited unless the shrimp trawler is in compliance with all applicable provisions in 50 CFR 227.72(e) and the following prohibitions:

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 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m) is prohibited unless a NMFS-approved hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 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).

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), 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

The AA may withdraw or modify a determination concerning unauthorized takings 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 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 Georgia, or affected areas of South Carolina 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 waters of all or parts of NMFS statistical Zones 30, 31

and/or 32 seaward to 10 nm (18.5 km) from the COLREGS line, for a period of 30 days. Contiguous statistical zones or portions of those zones may be included in the closure as necessary. Expansion of gear restrictions will also be considered as a mitigative measure to control sea turtle strandings. Area closures or additional gear restrictions will be implemented through emergency rulemaking notices 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 notice 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 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 Zones 30, 31, and 32 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 delay in effective date. In addition to the immediate need to protect listed sea turtles, these restrictions are expected to impose only

a minor burden on shrimp fishermen. The predominant TED designs in use in the affected area are hard grid TEDs which will not require any modifications. Trawlers equipped with only soft TEDs may be required to move out of the affected area, or to equip their nets with hard TEDs. However, these trawlers are expected to be few in number given that many may have already equipped their nets with hard TEDs in response to the previous rule requiring the use of such TEDs in Zone 21. For those trawlers who have yet to equip their nets with hard TEDs, hard grid TEDs are available for \$75.00 to \$350.00 and take only several hours to install. While some fishermen may not elect to equip their larger try nets with hard grid TEDs, and thus, would be unable to monitor their catch rate during long tows, they could monitor their catch rate with smaller try nets not required to have an NMFS-approved hard TED installed. The burden of this action on shrimp fishermen is expected to be minimized by the fact that fishermen in most of the affected areas have previously modified or acquired gear to comply with earlier, more stringent restrictions.

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. An EA has been prepared for this action. Copies of the EA are available (see **ADDRESSES**).

Dated: August 9, 1995.

Charles Karnella,

*Acting Program Management Officer,
National Marine Fisheries Service.*

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