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Deputy Associate Director, Mitigation Directorate.

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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.