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 Kemph'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 topopening TED, high pressure is generated above the trawl net which forces the webbing flap closed; while in a bottomopening 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

Requirements

emergency action.

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).

a shortened webbing flap meeting the

dimension requirements of this

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.