out to 200 nm (370.6 km) were closed to shrimping on May 15, and only 1 turtle stranded in Zone 18 between May 14 and May 20. For the 3 consecutive weeks beginning April 9 and ending April 29, strandings in Zone 20 were 3, 3, and 16 turtles per week, respectively. Seven of the 22 turtles were Kemp's ridleys. The temporary restrictions went into effect on April 30, and only 3 turtles stranded in Zone 20 over the next 3 weeks. These strandings approach or exceed the indicated take levels established for those zones with the exception of Zone 18 following the closure of waters off Texas and Zone 20 following the effective date of the temporary restrictions.

While the ERP's approach is to respond to increases in strandings as they occur, this proposed rule seeks to anticipate and prevent strandings before they occur. Many of the comments that NMFS received on the temporary restrictions published on May 3 concerned the lack of prior notice and opportunity for public comment (see Comments on the Emergency Response Plan and Temporary Restrictions section below). NMFS seeks to address this criticism by providing prior notice and an opportunity for public comment through publishing this proposed rule, which would impose certain restrictions upon the reopening of the waters off Texas. Based on historical data, the thresholds identified in the ERP and ITS likely will be reached and perhaps exceeded shortly after the reopening of the waters off Texas if no additional restrictions are imposed (see Texas Closure section below). NMFS believes that, if the restrictions contained in this proposed rule are not imposed effective upon the reopening of the waters off Texas, the thresholds identified in the ERP will be met or exceeded and restrictions pursuant to 50 CFR 227.72(e)(6) will need to be imposed shortly thereafter, with little or no prior notice or opportunity for prior public comment and little or no delayed effective date. In addition, although this proposed rule is not based on the thresholds identified in the ERP having been reached, it would impose the same restrictions identified in the ERP and promulgated on May 3, and as modified on May 18, 1995 (60 FR 26691). Given the relationship between this rule, the ERP and the temporary restrictions imposed pursuant to 50 CFR 227.72(e)(6), NMFS considered the comments received on the ERP and the temporary restrictions imposed on May 3, 1995 in developing this proposed rule.

The Texas Closure

Every year, offshore waters along Texas boundaries are closed to shrimp fishing out to 200 nm (370.6 km) for approximately 6 to 8 weeks in the late spring and early summer. The Texas closure is coordinated each year by State and Federal fishery managers to allow shrimp to grow to more valuable sizes and increase profits in the fishery. The Texas closure began this year on May 15 and will end no later than July 15. The exact date of the reopening is set by the State of Texas, which monitors shrimp sizes and distributions to determine the optimum time to open the fishery. Over the last 5 years, the waters have always been reopened earlier than July 15.

The reopening of waters off Texas after the closure is usually marked by heavy shrimping activity, with many shrimp vessels from Texas and other states participating. Sea turtle strandings in Texas historically have been low during the closure and have increased dramatically when the waters off Texas were reopened to shrimping. A comparison of strandings during the last 4 weeks of the closure to strandings during the first 4 weeks following the reopening to shrimping, clearly illustrates this trend. For example, in 1990, 6 dead turtles stranded on Texas offshore beaches in the 4 weeks before reopening, while 51 dead turtles stranded in the 4 weeks following reopening. In 1991, the corresponding stranding rates were 4 and 21; in 1992, 3 and 25; in 1993, 4 and 24. In 1994, 9 dead sea turtles stranded in Texas during the 4 weeks prior to reopening, while 99 dead turtles stranded in the 4 weeks following reopening. These data suggest an 81/2 fold increase in sea turtle strandings in Texas over the last 5 years following the reopening of the waters off Texas to shrimping

NMFS and the U.S. Coast Guard maintained high levels of enforcement of TED requirements throughout the waters off Texas prior to the Texas closure. In addition, NMFS gear experts conducted skill-building workshops in Texas during the spring to assist shrimpers regarding the proper use of TEDs. Nonetheless, continued elevated sea turtle strandings occurred in two statistical zones in Texas where shrimp trawl effort was high, and this required NMFS to impose additional restrictions to conserve listed sea turtles in accordance with the ERP. Before the restrictions were implemented, total sea turtle strandings in Texas were occurring at the same rate seen in 1994, which had been determined to likely jeopardize the continued existence of

the Kemp's ridley sea turtle. Upon imposing the restrictions, however, strandings were sharply reduced, as previously discussed.

Although NMFS and the U.S. Coast Guard will maintain high enforcement levels when Texas Gulf waters open, NMFS does not believe that this alone will be sufficient to maintain sea turtle mortalities within the incidental take level specified in the ITS accompanying the November 14, 1994, BO. Earlier this season, high enforcement presence alone was not sufficient to prevent the sea turtle mortalities that triggered the promulgation of restrictions in accordance with the ERP. The historical stranding patterns indicate that sea turtle strandings will likely rise very sharply when the waters off Texas reopen. Indicated take levels likely would be reached or exceeded in one or more zones in Texas, requiring NMFS to impose restrictions on an emergency basis, in accordance with the ERP.

Given the likelihood of elevated sea turtle strandings following the reopening of the waters off Texas to shrimping and the need to impose restrictions on the shrimp fishery as an emergency response thereto, NMFS believes that, in compliance with the ESA, it is in the best interests of the shrimp fishery and the conservation of listed sea turtles to impose restrictions on shrimp trawling upon the reopening of the waters off Texas. Shrimp industry representatives have stated that implementing emergency restrictions 2 weeks after the reopening would be disruptive to shrimpers at the height of the shrimp season.

Furthermore, immediate implementation of restrictions might impair their effectiveness because of difficulties in communicating the restrictions to those who must comply and the time necessary to come into compliance. If elevated sea turtle strandings continue, NMFS would have to take more restrictive steps to protect sea turtles. NMFS is, therefore, proposing this temporary rule, to be effective when waters off Texas reopen to shrimping, in order to protect listed sea turtles, reduce sea turtle strandings, reduce the possible need for further restrictive measures, avoid disruption of fishing activities, and give prior notice and an opportunity for prior comment. NMFS is proposing to impose the same restrictions that were in place in waters off Texas before the Texas closure, because many shrimpers are familiar with those restrictions and have already made modifications to their gear to bring that gear into compliance with the restrictions.