

Finally, use of full length webbing flaps would be prohibited. While full length flaps have been permitted to help reduce shrimp loss with TEDs, such flaps may hinder turtle release. In a top-opening TED, high pressure is generated above the trawl net, which forces the webbing flap closed, while in a bottom-opening TED the weight of the TED grid can pin the webbing flap shut over the escape opening. Testing has shown that turtles escape more readily from TEDs with shortened flaps than from TEDs with long flaps (55.2 second average escape time vs. 68.8 second average escape time). Additionally, the webbing flap can be sewn shut to disable the TED deliberately. Underwater investigations of the performance of top-opening TEDs with shortened webbing flaps indicated that the shortened webbing flap should not contribute to any shrimp loss. Under this proposed rule, only approved hard TEDs and special hard TEDs with top escape openings and shortened flaps that do not cover the escape opening would be allowed in shrimp trawls in the affected area.

Additional Conservation Measures

The AA may issue a determination that incidental takings of listed species during fishing activities are unauthorized, and, pursuant thereto, may restrict fishing activities in order to conserve threatened and endangered species. The regulatory authority for this is codified at 50 CFR 227.72(e)(6), and guidance in determining unauthorized takings and in setting restrictions is set forth in the ERP. NMFS will continue to monitor sea turtle strandings and will implement the provisions of the ERP as necessary. If offshore sea turtle strandings in any statistical zones in Texas persist at or above 75 percent of the indicated take level for 4 weeks, NMFS will follow the guidance in the ERP to determine whether to limit fishing effort, as required, in the offshore waters of the zones affected by elevated strandings, seaward to 10 nm (18.5 km) from the COLREGS line, for a period of 30 days. Contiguous statistical areas or portions of those areas may be included in the restrictions as necessary. These restrictions may apply to gear types/vessels currently exempted from the TED requirement at 50 CFR 227.72(e)(2)(ii) (A) and/or (B). Area restrictions will be promulgated through emergency rulemaking notices pursuant to the procedures set forth at 50 CFR 227.72(e)(6).

Request for Comments

NMFS will accept written comments (see ADDRESSES) on this proposed rule for a 15-day period from date of

publication in the **Federal Register**. In addition, NMFS will conduct two public hearings on this action (see ADDRESSES).

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have significant economic impact on a substantial number of small entities, because these restrictions would impose only a minor economic burden on shrimp fishermen. The predominant TED design in use in the affected area is a bottom-opening hard grid TED. Bottom-opening hard grid TEDs can be modified to comply with the requirements of this rule in one to two hours with little, if any, cost. Any webbing flap over the escape opening can be shortened in less than 10 minutes. Trawlers equipped with only soft TEDs would have to move out of the affected area, either offshore or alongshore, or to equip their nets with hard TEDs. Hard grid TEDs are available for as little as \$75.00 and take only a few hours to install.

The AA prepared an EA for this proposed rule and copies are available (see ADDRESSES).

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: June 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(2)(v) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(v) *Gear requirements—Offshore waters along Texas—(A) Gear restrictions.* Any shrimp trawler is prohibited from fishing in offshore

waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3' W. long. (the Texas-Louisiana border) unless it is in compliance with the prohibitions in paragraphs (e)(2)(v)(A) (1) through (4) of this section, and all other applicable provisions to § 227.72(e), unless such provisions do not conform to the prohibitions in paragraphs (e)(2)(v)(A) (1) through (4) of this section. Any provision in this section, including but not limited to, paragraph (e)(2)(ii)(B)(1) of this section (use of try nets), paragraph (e)(4)(iii) of this section (Soft TEDs), paragraph (e)(4)(i)(F) of this section (Position of escape opening), and paragraph (e)(4)(iv)(C) of this section (Allowable modification to TEDs), that does not conform to the prohibitions in paragraphs (e)(2)(v)(A) (1) through (4) of this section is suspended for the duration of this rule.

(1) The use of soft TEDs is prohibited.

(2) The use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

(3) 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) is prohibited unless a NMFS-approved top-opening, 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 (4.5 m) or less are exempt from the TED-use requirement in accordance with paragraph (e)(2)(ii)(B)(1) of this section.

(4) The use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing that is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening set forth in paragraph (e)(4)(i)(G) of this section apply (see Figure 14 to part 227).

(B) *Monitoring.* Shrimp trawlers operating in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, bounded between the line along 27° N. lat. and the line along 93°50.3' W. long. (the Texas-Louisiana border) must carry a NMFS-approved observer aboard such vessel(s) if directed to do so by the Southeast Regional, Director, upon written notification sent to either the address specified for the vessel registration or documentation purposes,