

and approximately 18 miles (29.0 km) of the northern portion of statistical Zone 30. The restrictions include prohibitions on the use by shrimp trawlers of: soft turtle excluder devices (TEDs); bottom-opening TEDs; webbing flaps that completely cover the escape opening of TEDs; and try nets with a headrope length greater than 12 ft (3.6 m) and footrope length greater than 15 ft (4.5 m), unless the try nets are equipped with 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 at 12:01 a.m. (local time) June 21, 1995 through 11:59 p.m. (local time) July 20, 1995. Comments on this action must be submitted by July 21, 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 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 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. 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 will be imposed if necessary 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 Biological BO, that 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. In addition, while the long-term operation of the shrimp fishery would not likely jeopardize the continued existence of loggerheads, it could prevent the recovery of this species. 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 Incidental Take Statement (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 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, 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 a biological opinion on April 26, 1995. This BO reaffirmed the reasonable and prudent alternative and incidental take statement provided on November 14, 1994.

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 are being accepted. 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.