implemented as mortality levels approach those established in the ITS to ensure that shrimping is not likely to jeopardize the continued existence of the Kemp's ridley. The BO specifically requires that such measures 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 reached or exceeded the ITL in Zone 31 for 2 weeks; therefore, conservation measures are being implemented in Zone 31 and adjacent waters along the Georgia coast.

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 incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an incidental take statement or biological opinion, or may be likely to jeopardize the continued existence of a species listed under the ESA. The AA has determined that continued takings of sea turtles by shrimp fishing off Georgia are unauthorized and, therefore takes this action.

The measures that NMFS is implementing include:

. Prohibition of the use of soft TEDs;

Prohibition of the use of bottom-

opening TEDs;

3. Prohibition of 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), unless the try nets are equipped with approved TEDs other than soft or bottom-opening TEDs; and

4. Prohibition of the use of webbing flaps completely covering the escape opening of TEDs, as described in the Requirements section herein.

These restrictions are being applied in Atlantic offshore waters seaward to 10 nm (18.5 km) along the Georgia coast, between 30°45' N. lat. and 32°03' N. lat. 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 in NMFS fishery statistical Zone 31, a small southern, portion of statistical Zone 32, and approximately 18 miles (29.0 km) of the northern

portion of Zone 30. As described in the ERP, NMFS may extend conservation measures in any statistical zone to portions of contiguous zones as determined necessary. NMFS has extended these measures to include the entire Georgia coastline due to the familiarity of state boundaries to shrimpers, and state and Federal enforcement personnel, the occurrence of physical landmarks delineating Georgia borders, and the high incidences of strandings along the entire Georgia coastline. These restrictions will allow fishing by shrimp trawlers to continue in these areas despite elevated rates of turtle strandings.

Although soft TEDs and bottomopening hard TEDs have been generally approved for use under the sea turtle conservation regulations, based on the best available information, NMFS has concluded that they are not as effective, under some conditions, in releasing turtles as top-opening hard TEDs. Therefore, the use of soft TEDs and bottom-opening hard TEDs is temporarily prohibited in the specified areas. NMFS gear specialists conducted evaluations of soft TEDs installed in various trawl designs purchased from a number of suppliers during September, 1994. All the devices met the regulatory requirements for soft TEDs. Trawl evaluations of the TEDs were conducted in the Canaveral ship channel. Seven TED/net configurations were tested. Five turtles were observed upon net retrieval in 21 tows with 1 configuration; 1 turtle was observed in 20 tows with another configuration. Three of the configurations also were evaluated for small turtle exclusion through the release of eight captivereared loggerhead turtles into the nets. Entanglement in the TED panels occurred in two of the three configurations tested. These tests suggest that proper soft TED installation is critical to turtle release. Additional in-water testing of hard-grid TEDs in May, 1995, indicated that small turtles require almost twice as long to escape from a bottom-opening TED versus a top-opening TED (an average of 125.6 seconds vs. an average of 68.8 seconds) under ideal conditions. NMFS has previously implemented regulations to discuss and address 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 bottomopening 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, and anecdotal accounts suggest multiple sea turtle captures in try nets are occurring in Georgia waters. Twenty-foot try nets are reportedly preferred to smaller try nets by the Atlantic shrimp fleet. During the Canaveral ship channel evaluations, conducted in September 1994 and discussed above, 1 loggerhead was captured in a 13-ft (4.0-m) headrope length try net in 59 tows, while 9 loggerheads were captured in a 20-ft (6.1-m) headrope length try net in 57 tows. Therefore, NMFS has determined that top-opening hard-grid TEDs temporarily should be required in try nets larger than 12-ft (6.1-m) headrope length or a footrope length greater than 15 ft (4.6 m) in the specified areas. Finally, webbing flaps completely covering TED escape openings have been allowed in order to help reduce shrimp loss with TEDs. However, full length flaps may hinder turtle releases. 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. Additionally, the webbing flap can be sewn shut to disable the TED deliberately. Accordingly, NMFS has determined that use of full length flaps should be temporarily prohibited in the specified

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. Flaps may not completely cover the escape opening. Figure 1 illustrates a top-opening hard TED with a shortened webbing flap meeting the dimension requirements of this emergency action.

## Requirements

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,  $\S 227.71(b)(3)$  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)

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that for a 30-day period, starting at 12:01 a.m. (local time)