m) in footrope length, effective May 12, 1995 (60 FR 26691, May 18, 1995). While this modification has been made in all temporary restrictions, the ERP is now being revised as well to reflect this change.

Comment. The requirement to use a shortened flap over the escape opening results in excessive shrimp loss.

Response. NMFS gear experts conducted underwater investigations on a top-opening hard TED with a shortened webbing flap and determined that it would not result in any significant shrimp loss. Furthermore, shrimp retention in TED-equipped nets can be maximized by use of an accelerator funnel which helps propel shrimp through TED grids and away from the turtle escape opening. However, NMFS has received numerous complaints from the shrimp industry about perceived loss of shrimp. Further, unlike 1994, NMFS has documented a high compliance rate with gear requirements, and therefore, believes that the shortened flap requirement should be re-evaluated on a case by case basis, but retains the shortened webbing flap requirement as part of the potential restrictive measures under the ERP.

Comment. The Texas Shrimp Association (TSA) and the National Fisheries Institute (NFI) objected to the manner in which NMFS prepared and implemented the ERP. NFI and TSA asserted that the process of preparation precluded meaningful industry participation, circumvented requirements under the Administrative Procedure Act, and imposed TED use restrictions without adequate time for shrimpers to adjust. TSA proposed an alternative to the ERP to limit inshore and nearshore fishing activity, with the stated objective of relieving pressure from incidental capture in areas where turtles are concentrated.

Response. The ERP was required by the November 14, 1994 Opinion in order to ensure that sea turtle mortalities attributable to shrimp fishing were not likely to jeopardize the species. The Opinion required that the ERP be developed by March 14, 1995, in order that NMFS have time to compile and analyze historic stranding data and still have a plan prior to the start of the 1995 shrimping season. The ERP does not modify the existing sea turtle conservation regulations nor does it have any binding effect on the public. The existing regulations already provide authority for emergency temporary action (such as TED use restrictions) to prevent unauthorized takings of sea turtles. The temporary restrictions implemented this season were based on the authority of 50 CFR 227.72(e)(6),

and justification for these actions were contained in the record for each one. The ERP simply provides guidance on when and how NMFS will exercise its discretion in implementing such temporary measures under this existing regulatory authority. The ERP was widely distributed upon its completion in March and is published herein in its entirety for public review and comment. The TSA alternative proposal to limit inshore and nearshore fishing activity to protect turtles, if implemented, would involve major changes to current conservation measures and would be subject to the rulemaking process. TSA has submitted its proposal as a petition for rulemaking under the APA, and NMFS is reviewing this petition in the context of an ANPR (60 FR 47544, September 13, 1995).

Comment. The Georgia Fisherman's Association (GFA) objected to the temporary restrictions in Georgia, particularly the prohibition on the use of bottom-shooting, hard TEDs and requested NMFS to rescind this restriction. The Sea Turtle Restoration Project of Earth Island Institute (EII) and NFI also urged NMFS to modify its temporary restriction as requested by GFA. GFA asserted that shrimpers were having problems with top-shooting hard TEDs because they lose shrimp, gather debris, are less effective at excluding turtles, and they twist and roll when installed with floats.

NMFS has also received verbal reports from Georgia fishermen that debris accumulates in the top-opening TEDs, thus hindering the release of turtles. GFA agreed that the banning of soft TEDs was warranted as they are not as effective as hard TEDs, but GFA stated that the simultaneous ban on soft TEDs and bottom-opening hard TEDs would make analysis of the relative contributions of the two gear types to sea turtle mortality and strandings impossible.

Response. Fishermen in the Atlantic have generally not used top-opening hard TEDs in recent years and may be having particular difficulty adapting to a new gear type. NMFS has investigated shrimpers' complaints and has had gear specialists working with Georgia shrimpers during the imposition of the temporary restrictions.

Gear specialists have been able to resolve problems associated with switching hard TEDs from bottomopening to top-opening and in the installation of flotation devices to prevent nets from twisting. No problems with clogged top-opening TEDs which would trap sea turtles have been observed. NMFS specialists have also noted that as shrimpers become familiar

with the gear changes they can fish effectively. In spite of the ability of NMFS gear specialists to resolve the alleged problems with top-opening hard TEDs experienced by individual shrimp fishermen in Georgia, NMFS has continued to receive complaints on the temporary prohibition of the use of bottom-opening hard TEDs, the strongly preferred gear choice for many Georgia fishermen.

A preliminary analysis of recent strandings and compliance rates following the July 15, 1995 opening of Texas offshore waters to shrimping indicates that strandings were highest in areas where the use of soft TEDs was prevalent. In two areas in Texas where strandings were low, no difference in stranding rates could be distinguished based on the differing proportions of the fleet using top- versus bottom-opening hard TEDs. Although other factors, particularly the distribution of shrimping effort, may have contributed to the observed stranding patterns in Texas, the data suggested that prohibiting the use of soft TEDs would provide more effective protection for sea turtles than prohibiting the use of bottom-opening hard TEDs. Therefore, NMFS implemented only the soft TED and try net restrictions described in the ERP in Georgia and South Carolina in response to elevated sea turtle strandings (60 FR 42809, August 17, 1995). This approach was intended to protect sea turtles and to help determine the effectiveness of each restriction. However, strandings in waters off Georgia and South Carolina in the week following the implementation of these restrictions, met or exceeded the indicated incidental take levels (ITLs) established for those areas. Consequently, NMFS is re-evaluating its recent restrictions and may prohibit the use of bottom-opening hard TEDs and require the use of shortened webbing flaps over escape openings should high levels of strandings continue in these areas.

Comment. The National Biological Survey (NBS), U.S. Department of the Interior, recommended that shrimp statistical Zone 21 be included in the interim special management area. NBS stated that a review of the stranding database shows that this area documents larger than average Kemp's ridley strandings when compared to the upper Texas Coast or Louisiana. NBS also asserted that Zone 21 was difficult to survey and therefore, strandings may go undocumented. NBS felt that the additional two weeks that would be required to implement restrictions in Zone 21 may jeopardize the survival of the Kemp's ridley.