DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910779–2317]

RIN 0648–AE12

Threatened Fish and Wildlife; Threatened Marine Reptiles; Revisions to Enhance and Facilitate Compliance With Sea Turtle Conservation Requirements Applicable to Shrimp Trawlers; Restrictions Applicable to Shrimp Trawlers and Other Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the sea turtle conservation measures and the interim final rule currently in effect. As of December 1, 1992, this final rule requires shrimp trawlers to comply with sea turtle conservation measures throughout the year in all areas. Where limited tow-times may be used as an alternative to turtle excluder devices (TEDs), tows must be limited to 55 minutes or less from April 1 though October 31; at other times of the year tows must be limited to no more than 75 minutes. As of January 1, 1993, shrimp trawlers under 25 feet (7.6 meters (m)) in offshore waters can no longer use limited tow-times as an alternative to using turtle excluder devices (TEDs). Also, as of January 1, 1993, all shrimp trawlers in inshore waters must use TEDs, except those equipped with a single net with a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m), which may use the tow-time alternative under December 1, 1994. This final rule also makes various other technical corrections and minor changes to the sea turtle conservation measures.

EFFECTIVE DATES: This rule is effective on December 1, 1992, except for a registration provision contained in § 227.72(e) (3)(v) and (6)(iv), which requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which is not yet effective. When OMB approval is received, the effective date of § 227.72(e) (3)(v) and (6)(iv) will be announced in the **Federal Register**.

ADDRESSES: Dr. Michael F. Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator, 301–713–2319, or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813–893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). Kemp's ridley, leatherback, and hawksbill turtles are listed as endangered. Loggerhead and green 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 these species by shrimp trawlers has been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, it is prohibited to take sea turtles. The incidental taking of turtles by shrimp trawlers in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is exempted from the prohibition if trawlers employ specified sea turtle conservation measures. Generally, these conservation measures include requiring shrimp trawlers to use TEDs in inshore and offshore waters or, in a few circumstances, to limit the duration of tow-times as an alternative to using TEDs.

Proposed Regulations

NMFS issued regulations amending 50 CFR part 217, 222, and 227 to protect endangered and threatened sea turtles on June 29, 1987 (52 FR 24244). NMFS later determined that there was a need to amend those regulations to conserve and prevent further declines in the populations of listed sea turtles and to enhance and facilitate compliance and enforcement. NMFS published proposed regulations on April 30, 1992 (57 FR 18446) and held public hearings on the regulations in each state where shrimp trawlers would be affected. NMFS extended the comment period on the proposed rule through October 23, 1992.

Interim Final Regulations

On September 8, 1992, (57 FR 40861) NMFS issued an interim final rule, effective September 1, 1992, that implemented some of the provisions of the April 30, 1992, proposed rule. The interim final rule extended the sea turtle conservation requirements in the Atlantic area to year-round, rather than from May 1 through August 31. Beginning November 1, 1992, in all areas where limited tow times could be used as an alternative to the use of TEDs, tow times were reduced from 90 minutes to 75 minutes. The exemption from the TED requirement for rock shrimp in the Atlantic was eliminated and exemptions were provided for vertical barred beam trawls, roller trawls, wing nets, skimmer trawls, pusher-head trawls and bait shrimpers. Procedures were established for restricting shrimp trawling and other types of fishing activities when found necessary to protect sea turtles or when special environmental conditions made trawling with TED-equipped nets impracticable. Definitions were added and prohibitions were revised to clarify sea turtle conservation measures and improve enforcement measures. The sale of non-approved TEDs was prohibited. Generic standards applicable to all hard TEDs were specified. Unnecessary elements concerning the construction requirements for the Morrison "soft" TED were removed. Allowable modifications to approved TEDs were clarified and all other modifications were prohibited. NMFS accepted comments on the interim final regulations until October 16, 1992.

Comments and Responses on the Proposed and Interim Final Regulations

NMFS received over 18,000 comments on the proposed and interim final amendments to the sea turtle conservation regulations, both from participants in the public hearings and by letter. NMFS reviewed all the comments and combined them under general categories provided below. Comments to which responses were provided in the interim final rule are not re-addressed here.

By far the most controversial provision was the proposal to require shrimp trawlers to use TEDs in both inshore and offshore waters throughout the year and to eliminate the tow-time option, except in limited situations. The proposed provisions were strongly supported by the general public and environmental community and were strongly opposed by the commercial shrimp trawl industry. Few offshore shrimp fishermen objected to the requirement to use TEDs all year, but most inshore shrimp fishermen objected to using TEDs instead of restricting tow times in inshore waters. Some of the most commonly voiced comments on this issue follow:

Comment: TEDs will not work in inshore waters because they will become clogged with seagrasses, debris, crab traps and other trash. A large number of commenters from Louisiana, Texas and Mississippi stated that TEDs would not work in areas where they normally shrimp. The biggest complaint concerned abandoned crab traps, which purportedly would become tangled in TEDs and release shrimp through the turtle escape opening. North Carolina inshore shrimp fishermen expressed concerns about clogging of TEDs with seagrasses.

Response: NMFS has received reports of clogging of TEDs with seagrasses and various types of trash. As discussed below, the final rule provides for a phase-in of the requirement to use TEDs in inshore waters. Full implementation of the requirement to use TEDs in inshore waters is delayed until December 1, 1994. Until that time, a shrimp trawler pulling a single net that has a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m) may restrict tow times instead of using a TED. Furthermore, the option of restricting tow times is available for all shrimp trawlers operating in inshore waters, and small trawlers in offshore waters, until January 1, 1993. During this time, inshore fishermen will have an opportunity to experiment with different TEDs under different conditions to determine what works effectively. At least one approved TED, the Anthony weedless TED, was designed specifically to deal with seagrass and algae problems. Several other approved TEDs also can exclude algae and seagrass. Based on information available, NMFS believes that there are very few historical shrimping areas where seagrass or algal concentrations make it impossible to harvest shrimp economically with a TED installed.

NMFS recognizes that crab traps could potentially lodge in the turtle escape opening, resulting in a loss of shrimp. This is something that NMFS cannot address in these regulations because it is a resource user conflict within state waters, which would be appropriately addressed by state regulation.

Comment: TEDs have not been adequately tested in small nets, and placing full-sized TEDs in small nets will result in a significant loss of shrimp. Many commenters suggested that NMFS was placing an unfair burden on inshore fishermen without adequately testing TEDs in small nets. Many pointed out that years of TED testing were conducted in the offshore fleet before the requirement to use TEDs in offshore waters was implemented.

Response: Based on test results and other information, NMFS believes that all currently approved TEDs will function properly in nets with a headrope length of 35 feet (10.7 m) or longer. A small TED known as the NMFS mini grid TED works well in trawls with nets having a headrope length as small as 25 feet (7.6 m). The Georgia and Matagorda TEDs, based on their construction and configuration, should work in nets with a headrope length of 30 feet (9.1 m). In some situations, especially with respect to smaller and lighter nets used in some inshore areas, there may be problems in adapting and using some types of TEDs. For example, twisting and stretching of lighter nets have been identified as

possible problems. These problems are not expected to affect nets with a headrope length of 35 feet (10.7 m) or longer or the heavier type of nets that are usually used offshore.

In this final rule, a shrimp trawler using a single net that has a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m) may restrict tow times instead of using a TED until December 1, 1994. This will allow additional time for testing of TEDs in smaller nets. When tow-time limits are used, trawlers must restrict their tows to no more than 55 minutes during warm-water months (April 1 through October 31) and to no more than 75 minutes during cold-water months (November 1 through March 31).

Comment: In general, the commercial shrimping industry claims that tow-time limitations are a viable alternative to TEDs and this option should remain in effect in inshore waters. Shrimp fishermen argue that 90-minute tow times have proven successful in protecting sea turtles and that this option is the only thing that will work in inshore waters. Comments from other sectors, which constitute the majority of comments on this issue, favor elimination of restricted tow times as an alternative.

Response: The NMFS decision to eliminate the tow-time option, with the exceptions noted, was based upon several considerations. First, the National Academy of Sciences, in its 1990 report, Decline of the Sea Turtles: Causes and Prevention, concluded that 90-minute tow times are inadequate to provide sea turtle protection comparable to that provided by TED use and recommended 40- and 60-minute tows (actual bottom fishing time) for warm- and cold-water months, respectively. Second, tow-time restrictions do not eliminate stress and trauma to turtles associated with their capture and forced submergence. Physiologists suggest that full recovery from such a capture could require days or even weeks, and that multiple captures of the same turtle could result in death, even when short tows are used. TEDs, on the other hand, minimize stress by releasing the turtle as soon as the TED is encountered. Third, enforcement of tow-time limitations is problematic. An insignificant number of cases involving a violation of the tow-time regulations have been prosecuted, despite the fact that many commenters readily admit to tows in excess of 90 minutes. Information from observers confirms that compliance has been poor. NMFS believes that TEDs are a more effective option to ensure adequate turtle protection. Furthermore, it may be economically advantageous to use TEDs, rather than limiting tow times.

Comment: Existing data do not justify requiring TEDs in all inshore waters or in all places at all times. There are areas and seasons when turtles are not present and TEDs are not needed. A number of commenters thought that the NMFS requirements for TEDs in virtually all shrimp trawls were unnecessary. Other commenters favored this action because it increases the protection of sea turtles.

Response: Even though there is less evidence regarding the distribution of sea turtles in inshore waters than there is regarding their distribution in offshore waters, available information makes clear that sea turtles are present in inshore areas where trawling takes place. They are, therefore, vulnerable to capture and mortality in trawls. While turtles may be present at low abundance levels or even absent in certain areas at certain times of the year, the best available data and information do not allow NMFS to predict accurately when and where this will occur. Consequently, NMFS has determined that protective measures for sea turtles should be implemented throughout the year in all areas (inshore and offshore) off the coast of the southeastern United States in the Atlantic and the Gulf of Mexico. Turtle movements appear to be linked with changing water temperatures, but a number of other factors, including availability of food, probably also play a role in determining distribution and abundance. Further, the numbers of turtles are severely depressed in all areas because of human activities, resulting in their threatened and endangered status, and protections may be necessary to allow turtles to repopulate some areas. NMFS will continue research efforts, and if it is demonstrated that there are areas and times when turtles are never present, NMFS will consider eliminating sea turtle conservation measures in those areas at those times. However, no such areas or times can be delineated at the present time.

Comment: Of the 3,000 additional comments received on the interim final rule, the overwhelming majority of commenters objected to the interim final rule and favored full implementation of the April 30, 1992, proposed rule. The most commonly voiced criticism of the interim rule was that it failed to ensure adequate protection of sea turtles in inshore waters by allowing a tow-line option instead of mandatory TED requirements.

Response: NMFS recognizes that the interim final rule would not provide an adequate long-term solution to the problem of sea turtle mortality in the shrimp fishery. The primary purpose of the interim final rule was to implement immediately turtle protection measures in the Atlantic area, while providing an opportunity for additional public comment on the proposed rule. NMFS agrees that the additional provisions contained in the proposed rule are necessary to ensure that sea turtles are adequately protected as mandated under the ESA.

Comment: Most commenters opposed the use of limited tow times as a substitute for TED requirements under any circumstances, and especially when environmental conditions make TED use impracticable. Most commenters argued that tow times are difficult to enforce and that such an exemption would allow fishermen to circumvent the TED regulations. Many cited past experiences where fishermen ignored tow-time limitations, even with NMFS observers aboard, as evidence of the ineffectiveness of tow times as an alternative to TEDs. Many of the commenters recommended that NMFS further clarify the conditions under which such an exemption would be granted. In general, the commercial shrimp industry favored the use of restricted tow times.

Response: NMFS agrees that in most instances where tow-time limitations were substituted for TED requirements, available evidence indicates that compliance has been poor. For example, poor compliance was documented when shrimpers were allowed to use limited tow times off Louisiana in the aftermath of Hurricane Andrew during September 1992, and when fishermen in the summer flounder fishery off North Carolina were required to use limited tow times from November 1991 through February 1992.

However, NMFS believes that there may be isolated areas and times when adverse environmental conditions (algae, seagrasses, etc.) make it impracticable to trawl with TEDs. Where adequate enforcement is possible, limited tow times may be an appropriate alternative. For example, in a very restricted nearshore area off North Carolina, tow-time limitations have been substituted for TED requirements because of excessive algal concentrations. North Carolina law enforcement personnel have reported one violation. Restricted tow times may be an effective option if fishermen cooperate and a strong law enforcement presence can be maintained. Under most circumstances, however, enforcement is not practicable and at-sea monitoring of tow times is costly, ineffective and requires significant

diversion of limited enforcement resources from other areas. In any case, NMFS does not intend to allow compliance with restricted tow times as a permanent alternative to the use of TEDs, except where environmental problems have been well documented and there is a basis for concluding that, in the particular circumstances, sea turtles would be adequately protected.

Other comments: Several commenters provided technical suggestions and recommendations regarding gear descriptions.

Response: NMFS considered these suggestions and incorporated recommended changes where appropriate.

Final Regulations and Changes From the Proposed and Interim Final Rules

As a result of comments and recommendations received, the final amendments differ from the proposed and interim final amendments in several areas. Specific changes are summarized below.

1. Although the interim final rule extended sea turtle conservation measures throughout the year in the Atlantic area, it did not implement year-round protections in the Gulf of Mexico. This final rule extends sea turtle conservation measures throughout the Gulf of Mexico after November 30, 1992, in order to protect sea turtles where protective measures otherwise would not exist. This means that shrimp trawlers 25 feet (7.6 m) or longer in length must use TEDs in all offshore waters throughout the Gulf of Mexico and shrimp trawlers less than 25 feet (7.6 m) in length in offshore waters and all trawlers in inshore waters must use TEDs or abide by restricted tow times. It is essential to take immediate action to avoid a high risk that sea turtles will be injured or killed after November 30, 1992. While fishing effort is expected to decrease somewhat during winter months, fishing effort, nonetheless, is significant and the duration of tows is often long, presenting a substantial risk of injury or mortality to sea turtles. NMFS estimates that unless sea turtle conservation measures are required throughout the Gulf of Mexico during the months of December, January, and February, approximately 700 sea turtles may be killed by shrimp trawlers.

2. Generally, this final rule requires all shrimp trawlers to use TEDs beginning January 1, 1993. At that time, all shrimp trawlers in offshore waters and most inshore shrimp trawlers (with the exception discussed below) will be required to use TEDs in their nets. The proposed rule would have generally eliminated restricted tow times as an alternative to the use of TEDs. The interim final rule did not implement that proposal.

3. The proposed rule did not provide an exemption from the TED requirement for small trawlers or for trawlers equipped with small nets. NMFS has determined that a phase-in of the new requirements is likely to minimize disruptions to the shrimp fishery, while providing adequate protections for sea turtles. Therefore, until December 1, 1994, a shrimp trawler operating in inshore waters and using a single net with a headrope of less than 35 feet (10.7 m) in length and a footrope of less than 44 feet (13.4 m) in length may limit tow times to no more than 55 minutes from April 1 through October 31, and to no more than 75 minutes from November 1 through March 31, as an alternative to using a TED. A single net is required to prevent shrimpers from switching from relatively large single nets to two or more smaller nets to avoid having to use TEDs. Some fishermen, where state regulations allow, may want to use two trawls in inshore waters, especially during the brown shrimp season. NMFS encourages fishermen to experiment with approved TEDs in smaller nets, and will provide such fishermen with technical assistance. Recent gear research has shown that 25-foot (7.6-m) nets can be modified to accommodate grid TEDs. This final rule also specifies a maximum footrope length to discourage attempts to distort nets to evade the requirement to use TEDs.

A headrope length of 35 feet (10.7 m) was selected because virtually all existing TEDs can be accommodated in nets this size or larger. Some types of TEDs can be used in many smaller nets, including most nets with headropes of 30 feet (9.1 m), and many nets with headropes as small as 25 feet (7.6 m). In some cases, additional time, experience, or instruction may be necessary to make TEDs function properly in small inshore nets. Also, NMFS believes that additional testing and evaluation of TEDs, especially soft TEDs, may provide more and better options for shrimp fishermen using small or lightweight nets. The December 1, 1994, date of applicability of this requirement will provide sufficient time for this additional testing and allow fishermen time to gain experience with TEDs.

The headrope length of 35 feet (10.7 m) also is based, in part, on new information on the inshore shrimp fleet and fishery. When the original TED regulations were implemented, NMFS knew relatively little about the gear, vessels or fishing conditions of this inshore fishery. Virtually all vessel observer coverage and most TED research efforts were conducted on offshore trawlers. More recent information indicates there are more variations in the gear, equipment, and boats used in the inshore shrimp fishery, as well as unique fishing conditions in some areas. For example, light twine nets are commonly used inshore. These nets are often constructed of weaker materials than those used offshore. Some of the inshore nets with headropes of less than 35 feet (10.7 m) may stretch and twist when TEDs are installed, or may be more difficult to use in some inshore areas that have special fishing conditions. NMFS gear specialists are investigating existing and new TEDs that could be used in these nets and in these areas, without reducing either fishing efficiency or turtle exclusion capabilities. At this time, NMFS gear specialists are confident that TEDs will work effectively inshore in nets that have a headrope length of 35 feet (10.7 m) or more.

This approach differs from the interim final sea turtle conservation regulations, which exempted shrimp trawlers less than 25 feet (7.6 m) in length from using TEDs in offshore waters. Taking all factors into consideration, NMFS believes that net size is a better criterion than trawler length for determining whether TEDs are required in inshore waters. Offshore trawlers, designed to optimize seaworthiness, are relatively consistent in design from vessel to vessel. Inshore, in protected waters, trawler designs tend to vary greatly. Also, the trawl towing capability of an inshore trawler is more a function of engine power than length. The propulsion system of inshore trawlers is often optimized for towing power as opposed to running speed, because traveling distances are normally not as great, and there may be less need to seek a speedy refuge from an approaching storm.

NMFS recognizes that enforcement of tow-time restrictions is problematic and that using headrope length as the basis for the requirement to use TEDs may present special enforcement problems. These enforcement difficulties will be ameliorated somewhat by allowing only shrimp trawlers with one net rigged for fishing to use the restricted tow-time option. A more concentrated enforcement effort may be necessary in many inshore areas. Nonetheless, if there is widespread noncompliance with the tow-time restrictions in inshore waters, or with other requirements, the interim final rule established new procedures to facilitate a quick response.

This final rule does not extend the limited exemption for trawlers using a single small net to vessels operating offshore because, unlike some trawlers operating with a small net in inshore waters, trawlers operating in offshore waters should be able to equip their nets to operate efficiently with TEDs by January 1, 1993. TEDs have been thoroughly tested and extensively used in offshore waters.

In some cases, small trawlers that normally operate inshore will be required to use TEDs when they are fishing in offshore waters. NMFS expects that most nets used by these trawlers can be equipped with TEDs, using current technology. Additionally, when operating offshore, these smaller trawlers often fish near the coast. Available evidence suggests that mortalities of the critically endangered Kemp's ridley sea turtle often occur when shrimping operations are conducted in these coastal offshore waters. Thus, NMFS has determined that all shrimp trawlers, regardless of length or net size, should be required to use TEDs in offshore waters as soon as practicable to maximize sea turtle protection.

4. This final rule corrects, clarifies, and makes minor amendments to the regulations implemented by the interim rule. For example, technical changes in describing allowable modifications and generic grid TED descriptions are made on the recommendation of NMFS gear specialists. Specifically, the attachment of an accelerator funnel to the TED extension webbing or grid bars opposite the escape opening reduces shrimp loss, and is recommended by gear specialists. This provision in no way hinders turtle release. This specification and others are designed to clarify and explain gear terms and to enhance enforceability of the regulations.

5. This final rule adds registration provisions that may be required for emergency TED exemption programs or temporary sea turtle conservation measures in NMFS-designated restricted areas. The need for the registration of fishermen was identified in the use of the emergency TED exemption provision of the interim final rule in 1992, both off North Carolina and Louisiana. Registration is needed to monitor fishing effort, to monitor incidental capture of turtles, to facilitate placement of observers, and for enforcement purposes. NMFS would be unable to respond to future emergency conditions requiring TED exemptions, temporary observer requirements, and other conservation measures, without the ability to identify and register the participants. While approval for registration of fishermen was granted by OMB in North Carolina and Louisiana, prior OMB approval for registration would allow NMFS to respond more quickly to emergency situations. NMFS has requested comprehensive authorization from OMB to collect registration information through brief telephone interviews, if necessary, to implement several potential emergency actions.

In order to provide continuity and to avoid confusion, many paragraphs amended by the interim final rule that are not changed by this final rule (e.g., many of the definitions in § 217.12) are republished as a part of the regulatory text of this final rule, together with amended text as explained in this preamble.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is consistent with the ESA and other applicable law. NMFS conducted a consultation under section 7 of the ESA for the 1987 sea turtle conservation regulations (52 FR 24244, June 29, 1987). A biological opinion was prepared analyzing those regulations. Additional consultation has been conducted to analyze the effects of the shrimp trawl fishery in the southeastern United States on sea turtles and other species listed under the ESA. The biological opinion prepared for this consultation, issued on August 19, 1992, concludes that operation of the shrimp trawl fishery, upon implementation of specified measures pursuant to the phase-in schedule specified in this final rule, is not likely to jeopardize the continued existence of sea turtles or other listed species. This final rule is consistent with the terms and conditions of the incidental take statement that is included in the biological opinion.

A regulatory impact review/regulatory flexibility analysis (RIR/RFA) was prepared for the 1987 sea turtle conservation regulations. A combination Environmental Assessment (EA) and supplemental RIR was prepared for the proposed amendments that were not already analyzed in the original analysis. An EA/RIR was also prepared on August 19, 1992. The supplemental RIR indicates that this final rule is not a "major rule" for which a regulatory impact analysis is required under E.O. 12291.

An environmental impact statement (EIS) was prepared for the listing of three species of sea turtles; the green loggerhead, and olive ridley. The EIS addressed the development of gear and procedures to reduce the incidental take and mortality of sea turtles in shrimp trawls. An EA that described a voluntary program to encourage the use the TEDs was prepared in 1983. A supplemental EIS covering the mandatory TED and tow-time requirements was prepared in 1987. A combination EA and supplemental RIR was prepared on August 19, 1992. The major provisions of the interim final rule and this final rule were analyzed as the preferred alternative in the EA. This EA concluded that the preferred alternative would not result in an adverse effect on the human environment.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the Federal coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

Neither this final rule nor the ESA precludes any state from adopting more stringent sea turtle protection measures. This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Section 227.72(e) (3)(v) and (6)(iv) provides for the registration of fishermen to implement emergency TED exemptions or sea turtle conservation measures. A request to make this collection has been submitted to the Office of Management and Budget (OMB). The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**).

NMFS has determined that good cause exists to make this final rule effective on December 1, 1992, thereby waiving the 30-day delayed effectiveness date requirement of section 553(d) of the Administrative Procedure Act. Good cause exists because of the need to protect sea turtles

in the Gulf of Mexico no later than December 1, 1992. A delay in the implementation of this rule beyond that date may jeopardize the continued existence of endangered and threatened sea turtles and may require the closure of the shrimp fishery. Furthermore, this final rule extends requirements in effect under the interim final rule until January 1, 1993; additional time is not required to comply with the requirements imposed by this final rule since the requirements are substantially similar to those now in effect. Consequently, NMFS has determined that there is good cause to make this final rule effective on December 1, 1992.

List of Subjects

50 CFR Part 217

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

50 CFR Part 227

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

Dated: November 30, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, the interim rule amending 50 CFR parts 217 and 227 that was published at 57 FR 40861 on September 8, 1992, is adopted as a final rule with the following changes:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, the definitions for "Southwest Florida Area" and "Tow time" are removed; the definitions for "Atlantic Area", "Gulf Area", and "Shrimp" are revised; and the definitions of "Accelerator funnel", "Approved TED", "Authorized officer", "Bait shrimper", "Fishing, or to fish", "Footrope", "Footrope length", "Hard TED", "Headrope", "Headrope length", "Pusher-head trawl (chopsticks)", "Shrimp trawler", "Skimmer trawl", "Soft TED", "Stretched mesh size", "Taut", "TED (turtle excluder device)", "Test net, or try net", and "Wing net (butterfly trawl)" are republished to read as follows:

§ 217.12 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.

* * * * *

Approved TED means:

(1) A hard TED that complies with the generic design criteria set forth in 50 CFR 227.72(e)(4)(i). (A hard TED may be modified as specifically authorized by 50 CFR 227.72(e)(4)(iii)); or

(2) A soft TED that complies with the provisions of 50 CFR 227.72(e)(4)(ii).

* * * * *

Atlantic Area means all waters of the Atlantic Ocean south of 36°33'00.8" N. latitude (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

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Fishing, or to fish, means:

(1) The catching, taking, or harvesting of fish or wildlife;

(2) The attempted catching, taking, or harvesting of fish or wildlife;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or

(4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

* * * * *

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forwardmost webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forwardmost webbing.

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Gulf Area means all waters of the Gulf of Mexico west of 81° W. longitude (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Hard TED means a rigid deflector grid and associated hardware designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forwardmost webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forwardmost webbing.

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Pusher-head trawl (chopsticks) means a trawl that is spread by poles suspended in a "V" configuration from the bow of the trawler.

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Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

(1) Brown shrimp (*Penaeus aztecus*);

(2) White shrimp (*P. setiferus*);

(3) Pink shrimp (*P. duorarum*);

(4) Rock shrimp (*Sicyonia brevirostris*);

(5) Royal red shrimp (*Hymenopenaeus robustus*); and

(6) Seabob shrimp (*Xiphopenaeus kroyeri*).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that extends from the outrigger of a vessel with a cable and a lead weight holding the trawl mouth open.

Soft TED means a panel of polypropylene or polyethylene netting designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

* * * * *

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

* * * * *

Taut means a condition in which there is no slack in the net webbing.

TED (turtle excluder device) means a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Test net, or try net, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

Wing net (butterfly trawl) means a trawl with a rigid frame, rather than

trawl door, holding the trawl mouth open.

PART 227—THREATENED FISH AND WILDLIFE

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

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

4. In § 227.71, paragraphs (a) and (b) are revised and paragraph (c) is republished to read as follows:

§ 227.71 Prohibitions.

(a) Except as provided in § 227.72, the prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to any species of sea turtle enumerated in § 227.4.

(b) Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, § 227.72(e)(3) or (6);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in § 227.72(e)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of § 227.72(e)(1);

(7) Fail to comply immediately, in the manner specified at 50 CFR 620.8 (b)–(d), with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 227;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED; or

(15) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under this subpart D has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of § 227.72(e)(4)(iii) has the burden of proving such claim.

5. In § 227.72, paragraph (e) is revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) *Exception for incidental taking*—(1) *General.* The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities to the extent that those involved are in compliance with the requirements of paragraphs (e)(1), (e)(2), (e)(3), and (e)(6) of this section.

(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(*1*) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot; or

(*2*) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period of 1 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to 24, if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) *Gear requirements.*—(i) *TED requirement.* Except as provided in paragraph (e)(2)(ii) of this section, any shrimp trawler that is in the Atlantic Area or Gulf Area must have an approved TED (as defined in § 217.12 of this subchapter) installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler.

(ii) *Exemptions from the TED requirement.* (A) A shrimp trawler is exempt from the TED requirements of paragraph (e)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (e)(3)(i) of this section and if it:

(*1*) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(*2*) Is a bait shrimper that retains all live shrimp on board in a container with a circulating seawater system, if it does not possess more than 32 pounds (14.5 kg) of dead shrimp on board, and if it has on board a valid original state bait-shrimp license (if in a state that requires such a license);

(*3*) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing;

(4) Is in an area during a period for which tow-time restrictions apply under paragraphs (e)(3)(ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs;

(5) Prior to January 1, 1993, is in inshore waters;

(6) Prior to January 1, 1993, is in offshore waters, if it is less than 25 feet (7.6 m) in length; or

(7) Prior to December 1, 1994, is in inshore waters, if it has no more than one net rigged for fishing (other than a test (or try) net), if that net has both a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m).

(B) The following fishing gear or activities are exempted from the TED requirements of paragraph (e)(2)(i) of this section:

(1) A single test net (try net) with a headrope length of 20 feet (6.1 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net;

(2) A beam or roller trawl fished without doors, boards, or similar devices, that has a mouth formed by a rigid frame and rigid vertical bars, if none of the spaces between the bars, or between the bars and the frame, exceed 4 inches (10.2 cm); and

(3) A shrimp trawler fishing for, or possessing, royal red shrimp, if at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler, is royal red shrimp.

(3) *Tow-time restrictions.*—(i) *Duration of tows.* If tow-time restrictions are utilized pursuant to paragraphs (e)(2)(ii), (e)(3)(ii), or (e)(3)(iii) of this section, a shrimp trawler must limit tow times to no more than 55 minutes from April 1 through October 31, and to no more than 75 minutes from November 1 through March 31. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl net that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

(ii) *Alternative—special environmental conditions.* The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (e)(2)(i) of this section, if he/she determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(iii) *Substitute—ineffectiveness of TEDs.* The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (e)(2)(i) of this section, if he/she determines that TEDs are ineffective in protecting sea turtles.

(iv) *Notice; applicability; conditions.* The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraphs (e)(3) (ii) or (iii) of this section in the **Federal Register** and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements of paragraph (e)(2)(i) of this section. The notification will specify the effective dates, the geographic area where tow-time restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that action.

(v) *Registration.* If the Assistant Administrator imposes restrictions under paragraph (e)(3) (ii) or (iii) of this section, he/she may require the owner and operator of a shrimp trawler to register before entering an area where, and during the time when, the restrictions apply. If registration is required, the trawler's owner and operator must submit the following information to the NMFS Regional Office:

(A) The name and official number (or registration number) of the shrimp trawler;

(B) The names, mailing and street addresses, and telephone numbers of the trawler owner and operator;

(C) The permit number or other identification of relevant state or Federal fishing permit(s);

(D) Where and when the trawler intends to fish;

(E) Where and when the trawler will depart on any fishing trip, with sufficient specificity to allow for an observer to embark on the trip; and

(F) Any changes in the information submitted under paragraphs (e)(3)(v) (A) through (E) of this section. Failure to do so immediately will void the registration, which will render unlawful any subsequent entry of the shrimp trawler into the area where and during the time when the restrictions apply.

(vi) *Procedures.* The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions that necessitated the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rulemaking.

(4) *Approved TEDs.* Any netting, webbing, or mesh that may be measured to determine compliance with this paragraph (e)(4) is subject to measurement, regardless of whether it is wet or dry. Any such measurement will be of the stretched mesh size.

(i) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as "hooped hard TEDs," such as the NMFS and Cameron TEDs (Figures 1 & 2), or "single-grid hard TEDs," such as the Matagorda and Georgia TEDs (Figures 3 & 4). Hard TEDs complying with the following generic design criteria are approved TEDs:

(A) *Construction materials.* A hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(1) Solid steel rod with a minimum outside diameter of ¼ inch (0.64 cm);

(2) Fiberglass or aluminum rod with a minimum outside diameter of ½ inch (1.27 cm); or

(3) Steel or aluminum tubing with a maximum inside diameter of ¼ inch (0.64 cm) and a minimum outside diameter of ½ inch (1.27 cm) (schedule 40 tubing).

(B) *Method of attachment.* A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(C) *Angle of deflector bars.* The angle of the deflector bars must be between 30° and 50° from the normal, horizontal flow through the interior of the trawl.

(D) *Space between bars.* The space between deflector bars, and between the deflector bars and the frame, must not exceed 4 inches (10.2 cm).

(E) *Direction of bars.* The deflector bars must run from top to bottom of the

TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED.

(F) *Position of escape opening.* The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in its deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.

(G) *Size of escape opening.* (*1*) On a hooped hard TED, the escape opening must not be smaller than 25 inches by 25 inches (63.5 cm by 63.5 cm) in the Gulf Area, or 30 inches by 30 inches (76.2 cm by 76.2 cm) in the Atlantic Area. If a door frame is used over the escape opening, it must open a minimum height of 10 inches (25.4 cm) in the Gulf Area, or 12 inches (30.5 cm) in the Atlantic Area.

(*2*) On a single-grid hard TED, the escape opening in the net webbing must measure at least 32 inches (81.3 cm) in horizontal taut length and, simultaneously, 10 inches (25.4 cm) in vertical taut height in the Gulf Area; or 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The vertical measurement must be taken at the mid-point of the horizontal measurement.

(H) *Size of hoop or grid.* (*1*) *Hooped hard TED.* (*i*) An oval front hoop on a hard TED must have an inside horizontal measurement of at least 32 inches (81.3 cm) and an inside vertical measurement of at least 20 inches (50.8 cm) in the Gulf Area, or an inside horizontal measurement of at least 35 inches (88.9 cm) and an inside vertical measurement of at least 30 inches (76.2 cm) in the Atlantic Area.

(*ii*) A circular front hoop on a hard TED must have an inside diameter of at least 32 inches (81.3 cm) in the Gulf Area or 35 inches (88.9 cm) in the Atlantic Area.

(*2*) *Single-grid hard TED.* A single-grid hard TED must have an inside horizontal and vertical measurement of at least 28 inches (71.1 cm) in the Gulf Area or 30 inches (76.2 cm) in the Atlantic Area. The required inside measurements must be at the mid-point of the deflector grid.

(ii) *Soft TEDS.* Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

(A) *Morrison TED* (Figures 5 & 6). The Morrison TED uses synthetic mesh webbing for its deflector panel(s). The webbing must consist of number 42 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The stretched mesh size may not exceed 8 inches (20.3 cm). The webbing may be installed either as one main excluder panel or as a main and two side (jib) excluder panels (Figure 6), so long as it forms a complete barrier to large objects inside the trawl net forward of the codend. The base (leading edge) of the excluder panel(s) must be sewn to the bottom body of the trawl net at least 16 feet 8 inches (5.1 m) forward of the point at which the codend is attached to the trawl net. The apex of the excluder panel(s) must be sewn to the center of the top body of the trawl net not more than 20 inches (50.8 cm) forward of the point at which the codend is attached to the trawl net. The meshes of the leading edge of the excluder panel shall be sewn evenly onto the bottom belly of the trawl following the same row of meshes from seam to seam, including the wings (i.e., the sides of the trawl that separate the top from the bottom). The leading edge of the panel cannot be installed on a bias. If a net extension is inserted forward of the codend, the base and apex attachments of the excluder panel(s) must be measured from the forward attachment points of such extension. The horizontal taut length of the stretched main excluder panel may not be less than 15 feet (4.6 m). Each point on the circumference of the webbing must be sewn to the trawl net. The meshes of the webbing must be under tension when the codend is pulled aft, thus forming diamond patterns pointing toward the top of the trawl net. As an escape opening, a slit at least 4 feet 8 inches (1.4 m) in taut length must be cut in a fore-and-aft direction at the top of the trawl net immediately forward of the apex of the panel webbing. The slit may not be covered or closed in any manner.

(b) *Parrish TED* (Figure 7). The Parrish TED consists of an extension and deflector panel made of synthetic mesh and a steel frame. The extension must be a piece of 1¾-inch (4.4-cm) stretched mesh, no. 15 thread, treated nylon, measuring 150 meshes by 100 meshes and installed in the trawl. When installed, the extension must be cylindrically shaped with a circumference of 150 meshes and a depth of 100 meshes. The deflector panel must slope down the inside of the extension and must be a rectangular piece of 8-inch (20.3-cm), stretched mesh, 3-mm diameter, braided polyethylene. The deflector panel must measure eight meshes across its leading and trailing edges and be 15½ meshes deep. The eight meshes at the leading edge of the deflector panel must be sewn into the small (1¾-inch) (4.4-cm) mesh of the extension three meshes down from the top edge of the extension. The eight meshes at the trailing edge must be attached to the top edge of the frame. Each side edge of the deflector panel must be attached at 5⅝-inch (14.3-cm) intervals to a ⅜-inch (1.0-cm) diameter, three-strand polydacron rope, which must be attached to the small mesh of the extension at 5⅝-inch (14.3-cm) intervals. The deflector panel must form a complete barrier to large objects inside the extension forward of the frame. The frame must be a rectangular, ⅜-inch (1.0-cm) diameter, welded galvanized steel rod unit with a 40-inch by 4-inch (101.6-cm by 10.2-cm) opening and small pad eyes at the top corners. The trailing-edge meshes of the deflector panel must be attached to the top of the frame, and 50 lateral meshes of the extension netting (1¾-inch (4.4.-cm) mesh) must be centered and sewn to the bottom and sides of the frame. The escape opening must consist of a lateral slit, measuring 40 meshes, cut from the leading edge at the bottom of the frame. A bungee cord having a 50-inch (127.0-cm) non-stretched length and a ¼-inch (0.64-cm) diameter must be laced through the meshes at the cut. Opposing ends of the bungee cord must be secured to the opposing pad eyes at the top of the frame. One end of a flap measuring 50 meshes across by 30 meshes deep must be attached to the meshes at the cut.

(C) *Andrews TED* (Figures 8a & 8b). The Andrews TED is a funnel constructed of 5-inch (12.7-cm) stretched mesh polyethylene or polypropylene webbing that is sewn inside a shrimp trawl. The leading edge of the funnel must be sewn with heavy twine at all points to the outer trawl beginning on the row of meshes located 20 meshes behind the center of the footrope and continuing around the circumference of the trawl, following the same row of meshes. The webbing must not be laced with rope. The funnel must taper to an escape opening in the bottom of the trawl. The rear edge of the escape opening must be located no more than 20 inches (50.8 cm) ahead of the net extension. The trailing edge on the funnel must be sewn at all points around the circumference of the escape

opening. The escape opening must be at least 96 inches (243.8 cm) in circumference. A webbing flap may be used to cover the escape opening if no device holds the webbing flap closed or otherwise restricts the opening, and if such flap is constructed of webbing that has a stretched mesh size no larger than 2-inch (5.1-cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is 50 meshes wide and 15 meshes deep, does not overlap the exit opening more than five meshes on each side (it may be attached along the 15-mesh edge), and maintains an opening of at least 48 inches (121.9 cm) in a taut position.

(iii) *Allowable modifications.* No modifications may be made to an approved soft TED. Only the following modifications may be made to an approved hard TED:

(A) Floats may be attached to the TED, either outside or inside of the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(B) An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater than 1⅝ inches (4.1 cm), if it has an inside horizontal opening of at least 39 inches (99.1 cm) when measured in a taut position, if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than ⅓ of its circumference is attached, and if the inside horizontal opening of at least 39 inches (99.1 cm) is maintained. In a downward shooting TED, only the top ⅓ of the circumference of the funnel may be attached. In an upward shooting TED, only the bottom ⅓ of the circumference of the funnel may be attached.

(C) A webbing flap may be used to cover the escape opening if no device holds it closed or otherwise restricts the opening, and if it is constructed of webbing with a stretched mesh size no larger than 1⅝-inch (4.1-cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is not attached on the sides more than 6 inches (15.2 cm) beyond the posterior edge of the grid, and does not extend more than 24 inches (61.0 cm) beyond the posterior edge of the grid.

(5) *Revision of generic design criteria and allowable modification of hard TEDs and additional soft TEDs.* (i) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (e)(4)(i) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (e)(4)(iii) of this section, or may approve soft TEDs in addition to those listed in paragraph (e)(4)(ii) of this section, by a regulatory amendment if, according to a NMFS-approved scientific protocol, the TEDs demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990). Testing under the protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

(ii) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to paragraph (e)(2) of this section. Applications should be addressed to the Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702.

(6) *Limitations on incidental takings during fishing activities.*—(i) *Limitations.* The exemption for incidental takings of sea turtles in paragraph (e)(1) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed under the Act.

(ii) *Determination; restrictions on fishing activities.* The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator may restrict fishing activities in order to conserve a species listed under the Act, including, but not limited to, restrictions on the fishing activities of vessels subject to paragraph (e)(2)(i) of this section. The Assistant Administrator will take such action if he/she determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw or modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) *Notice; applicability; conditions.* The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the **Federal Register.** The Assistant Administrator will provide as much advance notice as possible, consistent with the requirements of the Act, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of restriction of fishing activities will include findings in support of the restriction, will specify the time and area where the restriction is applicable, and will specify any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Such conditions and restrictions may include, but are not limited to, limitations on the types of fishing gear that may be used, tow-time restrictions, alteration or extension of the periods of time during which particular tow-time requirements apply, requirements to use TEDs, and requirements to provide observers. Notification of withdrawal or modification will include findings in support of that action.

(iv) *Registration.* If the Assistant Administrator imposes restrictions under paragraph (e)(6)(ii) of this section, he/she may require the owner and operator of a vessel to register before entering an area where, and during the time when, the restrictions apply. If registration is required, the vessel's owner and operator must submit the following information to the NMFS Regional Office:

(A) The name and official number (or registration number) of the vessel;

(B) The names, mailing and street addresses, and telephone numbers of the vessel owner and operator;

(C) The permit number or other identification of relevant state or Federal fishing permit(s);

(D) Where and when the vessel intends to fish; and

(E) Where and when the vessel will depart on any fishing trip, with sufficient specificity to allow for an observer to embark on the trip.

(F) Any changes in the information submitted under paragraphs (e)(6)(iv)(A) through (E) of this section. Failure to do so immediately will void the registration, which will render unlawful any subsequent entry of the fishing vessel into the area where and during the time when the restrictions apply.

(v) *Procedures.* The Assistant Administrator will consult with the appropriate fisheries officials (state or Federal) where the fishing activities are located in issuing notification of a determination concerning unauthorized takings or notification concerning the restriction of fishing activities. An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each. The Assistant Administrator may invite comments on such action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

[FR Doc. 92-29370 Filed 12-1-92; 12:52 pm]

BILLING CODE 3510-22-M