

environment as a result of the proposed rule. NMFS completed a final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) based on comments received during the comment period. A copy of the final EA/RIR/FRFA is available from NMFS (see **ADDRESSES**).

NMFS completed the FRFA, pursuant to 5 U.S.C. 604, without regard to whether the proposal would have a significant impact on a substantial number of small entities. A summary of this FRFA follows:

The Endangered Species Act provides the statutory basis for this final rule. This final rule will require the use of an approved leatherback TED in all shrimp trawl nets operated in all offshore waters and the inshore waters of Georgia and South Carolina at all times; require the use of an approved loggerhead TED in all shrimp trawls licensed or fishing for food shrimp in all inshore waters at all times; allow the use of the weedless TED with a brace bar; allow the use of hooped hard TEDs in inshore waters with modifications; allow the use of accelerator funnels with certain modifications; and require tow time restrictions on try nets.

The objectives of this final rule are to decrease the mortality of large loggerhead and green turtles; decrease the mortality of large leatherback turtles; decrease the mortality of all threatened and endangered sea turtles incidentally taken by shrimp trawl activity by eliminating TEDs that are not sufficiently effective in releasing sea turtles; improve the enforcement of existing TED regulations; and implement a more efficient and effective management scheme with respect to conserving large leatherback turtles.

An excessive number of endangered or threatened sea turtles are dying each year due to probable interaction with shrimp trawl gear. The Leatherback Contingency Plan with its required surveys and use of emergency rules that close areas to trawl activity to reduce sea turtle mortality has been shown to be inefficient. An alternative management approach is required to both address the excessive mortality of sea turtles and eliminate the need for costly and disruptive closures.

This final rule will impact the Southeast shrimp trawl fishery primarily through the imposition of increased costs associated with the purchase and maintenance of the required gear and through lost revenue opportunities through potential increased shrimp losses associated with the gear.

A fish harvesting business is considered a small business if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of \$3.5 million. Based on a compilation of data from the shrimp landings file for the Gulf, Florida trip ticket data, and data from the Georgia shrimp landings system, the maximum known gross revenue for an individual fishing craft in the Gulf and South Atlantic shrimp fisheries in 1999 was approximately \$723,656. While this figure could be an underestimate of the true maximum value since currently available data do not allow all shrimp landings from different parts of the region and their associated revenues to be linked to a particular fishing craft, this figure is sufficiently less than \$3.5 million to support the presumption that all firms in the Gulf and South Atlantic shrimp trawl fisheries are small business entities.

It is estimated that 11,244 small vessels (vessels less than or equal to 60 ft. (18.3 m)) and 2,368 large vessels (vessels greater than 60 ft. (18.3 m)), or a total of 13,572 vessels operate in the Southeast shrimp trawl fishery. Note that this figure does not include fishing craft that are licensed or known to only participate in shrimp fisheries that use non-trawl gear (i.e., butterfly nets, channel nets, cast nets, skimmer nets, etc.) since these gear types are not subject to the existing or proposed TED requirements. Small vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 4,752 lb. (2,155.5 kg) of shrimp annually valued at \$12,435 in gross revenues, with average variable cost expenditures of \$8,708 and generating a profit of \$3,727. Large vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 42,656 pounds of shrimp annually valued at \$142,880 in gross revenues, with average variable cost expenditures of \$126,089 and generating a profit of \$16,089.

Although all participants in the fishery may be affected by the proposed action, it should be noted that the provisions on weedless TEDs and hooped hard TEDs will also be expected to affect specific subsets of the industry. The weedless TED is used by approximately 15 percent of Texas shrimpers in the trawl fishery. Therefore, using the estimate of the 2,355 vessels reporting landings in Texas, 353 vessels would be affected by the weedless TED specifications. With respect to the hooped hard TEDs, it is estimated that 300 vessels currently utilize this gear.

This final rule is expected to decrease annual ex-vessel shrimp gross revenues by \$1.8-\$7.3 million, reduce variable costs (due to the change in the relative numbers of small vessels vs. large vessels) of production by \$1.4-\$3.7 million, and reduce profits by \$444,000-\$3.6 million. Ex-vessel shrimp prices are projected to increase, due to the decline in domestic shrimp harvest, by 0.7-1.7 percent per year. The proposed action is expected to result in a less than 1.0 percent loss in landings, gross revenues and profits in the Southeast shrimp trawl fishery, and result in a maximum loss of employment opportunities of 5.1 percent in the small vessel fleet and 0.5 percent in the large vessel fleet. The small vessel fleet is expected to contract by 400-574 vessels by 2006 relative to status quo conditions as a result of the rule, while the large vessel fleet is expected to contract by up to 11 vessels, also as a result of the rule. The change in average annual profits for the average small business entity operating in the Southeast shrimp trawl fishery due to the proposed action is expected to range from a gain in profits of 0.5 percent to a loss in profits of 2.4 percent over status quo conditions.

NMFS received the following comments regarding economic impacts of the rule through public comment on the proposed rule: (1) The projected cost to retrofit TEDs is too low; (2) the 20-percent profit margin used is too high; (3) the cumulative loss of shrimp as a result of the proposed changes in addition to existing requirements is not considered; (4) an analysis of possible shrimp loss due to the prohibition of accelerator funnels is lacking; (5) the analysis of the economic impact to small businesses is inadequate; (6) the percent shrimp loss is too low and should be 15 to 20 percent; (7) information on gear replacement frequency is inaccurate; and (8) the analysis does not consider the effects the rule will have on fishermen in combination with depressed shrimp prices. In response to these comments, a new Regulatory Impact Review and Final Regulatory Flexibility Analysis were conducted which incorporated information gathered during the public comment period as well as the best available information from existing databases on profit margins, gear costs, and the durability and cost of replacement of equipment. The average replacement cost for a leatherback TED was assumed to be \$220, 4 TEDs were assumed necessary for small vessels and 8-10 TEDs for large vessels, and the average useful life of a TED was assumed to be 3 years. The assumption