

of a 20-percent profit margin was eliminated and, instead, vessel profits were internally calculated based on expected revenues and variable costs. Shrimp loss under current regulations as well as the proposed regulations was considered and discussed in the analysis. Estimates of shrimp loss under different TED requirements were derived from test data and provided by the NMFS SEFSC. The analysis allowed the use of an accelerator funnel, consistent with the rule. To incorporate the effects of the depressed shrimp prices, 2001 prices were utilized throughout the assessment.

#### Description of Significant Alternatives to the Proposed Rule and Discussion of how the Alternatives Attempt to Minimize Economic Impacts on Small Entities

Other than the status quo alternative, there were 4 alternatives analyzed including the measures in this final rule (preferred action). One of the proposed alternatives, Alternative 1, would increase the standard size opening of TEDs to 35 inches (89 cm) by 20 inches (51 cm) in all areas; change the minimum grid size to at least 32 inches (81 cm) by 32 inches (81 cm) in all areas; redescribe the current version of the leatherback modification; replace the Leatherback Contingency Plan with standardized zones and times where shrimp trawlers are required to have TEDs installed that exclude leatherback turtles; disallow the use of weedless TEDs and the Jones TED; change the requirements for hooped hard TEDs; change the requirements for accelerator funnels; require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; and require tow time restrictions on trynets. This alternative would reduce the areal and seasonal extent of the leatherback TED requirements from that of the preferred action, but fewer endangered sea turtles would be saved and it is unclear whether costs would be materially reduced. Costs associated with this alternative could be equal to or exceed those of the preferred action.

Alternative 2 would increase the standard size opening of TEDs to 35 inches (89 cm) by 16 inches (41 cm) in all areas; change the minimum grid size to at least 30 inches (81 cm) by 30 inches (81 cm) in all areas; redescribe the current version of the leatherback modification; replace the Leatherback Contingency Plan with standardized zones and times where shrimp trawlers are required to have TEDs installed that exclude leatherback turtles; disallow the use of weedless TEDs and the Jones

TED; change the requirements for hooped hard TEDs; change the requirements for accelerator funnels; require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; and require tow time restrictions on trynets. This alternative would save even fewer sea turtles compared to the preferred action with, again, uncertainty associated with whether any cost savings could be achieved relative to the preferred action.

Alternative 3 would require the use of a TED capable of releasing a leatherback in all waters at all times; change the minimum grid size to a minimum grid size of at least 32 inches (81 cm) by 32 inches (81 cm) in all areas; redescribe the current version of the leatherback modification (71 inch TED); disallow the use of weedless TEDs and the Jones TED; disallow the use of accelerator funnels; require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; and require tow time restrictions on trynets. This alternative has more stringent requirements and would, while saving the same number of endangered sea turtles as the preferred action, likely do so at a higher cost. The status quo alternative would not achieve the desired biological goals of the action.

Copies of the EA/RIR/FRFA are available (see **ADDRESSES**).

#### List of Subjects

##### 50 CFR Part 222

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

##### 50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

##### 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Transportation.

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For the reasons set out in the preamble, 50 CFR parts 222, 223, and 224 are amended as follows:

#### PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

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

##### § 222.102 [Amended]

2. In § 222.102, the definition: “Leatherback conservation zone” is removed.

#### PART 223—THREATENED MARINE SPECIES AND ANADROMOUS SPECIES

3. The authority citation for part 223 continues to read as follows:

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

4. In § 223.206:

a. Paragraph (d)(2)(ii)(B)(1) is removed and paragraphs (d)(2)(ii)(B)(2) and (3) are re-designated as paragraphs (d)(2)(ii)(B)(1) and (2), respectively.

b. Paragraph (d)(2)(iv) is removed and paragraph (d)(2)(v) is re-designated as paragraph (d)(2)(iv).

c. Paragraph (d)(5) is removed and reserved.

d. Paragraphs (d)(2)(ii)(A)(2) and (4) are revised, and new paragraph (d)(2)(ii)(A)(5) is added to read as follows:

##### § 223.206 Exceptions to prohibitions relating to sea turtles.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(2) Is a bait shrimper that retains all live shrimp on board with a circulating seawater system, if it does not possess more than 32 lb. (14.5 kg) of dead shrimp on board, if it has a valid original state bait-shrimp license, and if the state license allows the licensed vessel to participate in the bait shrimp fishery exclusively;

\* \* \* \* \*

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

(5) Is using a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is 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, in which case the exemption under this paragraph (d)(2)(ii)(A) applies to the test net.

\* \* \* \* \*

5. In § 223.207, paragraph (a) introductory text, paragraphs (a)(3)(ii), (a)(4) through (a)(8), (b)(1), (b)(2), (d)(2), (d)(3), the headings of paragraphs