Instead, they were incorrectly included in a change of sponsor from Mallinckrodt Veterinary, Inc. (formerly Pittmann-Moore, Inc.) to Schering-Plough Animal Health Corp. (62 FR 61624, November 19, 1997). Sections 558.175, 558.195, 558.311, and 558.515 are amended to reflect the correct source of bacitracin zinc.

List of Subjects in 21 CFR Part 558

–Animal drugs, Animal feeds.

–Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

–1. The authority citation for 21 CFR part 558 continues to read as follows:

–Authority: 21 U.S.C. 360b, 371.

§ 558.175 [Amended]

–2. Section 558.175 *Clopidol* is amended in paragraph (d)(1)(iii)(*b*) and (d)(1)(iv)(*b*) by removing ''000061'' and adding in its place ''000004''.

§ 558.195 [Amended]

–3. Section 558.195 *Decoquinate* is amended in the table in paragraph (d) in the entry for ''27.2 (0.003 pct.), Roxarsone 11 to 45 (0.0012–0.005 pct.) plus Bacitracin 12 to 50'' under the ''Limitations'' column, by removing ''No. 000061'' and adding in its place ''Nos. 000004, 011716, and 046573''.

§ 558.311 [Amended]

–4. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1)(ii), under the ''Limitations'' column, in the fifth paragraph, by removing ''000061'' and adding in its place ''000004''.

§ 558.515 [Amended]

–5. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (d)(1)(vi)(*b*) by removing the phrase ''Nos. 000004, 000061,'' and adding in its place ''Nos. 000004''.

Dated: March 26, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–9575 Filed 4–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 980331080–8080–01; I.D. 032398C]

RIN 0648–AK66

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues this interim final rule to amend the regulations that require most shrimp trawlers to use Turtle Excluder Devices (TEDs) in the southeastern Atlantic, including the Gulf of Mexico, to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, this interim final rule allows the use of a new design of soft TED—the Parker soft TED—subject to certain limitations. The intent of this rule is to allow shrimpers the option of using a new design of soft TED.

DATES: This rule is effective April 13, 1998. Comments on this rule are requested, and must be received by June 12, 1998.

ADDRESSES: Requests for a copy of the environmental assessment (EA) prepared for this interim final rule and comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Requests for copies of the reports on 1997 TED testing should be addressed to the Chief, Harvesting Systems Division, Mississippi Laboratories, Southeast Fisheries Science Center, NMFS, P.O. Drawer 1207, Pascagoula, MS 39568–1207.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) 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, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227, subpart D. Existing sea turtle conservation regulations (50 CFR 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic Areas, defined at 50 CFR 217.12, to have a NMFS-approved TED installed in each net rigged for fishing, year round. TEDs currently approved by NMFS for shrimp trawling include single-grid hard TEDs, hooped hard TEDs conforming to a generic description, and two types of special hard TEDs.

On December 19, 1996, NMFS promulgated a final rule (61 FR 66933) that concluded a rulemaking process that had begun with an advance notice of proposed rulemaking published on September 13, 1995 (61 FR 47544). The final rule established the Atlantic and Gulf Shrimp Fishery-Sea Turtle Conservation Areas (SFSTCAs) with special conservation requirements to reduce the mortality and subsequent strandings of sea turtles associated with intensive shrimp trawling in nearshore waters. Included in the requirements for the SFSTCAs was the prohibition, effective March 1, 1997, of the use of soft TEDs. The December 19, 1996 final rule also removed the approval of all existing soft TEDs in the rest of the Gulf and Atlantic Areas, effective December 19, 1997. Some of the factors considered in the determination to remove the approval of soft TEDs were the difficulty of installing soft TEDs correctly in various styles of nets, observations of sea turtle takes in the then-approved soft TEDs during commercial trawling, and poor turtle release during retesting of approved soft TEDs in various styles of nets.

TED Certification Procedures

New TED designs must undergo and pass certification trials by the designer and NMFS gear experts before they can be approved for use by the Assistant Administrator for Fisheries (AA). Two different certification protocols were published by NMFS, one on June 29, 1987 (52 FR 24244), and the other on October 9, 1990 (55 FR 41092). The notices publishing these protocols provide a detailed description of the testing procedures and criteria. Both

protocols target a 97-percent exclusion rate of turtles. The original protocol, referred to as the Canaveral protocol, was established for the testing of TEDs in the Cape Canaveral, Florida, navigation channel which had been known for its historical high abundance of loggerhead sea turtles. The exclusion rate was determined by comparing the turtle capture rates of two simultaneously towed nets, one equipped with the candidate TED and the other with no TED installed. By 1989, however, there were not enough turtles at Canaveral to conduct TED testing. NMFS developed an alternate testing protocol using juvenile, captive-reared turtles. In this protocol, referred to as the small turtle protocol, a known number of turtles are introduced into a TED-equipped trawl and the number of escapes in a series of 25 introductions is recorded. The turtle exclusion rate of the candidate TED must statistically equal or exceed the exclusion rate of the control TED to pass the certification trial. A technical review committee, composed of industry and conservation representatives, is convened to review and confirm the video-taped documentation of all test results.

Both protocols also rely on evaluation by an experienced team of NMFS divers who are familiar with working in and around operating trawls and who conduct preliminary observations and make underwater video recordings of candidate TED designs. Videotapes are then reviewed by the candidate TED designer or representative in order to determine whether tuning or modifications are necessary prior to testing. When the designer is satisfied with the configuration of the candidate TED, testing is initiated. This process has resulted in significant on-site modifications to some candidate soft TED designs and has corrected design and installation problems that could otherwise have caused the failure of the design. Under this process, four soft TEDS passed certification and were approved for use: The Morrison, Parrish, Andrews, and Taylor. The Morrison and Parrish TEDs were approved after being tested under the Canaveral protocol, and the Taylor and Andrews TEDs were approved based on testing under the small turtle protocol. All four of the soft TED designs were tested and then approved on the basis of testing conducted in only one size and style of net.

Changes to the TED Testing Protocol

In the preamble of the December 19, 1996, final rule, that prohibited the use of soft TEDs, NMFS acknowledged that the two existing scientific protocols used in approving TEDs did not address some deficiencies in soft TEDs. The discussion in the preamble of that rule stipulated that future testing of soft TEDs would address soft TED-specific problems with the testing protocols, to assure that any subsequently approved soft TED would effectively exclude turtles. In conducting this year's testing of soft TEDs and in developing this interim final rule, NMFS has adopted changes to the methods, statistical risks of error, and application of results of the small turtle test protocol (originally published at 55 FR 41092, October 9, 1990).

One of the changes in methodology has been the adoption of a top-opening, curved-bar style (e.g., the SuperShooter™ design) hard TED, with an accelerator funnel and extended webbing flap, as the control TED. The old control, the NMFS TED, was not representative of gear in actual commercial use, and the metal-framed door over the escape opening in the original NMFS TED occasionally hindered the escape of the small turtles used in the testing. This change in the control TED should tend to make the small turtle protocol more conservative in approving new TED designs. For instance, in comparison testing conducted in 1995, the NMFS TED excluded 24 out of 25 turtles, while the top-opening, curved-bar, hard TED excluded 25 out of 25 turtles, with a shorter average escape time.

An additional change to the method was made by alternating the release position of the turtles in the net among the center, port, and starboard sides of the net. Previously, turtles had been released only at the center of the net. In testing hard TEDs, releasing turtles in the center posed no problem because the hard TED is compact and is installed in the aft portion of the net. All 25 turtles in the test sample encountered and successfully negotiated all the components of the hard TED (the accelerator funnel, the grid, the escape opening, and the webbing flap) to escape. In testing soft TEDs, however, test turtles released at the center of the headrope tended to pass straight down the center of the net and rarely contacted the sides of the soft TED. The sides, or wings, of soft TEDs are the most likely areas to observe pocketing or slack areas of webbing, and the wing areas of candidate soft TEDs accounted for most of the turtle captures observed, even though many turtles in a trial sample never encountered the wings. TED testing of commercially purchased Andrews soft TEDs in June 1996 first revealed the possible bias from using all center releases when testing soft TEDs. Turtles introduced into the trawl in front of the wings of the Andrews TEDs were captured in 21 out of 30 trials, while 15 out of 15 turtles escaped when introduced at the center line. To eliminate this potential bias and to better test the effectiveness of all parts of soft TEDs, the 1997 TED testing sessions were conducted with turtle releases in the port, starboard, and center of the trawls for both the control and candidate TEDs.

The statistical protocol applied to the TED testing results has also been modified to be more conservative in approving new candidate TEDs. The turtle exclusion rate of the candidate TED must statistically equal or exceed the exclusion rate of the control TED to pass the certification trial. Depending on the exclusion rate of the control TED, the number of captures by a candidate TED would prove it to be statistically worse than the control TED and cause it to fail the certification trial. Depending on the capture level used to reject a candidate TED, there is a risk that the failed candidate TED was actually an acceptable TED that happened to perform poorly within the limits of the trial. If a higher number of captures are selected as the failure point, the risk of rejecting an acceptable TED is reduced; however, the risk of accepting an unacceptable TED is correspondingly increased. In applying the TED testing results from the small turtle protocol prior to 1997, the number of captures required to fail a TED was selected so that the risk of rejecting a good TED would be approximately 10 percent. For the 1997 TED testing, NMFS determined that a higher risk of rejecting a good candidate TED would be adopted to lower the risks of approving a poor candidate TED. For the 1997 TED testing session, the risk of rejecting a good TED was increased to approximately 20 percent (the actual failure points selected corresponded to 15 percent and 22 percent risks for the June and September testing sessions, respectively). This change in the statistical protocol meant that candidate TEDs had to show a higher standard of turtle exclusion, relative to the control TED, than in any previous TED testing session.

The most important change in the TED testing protocol, however, is the application of the testing results only to the specific trawl and TED combinations tested. The four previously approved soft TED designs were tested only once in one size and style of net prior to approval. The TEDs were then approved for use in any style and size of net. The testing of commercially purchased Morrison soft

TEDs in 1994 and Andrews soft TEDs in 1996 revealed that soft TED incompatibility with some net types and high variability in installations were problems with the effectiveness of those soft TEDs. Under the new protocol, the approval of successful candidate soft TEDs will be limited to demonstrably compatible net sizes and styles.

Development of Improved Soft TEDs

In March 1997, NMFS gear experts began working with members of the shrimp industry to plan research and development for improved soft TEDs. Based on comments received during the 1996 rulemaking and through consultation with the shrimp industry, priority was placed on researching improvements for a top-opening, panel-style soft TED similar to the Morrison TED and for a bottom-opening, funnel-style soft TED similar to the Andrews TED. Shrimp fishermen and net makers proposed a variety of alternative soft TEDs, most of them variations on the Andrews or Morrison TED, for testing. From March to May 1997, NMFS issued 12 permits to fishermen to conduct commercial fishing efficiency testing with the experimental soft TEDs.

NMFS conducted a series of TED tests using the small turtle protocol from June 5 through 19, 1997. At the outset of the testing, eight different soft TEDs were identified for investigation. These candidates had been developed through cooperation with the shrimp industry and commercial fishing trials. The eight soft TEDs included five variations on the Morrison TED, two variations on the Andrews TED, and one soft TED that was similar to the Morrison and Taylor TEDs. Over the course of the testing, a total of 18 different soft TEDs were examined and tested as successive modifications were made to eliminate any identified design problems. Complete copies of the June 1997 TED testing report are available (see **ADDRESSES**); a summary of the relevant findings and gear developments follows.

Eleven variations of a top-opening Morrison/Taylor style soft TED were examined during the June TED testing session. This testing confirmed several of the observations about Morrison-style TED designs that NMFS gear experts had made during earlier testing in 1994 and 1996. Generally, the large escape opening in the top of the trawl incorporated in the Morrison TED design is easily negotiated by turtles, whose natural preference is to escape toward the surface. Turtles that avoid entanglement in the TED panel usually escape relatively quickly. Several critical factors in the soft TED design or installation that could produce entanglement were slack webbing, webbing that curved upward instead of lying taut and flat, and pockets of webbing near the attachment of the edges of the excluder panel to the trawl. In mesh sizes of 8 inches (20.3 cm) or even 6 inches (15.2 cm), turtles could become entangled if they encountered webbing in the parts of the trawl with any of those design or installation flaws.

The Parker TED, which was the last Morrison-style TED tested during the June session, incorporates design features that overcome the design and installation problems previously observed in Morrison-style TEDs. The Parker TED is a single panel design, so it does not use any wing panels which had been shown to be problematic. It uses a triangular section of 8-inch (20.3-cm) mesh polypropylene or polyethylene webbing in the front and center portion of the excluder panel, but is surrounded on the sides and rear portion of the excluder panel by strips of 4-inch (10.2-cm) mesh webbing. The problem areas for installation—slack areas and pockets near the edges—are, therefore, separated from the large-mesh center of the panel by the 4-inch (10.2-cm) mesh webbing. Even the small turtles used in the June testing session experienced no threat of becoming entangled in the 4-inch (10.2-cm) mesh webbing. Additionally, the 4-inch (10.2-cm) mesh webbing strips create a greater amount of water resistance and drag than the larger mesh center. The increased drag on the sides and rear of the panel worked to pull the entire panel very tight and flat. The Parker TED excluded 25 out of 25 test turtles introduced into the net, compared to 24 releases out of 25 trials scored by the control TED, a top-opening, curved-bar, hard TED. The Parker soft TED was tested in a 43-foot (13.1-m) headrope length Mongoose-style trawl during the June test session.

Following the June 1997 TED testing session, NMFS, in consultation with the shrimp fishing industry, decided to pursue additional testing of the Parker TED to ensure that it would function properly in other trawl styles and sizes than the 43-foot (13.1-m) Mongoose trawl in which it was tested. Commercial fishermen, primarily in the Atlantic Area, participated in an extensive testing program to evaluate the Parker TED in various gear configurations under commercial fishing conditions. One hundred and ninety seven shrimpers (100 in the Gulf of Mexico, 97 in the Atlantic) received authorizations to conduct fishing efficiency testing with experimental versions of the Parker TED. The permits require fishermen to submit reports on their catch upon completion of the permitted testing period. One hundred of the permits issued for Parker TED testing have expired, and reports have been submitted by 42 shrimpers from the Atlantic. Twenty-three of the reports submitted were from fishermen that did not use the Parker TED. Eighteen shrimpers that used the Parker TED reported good bycatch reduction and shrimp retention. Additionally, they reported at least 17 turtle takes (one fishermen reported ''numerous turtle captures''). All reported captures were in try nets, except for one turtle that was exiting the Parker TED as the net was retrieved. All captured turtles were reportedly released alive and in good condition.

These anecdotal reports are similar to reports from observers on commercial shrimp vessels testing the effectiveness of Parker TEDs as bycatch reduction devices in the Atlantic during the fall and winter of 1997. Fifty-four tows of Parker TEDs were observed during 19 sea days off Georgia. Three sea turtle takes were observed during these trials; a ridley and a loggerhead were observed in nets with grid TEDs installed that were blocked by crab traps, and a Kemp's ridley reportedly had not yet reached the Parker TED and slid through the trawl and out of the TED while the net was being retrieved. During similar trials off South Carolina, no sea turtle takes were observed during 30 tows in trawls with Parker TEDs installed.

NMFS conducted a second series of small turtle TED testing from September 15 through 28, 1997. This testing focused on evaluating the Parker TED in various styles of trawls and fishing configurations and on testing alternative designs of Andrews-style TEDs. The Parker TED was examined in eight different style trawls, using a range of center-bridle adjustments on tongue and bib trawls and with two different styles of escape opening.

The Parker TED proved to be compatible with most net types and gear configurations tested. Gear experts evaluated the trawling configuration of the various installations underwater and tested the different style nets with a sub-sample of up to 10 turtles to confirm the divers' evaluation of the effectiveness of the various installations. A total of 107 turtles were introduced into the various trawl/Parker TED combinations, and all were released effectively. The Parker TED assumed a proper configuration and excluded all of the turtles introduced into the net in a 2-seam balloon trawl, a 4-seam semi-balloon trawl, a 4-seam semi-balloon trawl with a bib attached, a straight-wing flat net,

a 4 bars to 1 point (4b1p) taper Mongoose net, and a 3b1p taper Mongoose net. (For a discussion of net tapers, see the section ''Restriction of Soft TED Use to Specified Net Sizes, and Styles'' following.)

In the Mongoose-style trawls and trawls with bibs, the soft TED's configuration was evaluated at a range of center bridle adjustments. TED testing conducted in November 1994 had indicated that the tension on the towing bridle attached to the tongue could influence the shape of the excluder panel on the Morrison TED. In all of these net styles tested with the Parker TED, the excluder panel maintained a good shape over the range of center bridle adjustments. Some installations showed an upward curl at the edge of the panel in the 4-inch (10.2-cm) mesh section, but the 8-inch (20.3-cm) mesh webbing remained flat. On the Mongoose-style trawls and trawls with bibs, a sub-sample of 10 turtles was run with the center bridle at an extremely short setting to test the TED's performance under the most adverse configuration. All of the turtles passed easily through the TED.

The Parker TED was also tested with a leatherback turtle-sized escape opening. An extra large opening covered with a chain-weighted flap was an approved modification for the Morrison TED. The leatherback escape opening modification of the Parker TED excluded all four of the turtles exposed to it. The chain-weighted webbing flap was not a barrier to turtle escape because it did not tightly seal the escape opening.

Two net styles that were evaluated by divers revealed potential incompatibility with the Parker TED: a 2-seam balloon net with a bib attached and an 86-foot (26.2-m) headrope length strongly tapered (6b1p) Mongoose net. In both nets, the excluder panel rolled strongly upward at the edges, pulling up the 8-inch (20.3-cm) mesh as well, creating the possibility for turtle entanglement in the distorted portion of the panel. Diver evaluations indicated that Parker TEDs would not always be effective in these net types.

The Environmental Assessment (EA) prepared for the interim final rule contains a complete discussion of all of the soft TED evaluations conducted during 1997 and of the factors that led NMFS to select this interim final rule as the preferred course of action. Complete copies of the EA for this rule are available (see **ADDRESSES**). In summary, NMFS is allowing the use of the Parker TED in most trawl styles because it passed the certification trials for numerous trawl styles and sizes and because gear specialists were confident that the TED can be replicated by net manufacturers in a manner that precludes stretching and bagging problems that lead to turtle captures in other styles of soft TEDs. Additionally, NMFS considered the favorable shrimp retention characteristics of the Parker TED. The South Carolina Department of Natural Resources (SCDNR) compared shrimp and finfish catches between nets equipped with the Parker soft TED and a top-opening, curved-bar hard TED aboard a commercial shrimp trawler. In 30 comparison tows during September through December 1997, the Parker TED-equipped net caught 9.1 percent less shrimp than the hard TED-equipped net. No sea turtle takes were observed during these 30 tows.

Individual fishermen in the Atlantic Area who received authorizations to conduct commercial efficiency testing (50 CFR 227.72; Office of Management and Budget collection control number 0648–0309, expiration date April 30, 1999) with the Parker TED have confirmed the SCDNR results with qualitative observations. Industry members of the soft TED advisory panel believed that the observed shrimp loss would be acceptable to shrimpers who prefer soft TEDs because of the TED's handling and possible bycatch reduction characteristics.

Although there is no expressed requirement for consideration of shrimp retention capabilities when certifying TEDs, NMFS believes that certification of TEDs that result in low shrimp landings is inappropriate and may be misleading to shrimpers. In the interest of authorizing TEDs that will be effective for shrimpers, amendments to the TED regulations in 1992 (57 FR 57357, December 4, 1992) gave the AA authority to issue permits for experimentation to improve shrimp retention efficiency of existing TEDs, as well as for developing additional TEDs. NMFS believes that soft TEDs with excessive shrimp loss will, at best, not be used. At worst, excessive shrimp loss may lead fishermen to disable or modify the TED after purchasing it. NMFS continues to believe that it is important to quantify the shrimp loss and finfish reduction characteristics of new soft TED designs to better assess their acceptance and effectiveness during commercial use. Although no precise level of shrimp loss acceptable to the industry has been identified at this time, 9 percent appears to be well within the reported tolerance limits. NMFS will continue to work with the industry to assess the shrimp retention rates for new soft TEDs that appear to be effective at excluding sea turtles, and to determine more precisely the level of shrimp loss that would be unacceptable to the shrimp industry and likely to prevent the use or correct installation of TEDs. NMFS also expects to conduct an additional session of TED testing for turtle release, including other variations on the Andrews TED and possibly the Parker TED, in May or June 1998.

In the preamble to the December 19, 1996, final rule, NMFS noted that, while existing soft TEDs were ineffective and the problems inherent in using soft webbing material as a turtle excluder were serious and widespread, there were still positive attributes of soft TEDs and a strong desire, expressed by shrimp fishermen and the Congress, to continue using soft TEDs. NMFS, therefore, stated its intention to undertake intensive efforts to identify technical solutions or modifications for soft TEDs that would effectively exclude sea turtles. The final rule stated that NMFS would work with a panel of stakeholders and gear experts to propose solutions for soft TEDs. The preamble to the final rule stated, ''This process should produce multiple initiatives for further evaluation, possibly including entirely new soft TED designs. If any of these initiatives produce a soft TED that is demonstrated to effectively exclude turtles, it will be approved for use without delay * * *. NMFS intends that successful improvements and modifications to existing soft TEDs that result in such TEDs effectively excluding sea turtles will be incorporated in the TED regulations through rulemaking.'' For this reason, the Parker TED is being certified through an interim final rule. The interim final rule is effective for 18 months in order to minimize possible adverse impacts on turtles. The 18-month period will allow NMFS to evaluate new information regarding the performance of the Parker TED under field conditions (see the section ''Justification for Period of Effectiveness'').

Approval of the Parker TED

Through this interim final rule, NMFS is approving the use of a new soft TED design known as the Parker TED, effective April 13, 1998, through October 13, 1999. The approval of the Parker TED restricts its use to specified trawls, based on the demonstrated effectiveness of the Parker TED in those trawls. The Parker TED is approved for use in all sizes and styles of trawls, except two-seam trawls with bibs or tongues attached, triple-wing trawls, and trawls in which the body taper is greater than 4b1p. Use of the Parker TED will be monitored through at-sea

observers on vessels to further assess shrimp catch and finfish bycatch reduction rates and to ensure that turtle release rates are applicable in commercial fishing activities.

Restriction of Soft TED Use to Specified Net Sizes and Styles

The December 19, 1996, final rule that removed the approval of four types of soft TEDs identified difficulty of installation and incompatibility with certain net types among the key problems with the existing soft TEDs. The results of the two TED testing sessions in 1997 underlined the importance of matching the candidate soft TEDs closely with specific installation and net requirements. This interim final rule provides detailed specifications for construction and installation of the Parker TED. The specificity of these requirements ensures that Parker TEDs constructed and installed according to the requirements will be effective TEDs and controls the problems with previous soft TED designs of incompatibility with various net types and improper installation. To ensure the proper installation of the Parker TED, NMFS intends to conduct special TED training sessions for soft TED makers. The TED manufacturers' training program will include certificates of training to the manufacturers and the development and distribution to fishermen of a list of manufacturers who have been trained in the new soft TED installation.

Because of the specificity of the Parker TED's requirements, enforcement officers will be better able to inspect the Parker TED and determine whether it is installed in a manner that will allow it to function effectively. Given the problems with previous versions of soft TEDs, NMFS has developed a 1998 soft TED enforcement plan to help ensure that the reintroduction of soft TEDs into the fishery will be successful. Among the elements of that plan, enforcement officers and gear experts will closely monitor the commercial implementation of the Parker TED at net shops and dockside trawlers, with the goal of finding and correcting any misapplication of the Parker TED's regulatory requirements. In addition to these education and monitoring initiatives, the 1998 enforcement plan includes enhanced resources dedicated toward TED at-sea enforcement and compliance. In previous years, most at-sea law enforcement has been conducted by the U.S. Coast Guard and by some state law enforcement agencies. In 1998, NMFS will be fielding enforcement officers for at-sea boardings to augment existing enforcement activities. These enforcement officers will be available to detect and deter TED violations in areas and times with historically high sea turtle strandings.

The specifications for the new soft TED design necessarily incorporate more terminology specific to net-making than the regulations for the previously approved soft TEDs, and, therefore, new definitions for trawl styles and webbing characteristics are added to the regulations. Definitions for three classes of trawls are added: Two-seam trawls; four-seam, straight-wing trawls; and four-seam, tapered-wing trawls. These classes encompass the three main types of net-body geometry in use in the commercial fishery. The two-seam trawls have a very simple design with top and bottom body panels of webbing that are directly attached to each other down the sides of the trawl (producing two sewing seams). The two-seam trawl is commonly known as a balloon trawl in the commercial shrimping industry. The four-seam trawls, on the other hand, incorporate two additional webbing panels between the top and bottom body panels down the sides; these side panels are called ''wings.'' Four-seam, straight-wing trawls, as the name implies, use wings whose upper and lower edges are parallel over its entire length. Western jib trawls and straight-wing flat nets are the primary styles of nets of this class in commercial use. In four-seam, tapered-wing trawls, the wing panels are triangular or trapezoidal in shape so that the top and bottom edges of the wings converge toward the rear of the trawl. Examples of four-seam, tapered-wing trawls in commercial shrimping use are the four-seam, semi-balloon trawls and tapered-wing flat nets. The Parker TED was evaluated in trawls of all three classes and is being approved for use through this interim final rule in all three classes of trawl. The installation requirements for the Parker TED vary, however, depending on the class of trawl used. In a four-seam, tapered-wing trawl and a two-seam trawl, the leading edge of the Parker TED excluder panel runs the width of the bottom body panel of the trawl. That is, the leading edge runs from ''seam-to-seam.'' In a four-seam, straight wing trawl, the leading edge of the excluder panel must be installed to run the width of the bottom body panel of the trawl and up half the height of each wing on either side.

Another major design element in shrimp trawl design is the inclusion of tongues or bibs. Tongues and bibs are additional pieces of webbing that extend the top, center portion of the leading edge of the trawl and include an eye for attachment of a towing bridle. This third bridle, in addition to the primary towing bridles that lead to the trawl doors or dummy-doors, allows the towing tension to be distributed away from the sides and toward the center of the trawl. The length of the third bridle is adjustable by the fisherman to vary the net's horizontal and vertical spreads. Tongues and bibs perform the same function in the trawl; tongues are usually formed into the top body panel and lie behind the headrope while bibs are usually added-on panels that are attached forward of the headrope. For the purposes of this interim final rule, however, tongues and bibs will be considered the same and only a regulatory definition of ''tongue'' is being added. Mongoose trawls are perhaps the best-known style of tongue trawls in commercial use. Mongoose trawls incorporate a four-seam, tapered-wing design in the body of the net, although bibs or tongues are combined with other classes of trawls as well. The Parker TED was evaluated in a variety of trawls with tongues. The Parker TED's configuration was distorted in a two-seam trawl with a tongue, but it retained a good configuration in four-seam trawls with tongues even at extreme ranges of center bridle tension and headrope flotation. The Parker TED is, therefore, being approved for use in four-seam trawls (both straight- and tapered-wing) with tongues, but not in two-seam trawls with tongues. A somewhat rare use of tongues is seen in the so-called ''triple-wing trawls,'' which incorporate a tongue in the center of the footrope in addition to a tongue in the headrope and are thus pulled with four towing bridles. The Parker TED was not evaluated in a triple-wing trawl and, consequently, is not approved for use in a triple-wing trawl.

Another element in shrimp trawl design is trawl taper. The fore-and-aft length of a trawl, relative to its headrope length, is largely determined by the rate of taper of the edges of the top and bottom body panels of the trawl. Taper is usually expressed as the ratio between the cuts in the components of the mesh that reduce the width of the panel of webbing and the cuts straight aft that extend the length of the panel of webbing. An understanding of net-making terminology is necessary to comprehend the conventions used in describing net taper. An individual mesh is composed of four equal lengths of twine, joined by four knots, and the webbing is usually hung in the body of a trawl so that all the meshes form diamond shapes, with the long axis of the diamonds oriented fore-and-aft. The two lengths of twine and the intervening

knot on the left and right sides of the mesh are known as ''points,'' and the individual lengths of twine are known as ''bars.'' Since a single bar is half the width of an entire mesh cutting, a bar on the outside edge of a panel of webbing reduces the width of that row of meshes by one half mesh. Continuing cutting in the direction through the bars on the opposite sides of each mesh and leaving an uncut edge of bars all lying in the same line produce an ''all-bar'' taper. An all-bar taper reduces the width of a panel of webbing by one mesh for every two rows of twine cut. The all-bar taper is the steepest angle of taper that is used in any portion of the soft TED design in this interim final rule. Lesser degrees of taper can be produced by interspersing bar cuts with point cuts—cuts straight aft through both lengths of twine in a point. A point cut extends the length of a webbing panel by one mesh without reducing the width. For example, ''2 bars, 1 point'' (2b1p) indicates a taper in which the net maker would cut a sequence of two bars (inward) followed by one point (aft). This 2b1p taper would reduce the width of a webbing panel by one mesh for every four rows of twine cut. Other bar-point combinations are possible, such as 4b1p, 6b1p, and 8b1p, which would correspond to increasingly steeper tapers approaching the angle of an all-bar taper. A ''straight'' or ''all-point'' cut indicates a cut that leaves all points along the cut edge and that does not reduce the width of the webbing panel. Figure 1 illustrates the components of trawl webbing and offers examples of different tapers:

BILLING CODE 3510–22–P

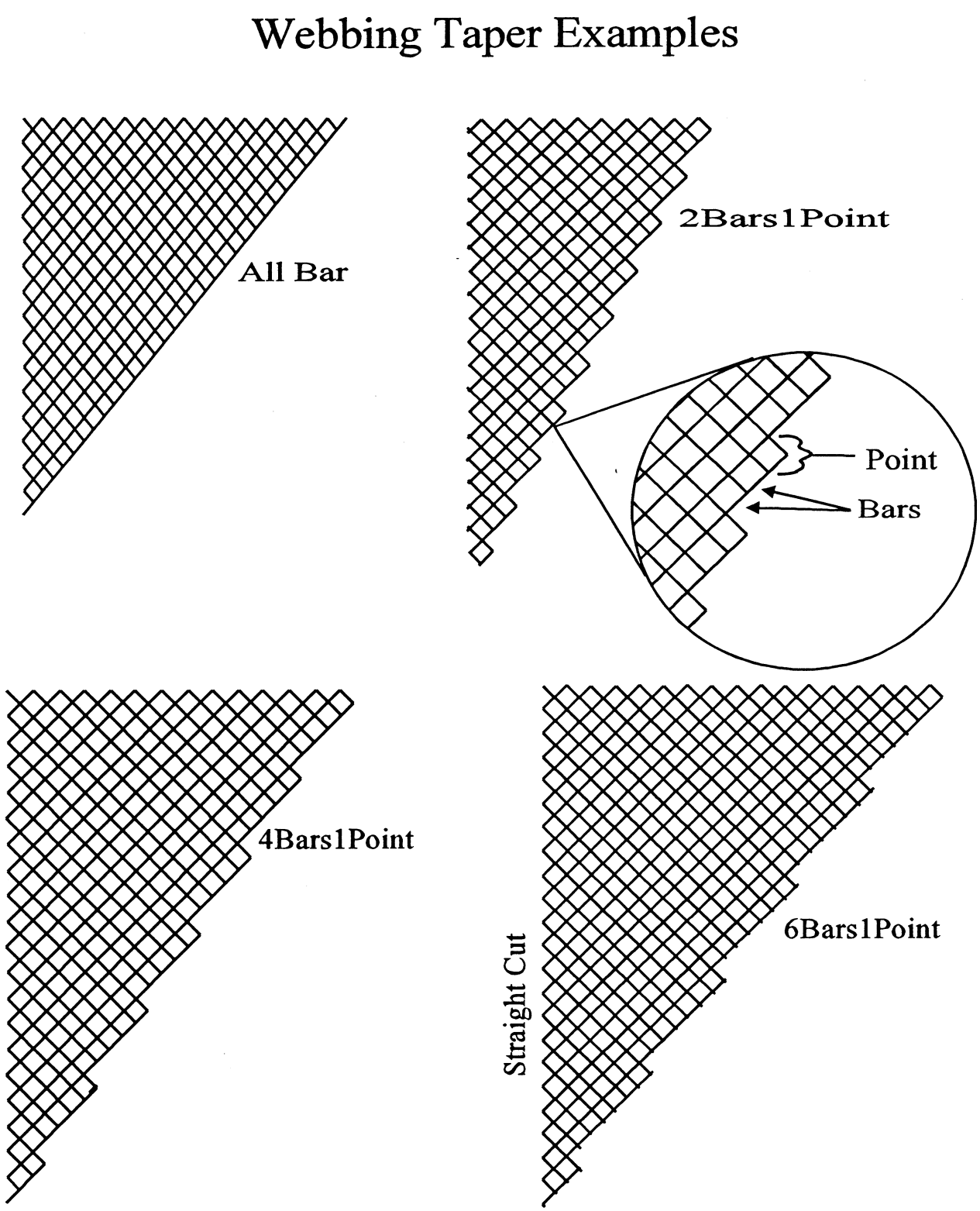


Figure 1. Illustration for Soft TED Designs of the Components of Trawl Webbing and Examples of Tapers.

BILLING CODE 3510–22–C

The concept of tapers is important to this interim final rule's construction requirements for both the Parker TED design and for the limitations on the styles of nets in which the Parker TED may be installed. This interim final rule allows the Parker TED to be installed and used in a range of trawl sizes. The installation points of the Parker TED may be moved forward or aft within the body of the trawl to the location where the panel fits properly as an excluder panel. During the 1997 TED testing sessions, the Parker TED was shown to be effective and to assume a proper configuration in a variety of trawls with tapers on the edges of the body panels of 4b1p or more gradual. In large trawls that use a strong body taper (6b1p was tested), the geometry of the trawl body appeared incompatible with the Parker TED. Therefore, this interim final rule allows installation of the Parker TED only in trawls with tapers on the edges of the body panels of 4b1p or less.

Justification for Period of Effectiveness

This interim final rule is effective from April 13, 1998 through October 13, 1999. This period of effectiveness is necessary to allow for the further testing of the soft TED designs and for the publishing of final protocols. The time period will also allow for the evaluation of the implementation of the commercial, training, and enforcement programs of the Parker TED. A minimum of 12 months is necessary to observe these new designs under all seasonal commercial fishing conditions. A rulemaking window of 6 months after 1 year of field testing will provide NMFS with ample time to review, analyze, and present the data and will give the public an opportunity for comment prior to publication of the final rule. Additionally, shrimpers will have time to make modifications to TEDs that may be required as a result of observations during the next year prior to the subsequent shrimp season in spring of 2000. A period of effectiveness beyond the 18-month period may unnecessarily impact turtles should the data analysis indicate that these soft TED designs are not effective at excluding turtles under normal fishing conditions.

Request for Comments

NMFS will accept written comments (see **ADDRESSES**) on this interim final rule until June 12, 1998. NMFS also intends to conduct an additional TED testing session, including continuing evaluations of soft TED designs, in May or June 1998. NMFS will announce the completion of the testing report from that session through a notice of availability in the **Federal Register**. NMFS may accept additional comments relevant to this action, following release of that TED testing report and prior to promulgation of a final rule replacing this interim final rule.

Classification

This action has been determined to be significant for purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists, under 5 U.S.C. 553(b)(B), to waive prior notice and an opportunity for public comment on this rule. It is impracticable and contrary to the public interest to provide prior notice and opportunity for comment because the shrimp fishery is currently underway in the offshore and eastern Gulf of Mexico with virtually all of those shrimp trawlers required to use TEDs. The provisions of this rule allow those fishermen the option of using a new design of soft TEDs in order to comply with the TED requirement. Additionally, effort in the nearshore and inshore shrimp fisheries in the Gulf and Atlantic Area will increase around the beginning of May. Fishermen traditionally spend the months of March and April rigging their vessels for the season. Delay in providing these fishermen with an additional option for compliance with the TED requirements would create disruption in the fishery through added gear costs and lost fishing time if fishermen commit to the use of certain gear during their vessel rigging period and subsequently choose to re-rig to use the newly approved soft TED design. Furthermore, the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council have both stressed the economic and environmental importance of reducing the bycatch of finfish in shrimp trawls. The Councils have moved to require bycatch reduction devices be installed in shrimp trawls through Amendment 9 to the Fishery Management Plan for the Gulf of Mexico Shrimp Fishery and through Amendment 2 to the Fishery Management Plan for the South Atlantic Shrimp Fishery. Soft TEDs, generally, are known to have valuable bycatch reduction abilities, and the introduction of this new soft TED design into the fishery will result in finfish bycatch reduction and may eventually provide fishermen with an additional option for complying with the gear requirements of the two fishery management plans' amendments. Because this interim final rule does not create any new regulatory burden but instead relieves regulatory restrictions by providing an additional option for complying with the existing sea turtle conservation requirements, under 5 U.S.C. 553(d)(1), it is not subject to a 30-day delay in effective date.

Because prior notice and opportunity for public comment are not required by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603(b) the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are not applicable to this rule. Accordingly, an initial Regulatory Flexibility Analysis was not prepared for this rule.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls. An EA prepared specifically for this action concludes that this interim final rule will have no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

List of Subjects

50 CFR Part 217

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

50 CFR Part 227

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

Dated: April 6, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

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

Authority: 16 U.S.C. 742a *et seq.*, 1361 *et seq.*, and 1531–1544, unless otherwise noted.

2. In § 217.12, definitions for ''Four-seam, straight-wing trawl'', ''Four-seam, tapered-wing trawl'', ''Taper'', ''Tongue'', ''Triple-wing trawl'', and ''Two-seam trawl'' are being added, in alphabetical order, to read as follows:

§ 217.12 Definitions.

* * * * *

Four-seam, straight-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing are parallel over the entire length.

Four-seam, tapered-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two

side panels of webbing. The upper and lower edges of the side panels of webbing converge toward the rear of the trawl.

* * * * *

Taper, in reference to the webbing used in trawls, means the angle of a cut used to shape the webbing, expressed as the ratio between the cuts that reduce the width of the webbing by cutting into the panel of webbing through one row of twine (bar cuts) and the cuts that extend the length of the panel of webbing by cutting straight aft through two adjoining rows of twine (point cuts). For example, sequentially cutting through the lengths of twine on opposite sides of a mesh, leaving an uncut edge of twines all lying in the same line, produces a relatively strong taper called ''all-bars''; making a sequence of 4-bar cuts followed by 1-point cut produces a more gradual taper called ''4 bars to 1 point'' or ''4b1p''; similarly, making a sequence of 2-bar cuts followed by 1-point cut produces a still more gradual taper called ''2b1p''; and making a sequence of cuts straight aft does not reduce the width of the panel and is called a ''straight'' or ''all-points'' cut.

* * * * *

Tongue means any piece of webbing along the top, center, leading edge of a trawl, whether lying behind or ahead of the headrope, to which a towing bridle can be attached for purposes of pulling the trawl net and/or adjusting the shape of the trawl.

* * * * *

Triple-wing trawl means a trawl with a tongue on the top, center, leading edge of the trawl and an additional tongue along the bottom, center, leading edge of the trawl.

Two-seam trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel and a bottom panel of webbing that are directly attached to each other down the sides of the trawl.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

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

Authority: 16 U.S.C. 1531–1543; subpart B, § 227.12 also issued under 16 U.S.C. 1361 *et seq.*

4. In § 227.72, the second sentence of paragraph (e)(2)(iv)(B) is amended by replacing the text ''or paragraph (e)(4)(iii)(E)'' with the text ''or, prior to October 13, 1999, paragraph (e)(4)(iii)(A)(*4*)(*ii*)''; the first sentence of paragraph (e)(4)(iv) is amended by removing the text '', except for the modifications described in paragraph (e)(4)(iii)(E)''; and paragraph (e)(4)(iii) is revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(iii) *Soft TEDs.* Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. Prior to October 13, 1999, the following soft TEDs are approved TEDs:

(A) *Parker TED.* The Parker TED is a soft TED, consisting of a single triangular panel, composed of webbing of two different mesh sizes, that forms a complete barrier inside a trawl and that angles toward an escape opening in the top of the trawl.

(*1*) *Excluder Panel.* (Figure 5) The excluder panel of the Parker TED must be constructed of a single triangular piece of 8-inch (20.3 cm) stretched mesh webbing and two trapezoidal pieces of 4-inch (10.2-cm) stretched mesh webbing. The webbing must consist of number 48 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The leading edge of the 8-inch (20.3-cm) mesh panel must be 36 meshes wide. The 8-inch (20.3-cm) mesh panel must be tapered on each side with all-bar cuts to converge on an apex, such that the length of each side is 36 bars. The leading edges of the 4-inch (10.2-cm) mesh panels must be 8 meshes wide. The edges of the 4-inch (10.2-cm) mesh panels must be cut with all-bar cuts running parallel to each other, such that the length of the inner edge is 72 bars and the length of the outer edge is 89 bars and the resulting fore-and-aft edge is 8 meshes deep. The two 4-inch (10.2-cm) mesh panels must be sewn to the 8-inch (20.3-cm) mesh panel to create a single triangular excluder panel. The 72-bar edge of each 4-inch (10.2-cm) mesh panel must be securely joined with twine to one of the 36-bar edges of the 8-inch (20.3-cm) mesh panel, tied with knots at each knot of the 4-inch (10.2-cm) webbing and at least two wraps of twine around each bar of 4-inch (10.2-cm) mesh and the adjoining bar of the 8-inch (20.3-cm) mesh. The adjoining fore-and-aft edges of the two 4-inch (10.2-cm) mesh panels must be sewn together evenly.

(2) Limitations on which trawls may have a Parker TED installed. The Parker TED must not be installed or used in a two-seam trawl with a tongue, nor in a triple-wing trawl (a trawl with a tongue along the headrope and a second tongue along the footrope). The Parker TED may be installed and used in any other trawl if the taper of the body panels of the trawl does not exceed 4b1p and if it can be properly installed in compliance with paragraph (c)(1)(iii) of this section.

(3) Panel installation—(i) Leading edge attachment. The leading edge of the excluder panel must be attached to the inside of the bottom of the trawl across a straight row of meshes. For a two-seam trawl or a four-seam, tapered-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel, from seam to seam. For a four-seam, straight-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel and half the height of each wing panel of the trawl. Every mesh of the leading edge of the excluder panel must be evenly sewn to this row of meshes; meshes may not be laced to the trawl. The row of meshes for attachment to the trawl must contain the following number of meshes, depending on the stretched mesh size used in the trawl: for a mesh size of 2¼ inches (5.7 cm), 152–168 meshes; for a mesh size of 2⅛ inches (5.4 cm), 161–178 meshes; for a mesh size of 2 inches (5.1 cm), 171–189 meshes; for a mesh size of 1⅞ inches (4.8 cm), 182–202 meshes; for a mesh size of 1¾ inches (4.4 cm), 196–216 meshes; for a mesh size of 1⅝ inches (4.1 cm), 211–233 meshes; for a mesh size of 1½ inches (3.8 cm), 228–252 meshes; for a mesh size of 1⅜ inches (3.5 cm), 249–275 meshes; and for a mesh size of 1¼ inches (3.2 cm), 274–302 meshes.

(ii) Apex attachment. The apex of the triangular excluder panel must be attached to the inside of the top body panel of the trawl at the centerline of the trawl. The distance, measured aft along the centerline of the top body panel from the same row of meshes for attachment of the excluder panel to the bottom body panel of the trawl, to the apex attachment point must contain the following number of meshes, depending on the stretched mesh size used in the trawl: for a mesh size of 2¼ inches (5.7 cm), 78–83 meshes; for a mesh size of 2⅛ inches (5.4 cm), 83–88 meshes; for a mesh size of 2 inches (5.1 cm), 87–93 meshes; for a mesh size of 1⅞ inches (4.8 cm) , 93–99 meshes; for a mesh size of 1¾ inches (4.4 cm) , 100–106 meshes; for a mesh size of 1⅝ inches (4.1 cm), 107–114 meshes; for a mesh size of 1½ inches (3.8 cm), 114–124 meshes; for a mesh size of 1⅜ inches (3.5 cm), 127–135 meshes; and for a mesh size of 1¼ inches (3.2 cm), 137–146 meshes.

(iii) Side attachment. The sides of the excluder panel must be attached evenly to the inside of the trawl from the outside attachment points of the

excluder panel's leading edge to the apex of the excluder panel. Each side must be sewn with the same sewing sequence, and, if the sides of the excluder panel cross rows of bars in the trawl, then the crossings must be distributed evenly over the length of the side attachment.

(4) Escape opening. The escape opening for the Parker soft TED must match one of the following specifications:

(i) Longitudinal cut. A slit at least 56 inches (1.4 m) in taut length must be cut along the centerline of the top body panel of the trawl net immediately forward of the apex of the panel webbing. The slit must not be covered or closed in any manner. The edges and end points of the slit must not be reinforced in any way; for example, by attaching additional rope or webbing or by changing the orientation of the webbing.

(ii) Leatherback escape opening. A horizontal cut extending from the attachment of one side of the deflector panel to the trawl to the attachment of the other side of the deflector panel to the trawl must be made in a single row of meshes across the top of the trawl and measure at least 96 inches (244 cm) in taut width. All trawl webbing above the deflector panel between the 96-inch (244-cm) cut and edges of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap must not be larger than the width of the forward edge of the escape opening. The flap must not extend more than 12 inches (30.4 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the top of the trawl but must not be attached farther aft than the row of meshes through the rear point of the escape opening. One row of steel chain not larger than 3⁄16 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain must not exceed 96 inches (244 cm). A Parker TED using the escape opening described in this paragraph meets the requirements of paragraph (e)(2)(iv)(B) of this section.

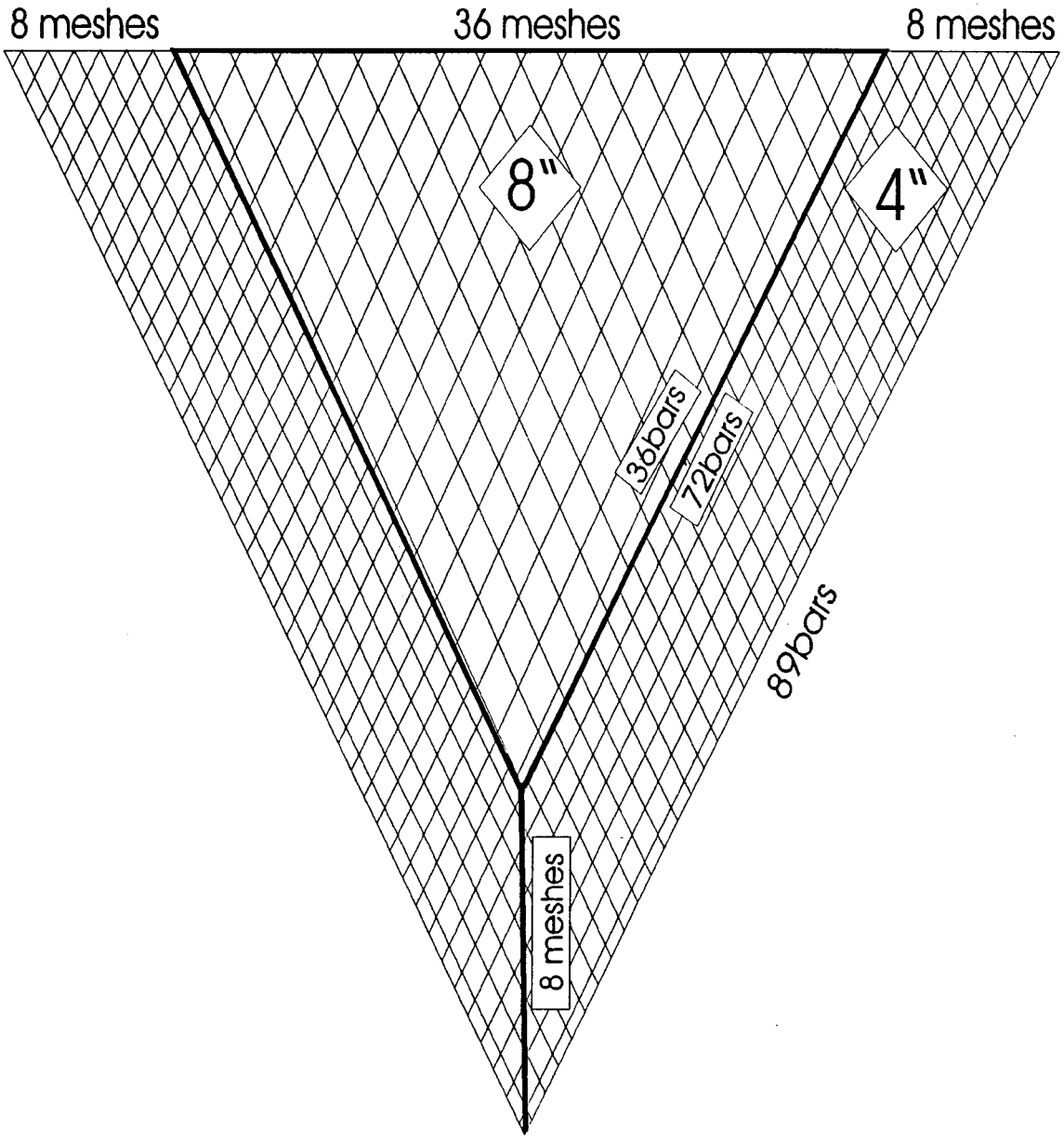
(B) [Reserved]

* * * * *

5. Figures 6, 7, 8a and 8b, and 9a and 9b to part 227 are removed and reserved, and Figure 5 is revised to read as follows: Figure 5 to Part 227—Net Diagram for the Excluder Panel of the Parker Soft TED.

BILLING CODE 3510–22–P

Parker Soft TED



The side panels are composed from 4-inch stretched mesh polyethylene or polypropylene webbing with No.48 twine size (3mm).

The main panel is composed of 8-inch stretced mesh polyethylene or polypropylene webbing with No.48 twine size (3mm).

[FR Doc. 98–9565 Filed 4–10–98; 8:45 am]

BILLING CODE 3510–22–C