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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. - - ; I.D.]

RIN 0648-AV14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Shrimp Fisheries of the Gulf of Mexico and South Atlantic;

Revisions to Allowable Bycatch Reduction Devices

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the Framework procedures for
adjusting management measures of the Fishery Management Plans for
the Shrimp Fishery of the Gulf of Mexico (Gulf shrimp FMP) and
the South Atlantic (South Atlantic shrimp FMP), NMFS proposes to
decertify the expanded mesh bycatch reduction device (BRD) for
use in the Gulf of Mexico shrimp fishery, and to revise the
allowable configuration of the fisheye BRD for use in both the
Gulf of Mexico and South Atlantic shrimp fisheries. The proposed
revisions to the description and configuration of the fisheye BRD
for both the Gulf of Mexico and South Atlantic shrimp fisheries
would negate the need to separately designate a Gulf fisheye BRD.
Therefore, the Gulf fisheye BRD would also be removed from the

list of allowable BRDs in the Gulf and South Atlantic regions. The intended effect of this proposed rule is to improve bycatch reduction in the shrimp fishery and better meet the requirements of national standard 9.

DATES: Comments must be received no later than 4:30 p.m., eastern time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-AV14.Proposed@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: 0648-AV14.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308.

Copies of an Environmental Assessment, an Initial Regulatory Flexibility Analysis (IRFA), and Regulatory Impact Review (RIR) completed in support of the proposed rule are available from the Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 727-824-5305; fax: 727-824-5308. FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone:

727-824-5305, fax: 727-824-5308, e-mail:

Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the shrimp FMP prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). The fishery for shrimp in the EEZ of the South Atlantic is managed under the shrimp FMP prepared by the South Atlantic Fishery Management Council (South Atlantic Council). The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Regulations implementing Amendment 2 to the South Atlantic shrimp FMP (62 FR 18536, April 16, 1997), required the use of BRDs in the South Atlantic penaeid shrimp fishery, and established descriptions of BRD designs and configurations allowed for use in the fishery. The final rule implementing Amendment 6 to the South Atlantic Council's shrimp FMP (70 FR 73383, December 12, 2005) expanded the BRD requirement to include the rock shrimp fishery.

Regulations implementing Amendment 9 to the Gulf shrimp FMP were published April 14, 1998 (63 FR 18139), and established a requirement, with limited exceptions, for the use of certified BRDs in shrimp trawls towed in the Gulf of Mexico EEZ shoreward

of the 100-fm (183-m) depth contour west of 85°30' W. longitude (western Gulf), the approximate longitude of Cape San Blas, FL. The rule established descriptions of BRD designs and configurations allowed for use in the western Gulf shrimp fishery.

To better address the requirements of national standard 9 of the Magnuson-Stevens Act, regulations implementing Amendment 10 to the Gulf shrimp FMP (69 FR 1538, January 9, 2004) required BRDs in shrimp trawls fished in the EEZ east of 85°30' W. longitude (eastern Gulf).

In accordance with the BRD framework procedures of the Gulf shrimp FMP, the Gulf Council recently proposed to modify the existing BRD certification criterion for the western Gulf (~~XX FR XXXXX, DATE~~) to be consistent with the criterion for the eastern Gulf, which is the same as the criterion for the South Atlantic region. When this new criterion is implemented through final rulemaking, a BRD will have to demonstrate a 30-percent reduction in the weight of finfish bycatch to be certified for use in either the Gulf of Mexico or South Atlantic shrimp fisheries. In this same rulemaking, NMFS is proposing a new "provisional" certification criterion as well. To be provisionally certified for a time-limited use in the southeastern shrimp fishery, a BRD must demonstrate a 25-percent reduction in the weight of finfish bycatch.

The fisheye BRD and Gulf fisheye BRD are two of the three BRD designs certified for use in the western Gulf. The fisheye BRD must be placed along the top center of the cod end of a shrimp trawl no further forward than 11 ft (3.4 m) from the cod end tie-off rings. Subsequent tests of the fisheye BRD in slightly different configurations led to the certification of the Gulf fisheye BRD. In this configuration, the fisheye may be placed 15 meshes on either side of top center, between 8.5 ft (2.6 m) and 12.5 ft (3.8 m) from the cod end tie-off rings, thus expanding the allowable configuration of the device itself. These two configurations of the fisheye BRD are also certified for use in the eastern Gulf and South Atlantic regions.

Because of the simplistic design of the fisheye BRDs and their low cost, they became the industry standard. The most commonly used configuration for fisheye BRDs in the Gulf shrimp fishery has the BRD placed 10.5 ft (3.2 m) to 12.5 ft (3.8 m) forward of the cod end tie-off rings. Based on recent observer data collected aboard shrimp vessels fishing in the Gulf of Mexico, NMFS' Southeast Fishery Science Center estimates the fisheye BRDs in this forward position are achieving approximately a 13-percent reduction in finfish bycatch by weight. Therefore, they do not meet the 30-percent finfish bycatch reduction criterion to be certified for use, nor do they meet the 25-percent finfish bycatch reduction criterion to be provisionally

certified for use.

However, placed farther back in the cod end, the fisheye BRD is more effective. When placed no farther forward than 9 ft (2.7 m) (102-105 meshes) from the tie-off rings, the fisheye BRD achieves a 37-percent reduction in total finfish bycatch by weight. There is a 98-percent probability the true reduction rate of the fisheye BRD in this more rearward position meets the proposed certification criterion.

Similarly, it appears the efficiency of the expanded mesh BRD, currently certified for use in the eastern Gulf of Mexico and South Atlantic, has decreased. During the original tests of the expanded mesh BRD in the mid-1990s, it achieved between a 30- and 35-percent reduction in total finfish bycatch. Recent tests of the expanded mesh BRD in the Gulf of Mexico indicate it is only achieving about a 17-percent reduction in total finfish bycatch.

For all of these BRD designs, the potential of the BRDs has not changed, but it appears fishing behavior, or some other factor, in the fleet has changed. There have been numerous technological changes to the overall construction of shrimp trawl gear, such as new turtle excluder devices and longer nets. In addition, there have been changes in fishing practices to help increase shrimp retention, such as faster towing speeds and modified retrieval procedures. These changes may have decreased

the efficiency of the BRDs to reduce finfish bycatch. Although the exact reasons for the BRDs' change in efficiency are not known, in practice, the common configuration of the fisheye BRDs and the expanded mesh BRD do not meet certification criteria for use in the Gulf of Mexico.

This proposed rule would remove the expanded mesh BRD from the list of allowable BRDs for use in the Gulf of Mexico shrimp fishery and revise the description and allowed placement of the fisheye BRD. The proposed rule would restrict the fisheye BRD to being located on the top center of the cod end no farther forward than 9 ft (2.7 m) from the tie-off rings. With the proposed restriction, the forward placement represented by the nominal Gulf fisheye BRD would no longer be allowed, and the Gulf fisheye BRD would be removed from the list of allowable BRDs for use in the Gulf of Mexico shrimp fishery.

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There would be no changes to the allowable BRDs in the South Atlantic. The shrimp fishery in the South Atlantic tends to operate in shallower water and has a different species composition to its bycatch. The new information on the fisheye BRD and expanded mesh BRD was all collected in the Gulf of Mexico; there are no new data collected from the South Atlantic fishery to indicate the BRDs are not meeting the bycatch reduction targets. However, with implementation of the proposed rule, and the removal of the Gulf fisheye BRD from the allowable

gear for the Gulf of Mexico, the Gulf fisheye BRD would only be certified for use in the South Atlantic region. To reduce nomenclatural confusion, and to simplify the regulations, the description of the fisheye BRD for the South Atlantic region would be revised to encompass both configurations.

To incorporate this change in the South Atlantic, the fisheye BRD installation configuration would be revised to allow the BRD to be placed along the top center of the cod end as far forward as 8.5 ft (2.6 m). From 8.5 ft (2.6 m) to 12.5 ft (3.8 m) forward of the tie-off rings, the fisheye BRD may be placed no more than 15 meshes off-center from the top center of the cod end. This revised description of the fisheye BRD would negate the need for a separate designation of a Gulf fisheye BRD, and the Gulf fisheye BRD would be removed from the list of allowable BRDs for use in the South Atlantic shrimp fishery as well.

Furthermore, NMFS intends to investigate the efficacy of these BRDs in the South Atlantic fishery before making additional decisions regarding the status of the fisheye and expanded mesh BRDs for use in the South Atlantic fishery.

Classification

NMFS has determined that the proposed rule is consistent with the FMPs and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would modify the list of allowable BRDs for use in the Gulf and South Atlantic shrimp fisheries. Specifically, NMFS proposes to restrict the allowable placement of the fisheye BRD and decertify the use of the expanded mesh BRD for the Gulf of Mexico shrimp fishery. Additionally, with the implementation of the proposed placement of the fisheye BRD, there would be no need to identify the Gulf Fisheye BRD as a separate configuration in either the Gulf or South Atlantic, and the Gulf fisheye BRD would be removed from the list of allowable BRDs.

The purpose of this proposed rule is to further reduce total finfish bycatch, including juvenile red snapper, in the Gulf of

