DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970523122–7122–01; I.D. 041897B]

RIN 0648–AH52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 9

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Amendment 9 would require, with limited exceptions, the use of certified bycatch reduction devices (BRDs) in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico shoreward of the 100–fathom (fm) (183–m) depth contour west of 85°30' W. long.; set the bycatch reduction criterion for the certification of BRDs; and establish an FMP framework procedure for modifying the bycatch reduction criterion, for establishing and modifying the BRD testing protocol and its specifications, and for certifying and decertifying BRDs. The intended effects are to reduce the unwanted bycatch mortality of juvenile red snapper and, to the extent practicable, not adversely affect the shrimp fishery in the Gulf of Mexico.

DATES: Written comments must be received on or before August 18, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of Amendment 9, which includes a regulatory impact review (RIR), an initial regulatory flexibility analysis (IRFA), a fishery impact statement, and a final supplemental environmental impact statement (final SEIS) should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813-225–7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The shrimp fishery is the most valuable commercial fishery in the Gulf of Mexico. In 1995, roughly 5,000 large vessels and some 20,000 small boats harvested 219.8 million lb (99,700 mt) with an exvessel value of $437.4 million. Shrimp species managed under the FMP are brown shrimp, pink shrimp, rock shrimp, royal red shrimp, seabob shrimp, and white shrimp. All except royal red shrimp are harvested in water depths less than 100 fm (183 m). Royal red shrimp are not found in depths less than 100 fm.

Shrimp trawls have a significant bycatch of non-target finfish and invertebrates, most of which are discarded dead. Scientific survey results indicate that the ratio of the weight of finfish bycatch to that of shrimp caught is about 4.2 to 1.

Bycatch may result in the reduction of species diversity within a marine ecosystem, adversely impact other fauna, and significantly reduce the yield in other fisheries that are directed at adults of the discarded species. Important fish species in the shrimp fishery bycatch include juveniles of red snapper, king and Spanish mackerel, and sharks. If left to mature and grow, these juvenile fish possibly could be harvested later and produce a significantly higher yield in weight as well as enhancing the reproductive capacity of their stocks.

Recent concerns over the shrimp fishery bycatch in the Gulf of Mexico have focused on the high mortality of juvenile (age 0 and age 1) red snapper, a valuable reef fish species for commercial and recreational fisheries. In 1991, NMFS began participation in a cooperative research program on the magnitude, composition, and impacts of the shrimp fishery bycatch in the Gulf of Mexico and South Atlantic and on technological approaches for reducing this bycatch. The shrimp and finfish industries, states, universities, and NMFS have been major partners in this cooperative research effort. To date, this research program has involved expenditures of more than $10 million.

Based on research results, the Council developed Amendment 9 to reduce the unwanted bycatch of juvenile red snapper while, to the extent practicable, minimizing adverse effects on the shrimp fishery. The red snapper stock of the Gulf of Mexico is overfished. Even if the directed fisheries for adult red snapper were eliminated, the bycatch of juvenile red snapper in shrimp trawls would still need to be reduced significantly for the adult spawning stock to recover. Under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the red snapper stock is subject to a long-term rebuilding program with the objective of reaching a 20 percent spawning potential ratio (SPR) by the year 2019, at which point the stock would no longer be considered overfished.

Management Measures in Amendment 9

The critical management measure would require installation of NMFS-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. long., the approximate longitude of Cape San Blas, FL. To be certified, these BRDs must reduce the bycatch mortality of juvenile red snapper by a minimum of 44 percent from the average level of mortality on these age groups during the years 1984–89. Specifically, on board a shrimp trawler, each trawl net that is rigged for fishing, and each try net that is rigged for fishing and has a headrope length greater than 16.0 ft (4.9 m), would be required to have a certified BRD installed. BRD designs that have passed the operational testing phase of the NMFS cooperative bycatch research program (i.e., the fisheye BRD and the Andrews turtle excluder device (TED)) would be certified for use in the EEZ where BRDs are required.

The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel that is inserted into the top center of the codend to form an escape opening facing the mouth of the trawl.

The Andrews TED is an approved soft TED made of webbing that is designed to exclude marine turtles from shrimp trawls. This TED also meets the bycatch reduction criterion for juvenile red snapper and is considered as a potentially certifiable BRD upon implementation of Amendment 9, if not prohibited from use as a TED by other applicable Federal law or regulation. On December 19, 1996, NMFS issued a final rule (61 FR 66933) under the Endangered Species Act (ESA) that decertified the Andrews TED effective March 1, 1997, in the specified conservation area (i.e., 0–10 nautical miles offshore west of the Mississippi River) and, effective December 19, 1997, throughout the Gulf. New tests indicated that this TED does not meet the requirements for excluding turtles. That final rule would remove the

Andrews TED from the list of NMFS-approved TEDs unless improvements or modifications are made to the design, so that it will exclude turtles effectively. Thus, the Andrews TED would be a certified BRD upon implementation of Amendment 9 only during a time when, and in a geographical area where, it is an approved TED, as specified in the applicable ESA regulations (i.e., at 50 CFR 227.72(e)(4)(iii)).

Amendment 9 would exclude from the requirement for use of BRDs: (1) Vessels trawling for royal red shrimp beyond the 100–fm (183–m) depth contour or trawling for butterfish or groundfish; (2) a single try net with a headrope of 16 ft (4.9 m) or less on each vessel; and (3) vessels trawling for shrimp with no more than two rigid-frame roller trawls limited to 16 ft (4.9 m) or less, such as those used in the Big Bend area of Florida. The rationale for excluding vessels fishing for royal red shrimp is that red snapper rarely occur in areas where royal red shrimp are caught. Vessels trawling for butterfish would be excluded because, based on observer information, such vessels have a minimal bycatch of red snapper and only two or three vessels are in the fishery. Vessels trawling for groundfish would be excluded because these vessels have a minimal bycatch of red snapper compared to shrimp trawlers. In the butterfish and groundfish fisheries, the mesh sizes and deployments of trawls make it highly unlikely that a vessel would have on-board or landed catch of shrimp in excess of 1 percent, by weight. Therefore, the codified text of this proposed rule contains no explicit exemption from the requirement for the use of a BRD by a vessel trawling for butterfish or groundfish—such vessel, by definition, would not be a ''shrimp trawler'' required to have a BRD in each net. Vessels trawling for shrimp with rigid-frame roller trawls would be excluded because such vessels operate in shallow waters where red snapper are not found in significant numbers.

Framework Measures in Amendment 9

The purpose of the framework measures is to provide a flexible management system to minimize regulatory delays while maintaining substantial Council and public input into management decisions. With these procedures in place, management can rapidly adapt to changes in the abundance of red snapper, new scientific information, and changes in fishing practices, such as seasonal variations in fishing patterns, areas, and effort. In addition, BRD certification/decertification via the framework procedure may be expedited to react to changes in the certification criterion and to the testing of new or modified BRDs.

If Amendment 9 is approved, the following procedures would be followed under the framework measures that are contained in Amendment 9 but are not part of the proposed rule.

Modification of the Bycatch Reduction Criterion

The Council would evaluate the need for changes to the bycatch reduction criterion for red snapper and recommend needed changes to the Regional Administrator, Southeast Regional Office, NMFS (Regional Administrator). Such changes would be accomplished through regulatory amendments (which would modify the final rule implementing Amendment 9 through notice-and-comment rulemaking). If the Council determines that bycatch reduction criteria are needed for other finfish species, those criteria would be established by FMP amendments.

The Council would establish a Special BRD Advisory Panel (SBAP) made up of scientists, engineers, fishermen, environmentalists, and others with knowledge of BRDs and their ability to reduce bycatch of juvenile red snapper. The SBAP would advise the Council on the need for, and recommendations regarding, modifications to the bycatch reduction criterion for red snapper. Prior to recommending such changes, the Council would also consult its shrimp and reef fish committees, as appropriate.

In addressing changes to bycatch reduction criterion for juvenile red snapper, the Council would consider the status of red snapper stocks as reflected in stock assessments, the impacts of shrimp trawl bycatch, and the impacts of the directed fishery for red snapper on the stock. The Council would also consider factors related to the shrimp fishery such as changes in fishing effort, the effects of state and Federal management efforts on bycatch, changes in TED gear or rules that may affect bycatch, closed areas, closed seasons and/or seasonal usage of BRDs, and limitations on the types and sizes of trawl gear. The Council would consider environmental and ecological effects, social and economic factors in the commercial and recreational fisheries for both red snapper and shrimp, and other relevant data. Modifications to the bycatch reduction criterion would be based on the best available scientific information and must be achievable through available, or soon to be available, technology. Public comments would be received prior to changes, and public testimony would be obtained at the meeting at which the Council considers changing the criteria.

The bycatch reduction criterion would be specified in terms of a percentage reduction in bycatch mortality of juvenile red snapper (age 0 and age 1) from the average level of mortality on those age groups during the years 1984–89. The criterion may be further qualified according to seasons and geographic areas.

If changes are needed to the bycatch reduction criterion for juvenile red snapper, the Council would send a regulatory amendment to the Regional Administrator that details its recommendations along with any relevant reports and public comments. The Regional Administrator would review the Council's recommendations, all scientific reports, and comments of the SBAP and other Council committees. If it is determined that the recommendations are consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, the Regional Administrator would draft proposed regulations implementing the changes to the bycatch reduction criterion for publication in the **Federal Register**. A comment period of not less than 15 days would be provided on the proposed rule.

If the Regional Administrator rejects the recommended changes of the Council, the Regional Administrator would notify the Council and provide written reasons for rejection along with recommendations for revisions. In the event of rejection, the existing criterion for bycatch reduction of red snapper would remain in effect until changes are approved and implemented.

Establishment and Modification of BRD Certification/Decertification Criteria and the BRD Testing Protocol

The criterion for the certification of a BRD would be that the BRD can consistently meet or exceed the established bycatch reduction criterion through the testing protocol established by the Regional Administrator. This BRD certification criterion may be modified through implementation of a regulatory amendment concurrent and consistent with changes to the bycatch reduction criterion.

The Council has not established criteria for shrimp loss from BRDs; however, shrimp loss data should accompany any application for certification of a BRD to allow evaluation of shrimp loss while satisfying bycatch reduction requirements. In addition, the applicant should provide information on cost and

operational considerations (e.g., ease of handling and any special operating tactics such as hauling back while towing away from high seas to minimize shrimp loss).

The BRD testing protocol would include the testing parameters and statistical guidelines to be followed in evaluating the effectiveness of BRD designs in meeting the established bycatch reduction criterion. The basic testing procedure would include an accurate and detailed written description and diagram of the gear used, including the types and rigging of trawls, BRDs, and TEDs. Also, the BRD must be rotated between outside and inside nets from side to side to reduce net bias. Modification of gear during testing constitutes the beginning of a new test.

All testing would be done under the supervision of qualified scientists or other technical personnel approved by the Regional Administrator to ensure that the protocol is followed and to help prevent the need for additional evaluation. Testing would be accomplished by comparison of a net with an experimental BRD and approved TED to a net with only the same type of TED. Testing will involve at least the minimum number of tows specified by the protocol. Testing would be done in areas where juvenile red snapper are present.

The Regional Administrator would develop the testing protocol for certifying new BRDs. This testing protocol would include specifications and guidelines regarding various testing parameters. Prior to implementation of the testing protocol, the Regional Administrator would provide copies of the protocol to the Council and provide a reasonable period for the Council's review and comment. In reviewing the testing protocol, the Council may consult appropriate committees and advisory panels for recommendations. The Council would advise the RA in writing of any recommendations regarding the testing protocol, including its guidelines and parameters, and provide any relevant reports and comments. The RA would review the Council's recommendations along with other comments and reports. The BRD testing protocol would be published in the **Federal Register**.

The following are testing parameters and guidelines that would be included in the testing protocol. There may be other parameters that would be required to be examined in evaluating BRD performance. The RA would determine if the researcher has complied with these testing parameters as specified in the protocol including: Valuation and oversight personnel, sample size, experimental design, season and area of testing, time of day, required measurements, length of tows, descriptions of devices in nets, shrimp loss, and any other relevant parameters.

For each new BRD proposed for certification, the applicant would be required to submit an application to the Regional Administrator along with a complete report on the BRD testing. This report would be required to contain a comprehensive description of the tests, including a summary of all data collected together with copies or listings of all data collected during the certification trials, and analyses of the data that demonstrate compliance with the testing protocol and the ability of the BRD to meet or exceed the bycatch reduction criterion. An applicant would be required to provide photographs, drawings, and similar material describing the BRDs. In addition, any unique or special circumstances of the tests should be described.

The Regional Administrator would determine if a BRD meets or exceeds the bycatch reduction criterion and whether the required reports and supporting materials are complete. The Regional Administrator would also determine whether the testing protocol was followed. If the applicant complies with the testing protocol and the BRD meets or exceeds the current bycatch reduction criterion, the Regional Administrator would certify the BRD (with any appropriate conditions as indicated by test results) and announce the certification in the **Federal Register**, amending the list of certified BRDs.

The Regional Administrator would advise the applicant, in writing, if a BRD is not certified. This notification would explain why the BRD was not certified and what the applicant may do to modify the BRD or the testing procedures to improve the chances of having the BRD certified in the future. If certification were denied because of insufficient information, the applicant would have 60 days from receipt of such notification to provide the additional information; afterwards, the applicant would have to re-apply. If the Regional Administrator subsequently certifies the BRD, the Regional Administrator would announce the certification in the **Federal Register**, amending the list of certified BRDs.

The Regional Administrator would decertify a BRD whenever it is determined that the BRD does not satisfy the bycatch reduction criterion. Before any proposed action would be taken to decertify a BRD, the Council and public would be advised and provided an opportunity to comment on the advisability of the proposed decertification. The Regional Administrator would consider any comments from the Council, and if the Regional Administrator elects to decertify the BRD, it would be accomplished through publication of proposed and final rules in the **Federal Register** with a comment period of not less than 15 days.

The Regional Administrator would, if necessary, modify the BRD testing protocol to more appropriately evaluate BRDs to determine if they meet the bycatch reduction criterion as established or modified by the Council. If the Regional Administrator determines that changes to the testing protocol are needed, the Regional Administrator would follow the same basic process as for initial implementation (i.e., consultation with the Council and regulatory amendment).

One-Year Delayed Effectiveness Period

In a letter dated March 26, 1997, based on the Council's motions passed at its meeting of March 10–13, 1997, the Council Chairman requested NMFS to:

1) Implement Amendment 9 to the Shrimp Fishery Management Plan with an effective date of one year from its approval date (approximately August 1, 1998).

2) Develop and implement a transition plan including, but not limited to the following elements:

A. Outreach to encourage the industry to experiment with existing and new BRDs to develop as many acceptable models as possible, and any BRD other than a hard TED will be acceptable during the transition period;

B. Technology transfer to provide training and assistance to the industry in the use of BRDs; and

C. Educational assistance to provide the industry with knowledge to obtain the maximum benefit of newly developed devices.

3) Freeze the existing total allowable catch (TAC) for red snapper until the effective implementation date of Amendment 9.

In a letter dated April 8, 1997, to the Council, the Regional Administrator advised that NMFS could not grant its request for delayed implementation of Amendment 9 because the Magnuson-Stevens Act requires NMFS to implement approved fishery management plans and amendments without delay, and that a 1-year delay in implementation would be inconsistent with the administrative record supporting Amendment 9. In a letter dated April 10, 1997, to the Regional Administrator, the Council Chairman indicated: ''In regard to your letter of April 8 regarding Shrimp Amendment 9, I do not think it was ever the Council's intent that the secretarial

review process for approval and implementation be halted or slowed.'' He further indicated: ''My reading of the Council intent was as soon as the rules were approved that the requirement for bycatch reduction devices (BRDs) be modified to allow the use of noncertified BRDs as well as certified BRDs for a one-year period. This would allow testing by the industry of other BRD designs, hopefully resulting in designs that could be certified during that period. Also during that period we had hoped that National Marine Fisheries Service and National Oceanic and Atmospheric Administration personnel (including Sea Grant) would provide assistance to the industry in evaluating and 'tuning' that gear.''

NMFS has initiated Secretarial review of Amendment 9 and has announced the availability of Amendment 9 for public review and comment. NMFS is proceeding with publication of this proposed rule for public comment. As indicated above, Amendment 9 measures approved by NMFS must be implemented without delay. If approved, the measure requiring all affected shrimp fishermen to use NMFS-certified BRDs would become effective in accordance with the Administrative Procedure Act. Amendment 9 does not provide for the use of non-certified BRDs. If the Council wants to allow the use of non-certified BRDs for whatever period, it would have to amend the FMP and submit such amendment to NMFS for review, approval, and implementation.

Availability of and Comments on Amendment 9

Additional background and rationale for the measures discussed above are contained in Amendment 9, the availability of which was announced in the **Federal Register** on April 29, 1997 (62 FR 23211). Written comments on Amendment 9 must be received by June 30, 1997. Comments that are received by NMFS by June 30, 1997, whether specifically directed to Amendment 9 or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 9. Comments received after that date will not be considered by NMFS in this decision. All comments received on Amendment 9 or on this proposed rule during their respective comment periods will be addressed in the final rule.

Classification

At this time, NMFS has not made a final determination that the provisions of Amendment 9 are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. In making that final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared a final SEIS for Amendment 9 that was filed with the Environmental Protection Agency (EPA) for public review and comment; a notice of its availability was published by the EPA in the **Federal Register** (June 6, 1997, 62 FR 31098). The public comment period will end July 7, 1997. The final SEIS assesses the impacts on the human environment of both the Gulf shrimp fishery and the Council's proposed and alternative management measures for reducing shrimp fishery bycatch.

According to the final SEIS, the bycatch reduction measures of Amendment 9 (i.e., the installation of certified BRDs in shrimp trawls): (1) Would reduce the bycatch mortality of juvenile red snapper by 44 percent, an amount necessary for rebuilding the red snapper stock to a healthy level by 2019; (2) would reduce red snapper bycatch in geographic areas where red snapper are concentrated; (3) would reduce the bycatch of other finfish in the area where BRDs are required (i.e., in the Gulf EEZ within the 100–fathom (183–m) contour west of Cape San Blas, FL); no finfish bycatch reduction is expected for most of Florida's west coast; (4) may result in a loss of shrimp harvested; the amount of this loss will depend on the type of BRD used and the operation of the trawl and vessel; (5) would still result in some reduced level of incidental take of finfish in shrimp trawls because BRDs are not 100 percent effective; and (6) would not affect shrimp fishery incidental catch in state controlled waters unless the states adopt similar BRD regulations or unless some level of voluntary use of BRDs would occur in these areas.

The best available stock assessment model indicates that the red snapper stock will rebound with a substantial reduction in the bycatch mortality of the juveniles, but the ecological consequences of reducing the bycatch mortality of other fishes and invertebrates, particularly those that have little commercial value due to size or marketability, are not fully understood. Based on the results of ecological modeling, the mandated use of BRDs could have a negative effect on the biomass of shrimp stocks (i.e., between a 5.9 and 8.2 percent reduction in shrimp biomass resulting primarily from increased populations of bottom fish predators); three of four models considered showed shrimp biomass reductions resulting from increased finfish predation—one model indicated the potential for a small increase in shrimp biomass. Shrimp fishermen will be adversely affected to the extent that their catch is reduced through the loss of shrimp from BRDs as well as any resultant loss of catch from potential reductions in the total shrimp biomass.

Conversely, both recreational and commercial red snapper fishermen should benefit from the predicted recovery of the red snapper stock. Fishermen who target other highly sought-after species that are also taken in the shrimp fishery bycatch (e.g., king and Spanish mackerel) also should benefit to the extent that populations of these species increase. The effects of the shrimp fishery on the red snapper stock have heretofore been adverse because of the bycatch mortality of juveniles; the effects of this fishery on other finfish populations have probably been adverse but the exact biological impacts are unknown or not well understood.

The overall effects of the proposed BRD measures will be positive for the red snapper stock and probably positive for the other finfish stocks affected by shrimp fishery bycatch (the probable effects on these other species is not well understood). Although the overall effects of the bycatch reduction measures may be positive for finfish, they may have negative effects in terms of a reduced biomass of shrimp because of increased finfish predation and reduced nutrient recycling. Whether this will result in a corresponding reduction in shrimp harvest is unknown at this time. Firm conclusions about impacts of BRDs on shrimp catches are difficult given an approximate 12 percent variability in annual Gulf shrimp landings over the last five years. Because of these uncertainties, it is difficult to predict the effects of BRDs on shrimp fishery participants or fishing communities resulting from changes in the biomass of shrimp stocks or the level of shrimp landings.

The Council prepared an initial regulatory flexibility analysis (IRFA) based on the RIR that describes the impacts this proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS has concluded that Amendment 9, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities. A summary of the IRFA's assessment of the significant impacts on small entities follows.

Amendment 9 will affect most of the roughly 5,000 shrimp vessels that

operate in the Gulf, because the vast majority of such vessels operate in the EEZ for at least part of the year. It will also affect a substantial, but unknown, number of shrimp boats that are smaller than the typical offshore shrimp vessel (smaller craft that do not require U.S. Coast Guard documentation) but operate in the EEZ during periods of favorable weather when harvestable shrimp populations are found in the near-shore portion of the EEZ. All of the vessels and boats that would be affected by Amendment 9 are considered small business entities for the purposes of the Regulatory Flexibility Act, because their individual annual gross revenues are less than $3 million. The small entities that would be affected by Amendment 9 generate annual gross revenues ranging from almost nil to about $200,000, while incurring annual operating costs ranging from $8,000 to $98,000.

The shrimp loss from using BRDs would cause at least a 5–percent reduction in gross revenues for a large, but unknown, number of shrimp vessels. The owners of affected shrimp fishing vessels and boats will have to purchase and use certified BRDs, each costing between $50 and $200; vessels and boats may fish with between one and five nets. In addition, affected small entities would incur annual increases in operating costs ranging from 0.2 to 10 percent; these costs generally would be less than 5 percent. The IRFA indicates that, depending on the type of certified BRD shrimpers choose, between 10 and 513 full-time shrimp vessels (i.e., between 0.3 and 16.6 percent of the fleet size of these vessels) would leave the shrimp fishery because of the effects of the BRD requirements.

The subject proposed rule to implement Amendment 9 would not establish any new reporting or recordkeeping requirements. However, the BRD testing protocol required by Amendment 9 will be published under a separate and subsequent proposed rule and will include two new collection-of-information requirements subject to the Paperwork Reduction Act (see discussion below regarding Paperwork Reduction Act). The impacts of these information collections on small entities will be discussed in the subsequent rulemaking.

Regarding other Federal rules that duplicate, overlap, or conflict with the proposed rule, if Amendment 9 is approved and implemented, the Andrews TED would be a NMFS-certified BRD only for that period of time and for that geographic area for which it will still be a NMFS-certified TED (see discussion above regarding the Andrews TED in relation to Amendment 9 and the ESA). After that period of time or outside of that area, the Andrews TED would not be a NMFS-certified BRD.

Several alternatives to the proposed measures of Amendment 9 were considered by the Council. The status quo, which would have no negative economic effects on the shrimp trawling industry, was rejected because the critical bycatch reduction objective cannot be met without some action to reduce the shrimp fishery bycatch of red snapper. The alternative of closing the shrimp season for a portion of the year was rejected because this would not likely result in a large enough reduction of red snapper bycatch and because the negative impacts on the shrimp industry would be significant. The alternative of meeting the bycatch reduction objective through permanently closing some shrimp trawling areas where juvenile red snapper are concentrated was rejected because the projected economic losses to the shrimp industry were greater than the preferred alternative. The proposed rule does provide for certain exemptions from the BRD requirements (e.g., exemptions for gear and fishing operations in certain depth and geographic zones where juvenile red snapper are not abundant) to reduce negative economic impacts on shrimp fishermen while still meeting the bycatch reduction objectives. A copy of the IRFA is available from the Council (see **ADDRESSES**).

This rule would not establish any new reporting or recordkeeping requirements. As discussed above, the BRD testing protocol is expected to include two new collection-of-information requirements subject to the Paperwork Reduction Act. These two requirements are the notification of NMFS prior to conducting BRD certification tests and the submission of test results with the application for certification. The estimated burden hours (i.e., response times for these requirements) for these requirements have not been determined. When determined, these new collection-of-information requirements will be submitted to the Office of Management and Budget for approval. These requirements and their response times/burden hours will be part of another proposed rule containing the BRD testing protocol to be published by NMFS subsequently in the **Federal Register** with an opportunity for public comment.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, National Oceanic and Atmospheric Administration, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 25, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, a definition for ''Shrimp trawler'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Shrimp trawler means any vessel that is equipped with one or more trawl nets 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.

* * * * *

3. In § 622.41, paragraph (h) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) *Shrimp in the Gulf*—(1) *BRD requirement.* (i) Except as exempted in paragraphs (h)(1)(ii) through (iv) of this section, on a shrimp trawler in the Gulf EEZ shoreward of the 100–fathom (183–m) depth contour west of 85°30' W. long., each net that is rigged for fishing must have a certified BRD installed. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(ii) A shrimp trawler is exempt from the requirement to have a certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler is royal red shrimp.

(iii) A single try net with a headrope length of 16 ft (4.9 m) or less used by a shrimp trawler is exempt from the requirement to have a BRD installed provided it is either pulled immediately in front of another net or is not connected to another net.

(iv) Up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board a shrimp trawler are exempt from the requirement

to have a certified BRD installed. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(2) *Certified BRDs*. The following BRDs are certified for use by shrimp trawlers in the Gulf EEZ. Specifications of these certified BRDs are contained in Appendix D of this part.

(i) Fisheye.

(ii) Andrews TED. The Andrews TED is certified as a BRD only during a time when and in a geographical area where it is an approved TED, as specified at 50 CFR 227.72(e)(4)(iii).

4. In § 622.48, paragraph (i) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(i) *Gulf shrimp*. Bycatch reduction criteria, BRD testing protocol, certified BRDs, and BRD specifications.

5. In Appendix D, paragraph D is added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

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D. *Andrews TED*. Specifications for the Andrews TED are at 50 CFR 227.72(e)(4)(iii)(C).

[FR Doc. 97–17229 Filed 7–1–97; 8:45 am]

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