in St. Paul and St. George, with assistance from NMFS officials.

Executive Order 13175–Native Consultation

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 Note), the executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of the National Marine Fisheries Service in matters affecting tribal interests. Section 161 of Public Law 108–100 (188 Stat. 452) as amended by section 518 of Public Law 108–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS has contacted the tribal governments of St. Paul and St. George Islands and their respective local Native corporations (Tanadgusix and Tanaq) about setting the next three years harvest estimates and received their input.

Dated: May 27, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–12323 Filed 6–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No.070718362–7488–01]

RIN 0648–AV14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; 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 Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS proposes to decertify the expanded mesh bycatch reduction device (BRD), the ''Gulf fisheye'' BRD, and the ''fisheye'' BRD, as currently specified, for use in the Gulf of Mexico (Gulf) shrimp fishery. NMFS would also certify a new specification for the fisheye device to be used in the Gulf. 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 July 3, 2008.

ADDRESSES: You may submit comments, identified by 0648–AV14, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov*.
- Fax: 727–824–5308, Attn: Steve Branstetter.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Copies of 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 is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council). The FMP is 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 9 to the 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 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 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 FMP, NMFS recently modified the existing BRD certification criterion for the western Gulf (73 FR 8219, February 13, 2008) to be consistent with the criterion for the eastern Gulf. The new criterion specifies a BRD must demonstrate a 30–percent reduction in the weight of finfish bycatch to be certified for use in the Gulf shrimp fishery.

The ''fisheye'' BRD and ''Gulf fisheye'' BRD are the two dominant BRD designs currently used in the western Gulf. These two BRDs are actually the same device; the only difference between them is their configuration (where they are placed within the cod end of the trawl). 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 device in slightly different configurations led to the certification of the ''Gulf fisheye'' BRD. In the ''Gulf fisheye'' configuration, the device 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 placement of the device. These two configurations of the fisheye device are also certified for use in the eastern Gulf.

Because of the fisheye-type device's simplistic design and low cost in either configuration, it became the industry standard. The most commonly used configuration for the fisheye device 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. According to NMFS' Southeast Fishery Science Center (SEFSC) estimates, the fisheye device in this configuration is achieving a 14–percent reduction in finfish bycatch by weight. Thus, it does not meet the new 30–percent finfish bycatch reduction criterion, established in separate rulemaking.

However, placed farther back in the cod end, the fisheye device 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 configuration, would meet the 30–percent finfish reduction certification criterion.

Similarly, it appears the efficiency of the expanded mesh BRD, currently certified for use in the eastern Gulf, 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 indicate it is only achieving about a 17–percent reduction in total finfish bycatch.

For both of the fisheye devices (the ''Gulf fisheye'' BRD and the ''fisheye'' BRD) and the expanded mesh BRD, 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 in recent years, such as new, larger turtle excluder devices (TEDs) 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. Although the exact reasons for the BRDs' change in efficiency are not known, in practice, the fisheye device, in its most common configuration, and the expanded mesh BRD do not appear to meet the 30–percent finfish reduction certification criterion.

This proposed rule would decertify the expanded mesh BRD, the ''Gulf fisheye'' BRD, and the ''fisheye'' BRD, as currently specified, for use in the Gulf shrimp fishery and certify a new specification of the fisheye device (revise the description and allowed placement of the ''fisheye'' BRD). The proposed rule would restrict placement of the fisheye device in the Gulf shrimp fishery to the top center of the cod end no farther forward than 9 ft (2.7 m) from the tie-off rings, and this new specification would simply be termed the fisheye BRD. Compared to the fisheye device in its current configurations, the fisheye BRD, in this more restricted configuration, will further reduce total finfish bycatch, including bycatch of juvenile red snapper.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be 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 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 revise the list of allowable BRDs used in the Gulf shrimp fishery. Specifically, NMFS proposes to decertify the expanded mesh BRD, the ''Gulf fisheye'' BRD, and the ''fisheye'' BRD, as currently specified, for use in the Gulf shrimp fishery. The ''fisheye'' BRD with a new, more restrictive specification would be certified for use in the Gulf. The allowable placement of the fisheye BRD would be restricted to no further forward than 9 ft (2.7 m) from the cod end tie-off rings. The purpose of this proposed rule is to further reduce total finfish bycatch, including juvenile red snapper, in the Gulf shrimp fishery to better address the requirements of national standard 9 and aid in the rebuilding of the Gulf's overfished red snapper stock.

No duplicative, overlapping or conflicting Federal rules have been identified.

As of March 26, 2007, a Federal Gulf shrimp moratorium permit is required to fish for shrimp in the Gulf EEZ and 1,928 permits have been issued. Of these permits, 16 are currently not attached to a particular vessel, which results in 1,912 vessels possessing a Federal Gulf shrimp moratorium permit at this time. Of these 1,912 vessels with moratorium permits, 1,599 vessels were active in the Gulf food shrimp fishery in either 2005 or 2006, as demonstrated by recorded landings in the Gulf shrimp fishery landings file for the years 2005 and 2006. This is the most recent period of finalized data for this fishery and will be used for this analysis. The 313 permitted vessels not active during the 2005 or 2006 seasons potentially could have fished during the 2007 season. However, because the status of their current or expected participation is unknown and information on recent performance characteristics are not available, they have not been included in the analysis of directly impacted vessels. Should these 313 vessels become active in the future, they could be directly impacted at that time. Over the past four years, participation in the fishery by permitted vessels has continually declined, particularly in 2006, and preliminary data suggests participation may have decreased further in 2007. This trend is expected to continue in the foreseeable future.

Of the 1,599 active permitted vessels, an estimated 478 vessels are presently using BRDs that would still be allowable under the proposed action. These vessels would not be required to switch to new BRDs or change the placement of their ''fisheye'' BRD. The other 1,121 active permitted vessels presently using BRDs that would not be allowable under the proposed action would have to change the location of their current BRDs or switch to other BRDs. Thus, it is estimated that 1,121 vessels would be directly impacted by the proposed action.

The average annual gross revenue per active permitted vessel in 2005–2006 was approximately $196,943 (2006 dollars). The maximum average annual gross revenue reported by an active permitted vessel during this period was $965,462. However, substantial differences in average annual revenues exist by vessel size. For the large vessel group (60 ft (18.3 m) in length or greater), the average annual revenue per vessel was approximately $221,017 in 2005–2006. For small active permitted vessels (less than 60 ft (18.3 m) in length), the average annual revenue per vessel was approximately $61,267 in 2005–2006. The distribution of annual revenues for small vessels is also considerably more heterogeneous than for large vessels reflecting the fact that the vast majority of large vessels operate on a full-time basis while, for small vessels, some operate on a full-time basis and others only on a part-time basis.

On average, small active permitted vessels are also smaller in regards to almost all of their physical and operational attributes as they use smaller crews, fewer and smaller nets, have less engine horsepower and fuel capacity, etc. Small vessels are also older on average. Almost all large vessels are steel-hulled. Steel hulls are also the most common hull-type among small vessels, though more than 50 percent of these vessels have fiberglass or wood hulls. More than two-thirds of

the large vessels have freezing capabilities while few small vessels have such equipment. Small vessels still rely on ice for refrigeration and storage. A few of the small vessels are so small that they rely on live wells for storage.

Both large and small active permitted Gulf shrimp vessels are highly dependent on Gulf food shrimp landings and revenues. In 2005–2006, the percentage of revenues arising from food shrimp landings was nearly 99 percent for large vessels and approximately 94 percent for small vessels.

Finally, according to previous projections, on average, both small and large Gulf shrimp vessels were experiencing significant economic losses, ranging from a -27 percent rate of return (net revenues/gross revenues) in the small vessel sector to a -36 percent rate of return in the large vessel sector (-33 percent on average for the fishery as a whole). Although more current estimates are not available, preliminary results indicate that the average active permitted Gulf shrimp vessel, whether large or small, was still earning an economic loss in 2006. Therefore, any additional financial burden could hasten additional exit from the fishery.

The Small Business Administration defines a small business in the commercial fishing industry as an entity that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million annually (NAICS codes 114111 and 114112, finfish and shellfish fishing). Based on the average annual revenues for the fishery provided above, all shrimp vessels expected to be directly impacted by the proposed action are determined, for the purpose of this analysis, to be small entities. This proposed rule is expected to directly affect 1,121 vessels, or 59 percent of all permitted vessels and 70 percent of active permitted vessels. Thus, NMFS determines that this action will affect a substantial number of small entities.

Adverse direct effects expected as a result of the proposed action would only accrue to certain vessels in the Gulf EEZ commercial shrimp fishery. The extent to which particular small entities' profits will be reduced by the proposed action is critically dependent on whether the 1,121 potentially impacted shrimp vessel owners decide to employ the predominantly used and produced fisheye BRD in the proposed allowable position, which would be the most expedient option and minimize immediate out-of-pocket expenses, or switch to the modified Jones-Davis BRD or the extended funnel BRD which have a significantly lower average shrimp loss. Two other BRDs would be available, specifically the Jones-Davis and composite panel BRDs. However, due to the lower average shrimp loss associated with the extended funnel and modified Jones-Davis BRDs, and the lower cost relative to the Jones-Davis BRD (but not the composite panel BRD), the extended funnel and modified Jones-Davis BRDs would be economically preferable. Therefore, this analysis assumes that these would be the BRDs of choice.

Approximately 6,400 replacement BRDs will be required under the proposed rule. NMFS has contracted for approximately 1,000 of the economically preferable BRDs to be produced for free distribution to vessels that would be forced to change their current BRDs as a result of the proposed rule. It is expected that one free BRD will be provided to each vessel to ensure that the benefits will be widely distributed. Since the small vessels that will potentially need to switch to new BRDs will likely only need to purchase three BRDs, as compared to six BRDs for large vessels, it is expected that the free BRDs will be provided only to large vessels. This analysis assumes that the shrimp industry will have approximately six months after publication of the final rule to meet the compliance requirements of the proposed rule. This should allow net shops sufficient time to produce the remaining 5,400 BRDs which are expected to be needed in the shrimp industry.

NMFS also anticipates that the effective date of this rule will occur during the off-season, which will allow vessel captains additional time to determine the best methods to use their new BRD according to their particular vessel's operations prior to the peak summer season. Thus, while it may take time for vessel captains to learn how to re-configure their gear so that the gear and gear modifications (BRDs and TEDs) operate in an optimal manner with respect to shrimp retention, the timing of the action should minimize the potential for any initially higher than expected shrimp losses as a result of vessel captains moving up the ''learning curve.''

Therefore, in general, the actual impacts of the proposed rule are expected to be approximated by the impacts associated with use of the extended funnel or modified Jones-Davis BRDs. This general conclusion assumes that vessel owners will make prudent use of the time they are given to test the gear and that the relatively high average shrimp loss associated with the fisheye BRD in the proposed allowable position will provide sufficient economic incentive to switch to a different BRD as soon as possible.

Regardless of the new BRD adopted, the estimated ten large vessels and one small vessel currently using the expanded mesh BRD would be expected to experience a substantial loss as a result of this proposed action. Even if these vessels switch to the extended funnel BRD or modified Jones-Davis BRD, these vessels are projected to experience an estimated annual loss of approximately $17,000 per vessel, or approximately 8 percent of their average annual gross revenues, as a result of higher costs associated with these relatively more expensive new BRDs and reduced revenues resulting from their higher average shrimp loss relative to the expanded mesh BRD. This loss would be expected to be sufficient to cause additional operational changes, since the losses would not likely be sustainable.

For the estimated 70 small and 626 large vessels currently using the ''fisheye'' BRD in the 9-(2.7–m) to 11–ft (3.4–m) position, the expected impacts of the proposed rule are considerably less burdensome, despite the increased operating costs due to the higher costs of the new BRDs, and potentially even beneficial. Specifically, for the 70 small vessels, a switch to the extended funnel BRD is projected to lead to slightly higher annual revenues, approximately $200, or 0.3 percent of their average annual gross revenues, because of the lower average shrimp loss from these alternative BRDs. A switch to the modified Jones-Davis BRD is projected to result in a slight annual loss of $400, or 0.6 percent of their average annual gross revenues. The effects of either switch would likely be imperceptible and, therefore, are expected to cause no change in these vessels' fishing operations.

For the 626 large vessels, a switch to the extended funnel BRD is projected to result in an annual gain of approximately $2,000, or approximately 1 percent of average annual revenues, again due to the higher average shrimp retention. Under a switch to the modified Jones-Davis BRD, the higher costs associated with purchasing this more expensive BRD are approximately equivalent to the increase in revenues resulting from its relatively lower average shrimp loss, thus resulting in no net change. As with the small vessels, all impacts would be expected to be imperceptible and cause no change in these vessels' fishing operations.

Additionally, any potential adverse impacts in the first year would be slightly mitigated by the provision of the one free BRD.

The estimated 27 small and 387 large vessels currently using the ''Gulf fisheye'' BRD are projected to experience greater losses than the vessels currently using the ''fisheye'' BRD in the 9-(2.7–m) to 11–ft (3.4–m) position. Specifically, for the 27 small vessels, a switch to the extended funnel BRD or modified Jones-Davis BRD is projected to result in an estimated annual loss of approximately $1,400, or approximately 2 percent of the vessel's average annual gross revenues. This loss would result from both an increase in operating costs, as these BRDs are relatively more expensive, and a decrease in annual revenues, since they also have a slightly higher average shrimp loss. For the 387 large vessels, a switch to the extended funnel BRD or modified Jones-Davis BRD is projected to result in an estimated annual loss of approximately $4,000, or approximately 2 percent of the vessel's average annual gross revenues. Again, this loss would be due to both an increase in operating costs and higher average shrimp loss. Under current economic conditions, such losses to both the small and large vessels could cause some vessels to alter their current operations in an effort to either reduce costs or increase revenues. Such changes might include, but not be limited to, reducing effort, the number of crew, or crew revenue shares, or switching to other fisheries. The impacts on the large vessels would be slightly mitigated in the first year by the provision of the one free BRD.

The only alternative considered to the proposed action is the status quo, or no action. Since the status quo would not change the existing list of allowable BRDs in the Gulf shrimp fishery, there would be no new impacts associated with this action. However, new information collected between 2001 and 2003 indicate that the expanded mesh BRD, the ''Gulf fisheye'' BRD, and the ''fisheye'' BRD in its standard configuration, as used in the Gulf shrimp fishery, do not meet the 30–percent finfish reduction criterion. According to NMFS' SEFSC estimates, the fisheye device in its most common configurations achieves between a 14- and 23–percent reduction in finfish bycatch by weight, and the expanded mesh BRD achieves a 17–percent reduction in finfish bycatch by weight.

Allowing for the provisional certification of BRDs achieving a 25–percent reduction in finfish bycatch by weight, which has been established via separate rulemaking, could significantly reduce the potential adverse economic impacts of this proposed action on small entities since it would allow for the temporary certification of the extended funnel BRD in the western Gulf. Relative to the other BRDs that meet the 30–percent finfish reduction criterion, the extended funnel BRD's average shrimp loss is considerably lower and, thus, so are the economic impacts potentially resulting from this action if shrimp vessel owners switch to this particular BRD. The period of time vessel owners are expected to be given should be sufficient to allow them to switch to this BRD or the modified Jones-Davis BRD, which will mitigate any adverse economic impacts from the proposed rule. Additional mitigation in the first year will accrue due to the distribution of the 1,000 free BRDs.

Copies of the RIR and IRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 28, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, 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 § 622.41, paragraphs (g)(3)(i)(A),(B), and (E) are revised to read as follows:

§ 622.41 Species specific limitations.

(g) * * *

(3) * * *

(i) * * *

(A) Fisheye—see Appendix D for separate specifications in the Gulf and South Atlantic EEZ.

(B) Gulf fisheye—South Atlantic EEZ only.

(E) Expanded mesh—South Atlantic EEZ only.

3. In Appendix D to part 622, sections C and D are revised to read as follows:

APPENDIX D TO PART 622—SPECIFICATIONS FOR CERTIFIED BRDS

C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch (6.35–mm) diameter, which is inserted into the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in^2 (91.4 cm^2). When the fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

(a) In the Gulf EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 9 ft (2.7 m) from the cod end drawstring (tie-off rings).

(b) In the South Atlantic EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an escape opening in the trawl facing the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the cod end tie-off rings.

D. *Gulf fisheye.*

1. *Description.* The Gulf fisheye is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch (6.35–mm) diameter, which is inserted into the top center of the cod end, and is offset not more than 15 meshes perpendicular to the top center of the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The Gulf fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in^2 (91.4 cm^2). To be used in the South Atlantic EEZ, the Gulf fisheye BRD must be installed in the cod end of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no less than 8.5 ft (2.59 m) and no further forward than 12.5 ft (3.81 m) from the cod end tie-off rings, and may be offset no more than 15 meshes perpendicular to the top center of the cod end. When the Gulf fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

4. In addition to the amendments above, in 50 CFR part 622, remove the word ''codend,'' wherever it occurs, and add in its place the words ''cod end''.

[FR Doc. E8–12324 Filed 6–2–08; 8:45 am]

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