mutually agreeable meeting date, time, and place. The fisherman must meet NMFS at such location at the designated time and allow NMFS to examine his or her gear to help ensure the leader is in compliance with the definition of a modified pound net leader. NMFS will ascertain whether the leader meets the following four criteria taken from that definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at least every 2 feet (61 cm); and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. NMFS will also measure the height of the mesh in relation to the height of the entire leader. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed, as well as information on the low water depth at each end of the modified leader at the site at which it will be set. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more tamperproof tags. Removing or tampering with any tag placed on the leader by NMFS is prohibited. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call NMFS at 757–414–0128 within 48 hours of discovery to report this incident. After the leader is determined to have passed inspection, NMFS will issue a letter to the fisherman indicating that the leader passed inspection. The fisherman must retain that letter on board his/her vessel tending the inspected leader at all times it is deployed. Modified pound net leaders must pass inspection prior to being used at any time during the time period from May 6 through July 15 of each year.

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[FR Doc. E8–27344 Filed 11–17–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 070718362–81268–02]

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: Final rule.

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 issues this final rule 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 is also certifying a new specification for the fisheye device to be used in the Gulf. In addition, this final rule incorporates a number of minor revisions to remove outdated regulatory text and revise references within regulatory text. The intended effect of this final rule is to improve bycatch reduction in the shrimp fishery and better meet the requirements of national standard 9.

DATES: This final rule is effective May 18, 2009.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Steve Branstetter, NMFS, Southeast Regional Office, 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.

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.

On June 3, 2008, NMFS published a proposed rule (73 FR 31669) and requested public comment. The rationale for the measures contained in this final rule are provided in the preamble to the proposed rule and are not repeated here. This final rule is effective approximately 6 months after the publication date to give members of the Gulf shrimp industry enough time to come into compliance with the management measures contained in this rulemaking.

Comments and Responses

NMFS received four comments on the proposed rule, three of which opposed proposed actions or suggested alternate management measures. Following is a summary of the comments and NMFS' responses.

Comment 1: BRD efficacy results used for this rulemaking are not based on best scientific data; preliminary results from a new study released by the Gulf and South Atlantic Fisheries Foundation, Inc. (Foundation) have different outcomes than the results used by NMFS in certifying and decertifying BRDs.

Response: To be certified for unconditional use in the southeastern shrimp fishery, testing must demonstrate that a BRD reduces the weight of finfish bycatch by 30 percent, and that less than a 10–percent probability exists that the reduction rate is less than 25 percent. To be provisionally certified (for 2 years), testing must demonstrate that at least a 50–percent probability exists that the BRD reduces the weight of finfish bycatch by 25 percent.

New data are collected at varying rates for different types of fishery research. The Foundation study includes new data that became available after NMFS initiated this rulemaking. Nevertheless, the preliminary results provided by the Foundation study very closely matched the results available to NMFS at the time the rule was developed. The Foundation study agreed with NMFS results indicating a fisheye-type BRD placed less than 9 ft (2.7 m) from the cod end tie-off rings met the certification criterion; the ''Gulf fisheye'' BRD and the expanded mesh BRD did not meet the certification criterion; and the extended funnel BRD did meet the provisional certification criterion. Therefore, the results of the Foundation study do not contradict the actions in this rulemaking to change the allowable placement of the ''fisheye'' BRD in the Gulf, and to decertify the ''Gulf fisheye'' and expanded mesh BRDs in the Gulf.

The Foundation study had slightly different results for the Jones-Davis, Modified Jones-Davis, and composite

panel BRDs. For the Jones-Davis BRD, the Foundation study only considered a limited data set, consisting of 20 new sample tows, which indicated the BRD did not meet the criterion. This limited data set does not meet the minimum 30–tow sample size requirement for certification consideration, and there are no other data for this BRD design except the data used to originally certify the BRD in 1998. The Foundation study included 510 sample tows (compared to NMFS' analysis of 464 sample tows) for its analysis of the Modified Jones-Davis BRD, and concluded the reduction in finfish biomass was greater than 30 percent, but the probability threshold was not met (p=0.11). However, the Foundation study used a different analytical approach in determining its probability estimates. NMFS would need to examine the ramifications of using different analytical procedures prior to making any further determinations regarding this gear. The Foundation study used 187 sample tows (compared to NMFS' analysis of 146 sample tows) to evaluate the efficacy of the provisionally certified composite panel BRD. Whereas NMFS concluded this BRD met the provisional certification criterion by a very small margin (mean reduction rate of 25.1 percent with a 52–percent probability the mean reduction rate was greater than 25 percent), the Foundation study indicated the BRD has a 23.8–percent reduction rate with a 45–percent probability the reduction rate is greater than 25 percent.

As noted, new data are collected on a continuing basis by NMFS and its cooperating research partners. These data will be reviewed and evaluated, along with other relevant data comprising the best scientific information available, to monitor for any substantial changes in the overall efficacy of the various BRDs. Revisions will be contemplated once sufficient information exists to determine whether revisions are appropriate. However, repeated revisions to the status of certified or non-certified BRDs without a sufficient administrative record would not be consistent with the Magnuson-Stevens Act, the FMP, or other applicable law, and would lead to unnecessary regulatory confusion and economic hardship to the industry. NMFS does not intend, at this time, to modify the list of certified BRDs based on preliminary analyses conducted using different methodologies. However, NMFS will continue to monitor the efficacy of BRDs currently certified for use in the southeastern shrimp fishery.

NMFS provisionally certified the Extended Funnel and composite panel BRDs for a period of 2 years, through March 14, 2010. NMFS, in cooperation with its research partners, is currently collecting additional information on modifications to these BRD designs to determine if such modifications will improve their overall bycatch reduction efficacy.

Comment 2: The benefit of BRDs is a diminishing return as shrimp effort declines. There are no documented bycatch issues where bycatch mortality reduction is needed in the trawl fishery for managed species; the only basis for BRDs is purportedly to meet Magnuson-Stevens Act requirements. Furthermore, there is no basis or sound definition of the 30–percent reduction target over another target; it is arbitrary and maybe capricious. Bycatch reduction credit should include reductions from turtle excluder devices (TEDs).

Response: This rulemaking is limited in scope to revising the list of allowable BRDs, based on the recently revised BRD certification criterion (73 FR 8219, February 13, 2008). In accordance with regulations at 50 CFR 622.41(g)(2)(iv), the Regional Administrator will decertify a BRD when it is determined the BRD does not meet the certification criterion. NMFS' analyses and an independent review of those data by the Foundation agreed the ''Gulf fisheye'' BRD and the expanded mesh BRD do not meet the certification criterion. This rulemaking will decertify those BRDs in the Gulf.

Although there are no species-specific targets for shrimp trawl bycatch reduction, fishing mortality associated with shrimp trawl bycatch has been considered in recent stock assessments for several managed stocks, including red snapper, vermilion snapper, gray triggerfish, and king mackerel. NMFS' analyses and an independent 1997 report by the Foundation indicate BRDs can substantially reduce the catch of numerous finfish species. Therefore, the requirements for BRDs in the southeastern shrimp fishery helps NMFS and the Councils meet national standard 9 and other Magnuson-Stevens Act requirements, including section 303(a) of the Magnuson-Stevens Act by reducing bycatch and bycatch mortality for both managed and non-managed stocks.

The total quantity of bycatch reduced from use of a BRD is dependent on total effort, and shrimp trawl effort, and the resulting level of bycatch, has been reduced substantially in recent years. In addition, TEDs and other fishing gear modifications or fishing behavior modifications may reduce bycatch. However, the BRD certification criterion is not intended to be an overall target or credit for the level of bycatch reduction that may be possible in the fishery. The criterion represents an achievable average rate by which a BRD reduces the finfish biomass captured in the cod end of the trawl, independent of the level of effort or quantity of the catch. Bycatch reduction that might occur from other technological or fishing behavior changes would be in addition to the 30–percent reduction achieved through the use of BRDs.

The definition of the bycatch reduction criterion is clearly described in the Bycatch Reduction Device Testing Manual. During certification testing, a BRD candidate is placed in the cod end (behind the TED) of one outboard net to create an experimental net, and any certified BRD in the other outboard net is either removed or disabled to create a control net. All trawls under tow must be equipped with approved TEDs. The catch and catch rate between the two nets is then compared. The BRD Manual further states: ''The primary assumption in assessing the bycatch reduction efficiency of the BRD candidate during paired-net tests is that the inclusion of the BRD candidate in the experimental net is the only factor causing a difference in catch from the control net.'' In summary, the BRD must demonstrate the ability, on average, to allow 30 percent of the finfish biomass captured in the cod end of a shrimp trawl to escape from the net.

The basis for the 30–percent criterion was established when the Council recommended, and NMFS approved and implemented through regulation, BRD requirements for the eastern Gulf in Amendment 10 to the FMP. Previously, regulations implementing Amendment 9 required BRDs in the western Gulf; however, the focus of the original requirement was to reduce juvenile red snapper bycatch, and juvenile red snapper were not common in the eastern Gulf. The Magnuson-Stevens Act requires measures to avoid and minimize bycatch and bycatch mortality overall; therefore, in developing Amendment 10, the Council chose a more generic goal of reducing overall finfish catch by 30 percent by weight. The Council's decision was supported by information on the bycatch reduction capabilities of BRDs presented in a 1997 report by the Foundation and a 1998 NMFS Report to Congress. All three BRDs (''fisheye'', ''Gulf fisheye'', Jones-Davis) certified at the time for use in the western Gulf (based on a red snapper reduction criterion) met this general finfish reduction criterion. In addition, two other BRDs (extended funnel and expanded mesh), certified for the South Atlantic based on their ability to reduce

the catch of weakfish and Spanish mackerel, also met this general finfish criterion. Thus, this general finfish reduction requirement allowed all BRDs certified at the time under other certification criteria to be certified for use in the eastern Gulf. The intent was to provide maximum flexibility to the shrimp industry to use a BRD most appropriate for the fishing conditions and fishing activities conducted in the eastern Gulf. Subsequently, the South Atlantic Fishery Management Council revised their certification criterion to reflect this general finfish reduction criterion, again noting all BRDs certified for use in the South Atlantic, because of their ability to reduce weakfish and Spanish mackerel, also met this general finfish criterion.

Comment 3: There was a basis for establishing a 74–percent bycatch mortality reduction target for red snapper as part of joint Amendment 27 to the Reef Fish FMP and Amendment 14 to the Shrimp FMP (Amendment 27/14). Currently, the shrimp fishery is meeting the 74–percent target with or without BRDs. It is clear BRDs are not an effective tool for reducing red snapper or rebuilding the stock. In addition, other factors such as natural mortality may play a bigger role in red snapper health than previously thought. Current research has not been able to document the expected inverse relationship between juvenile red snapper abundance and shrimp effort. Finally, the increased survivorship of predatory fish may be impacting red snapper and shrimp. The costs and benefits of reducing bycatch should be considered in a broad ecosystem context.

Response: As noted in the previous response, the scope of this rulemaking is to decertify those BRDs that do not exclude 30 percent of the finfish bycatch, by weight, captured during trawling operations. Although BRDs do contribute to an overall reduction in fishing mortality of red snapper, and other managed and non-managed finfish species, there are no species-specific reduction criteria associated with the certification and decertification of BRDs. However, Amendment 27/14 notes that a 30–percent reduction in finfish roughly corresponds to a 20–25–percent reduction in the catch rate of red snapper. With the implementation of actions in Amendment 27/14, the Council and NMFS have taken a different approach to achieve reductions in red snapper fishing mortality from shrimp trawls through the use of specific time-area closures, as necessary. NMFS is aware of as yet unpublished studies on red snapper natural mortality; these studies will be evaluated and considered in the next red snapper stock assessment, which is currently scheduled for 2010.

Amendments 9, 10, and 14 to the Gulf Council's Shrimp FMP and Amendment 6 to the South Atlantic Council's Shrimp FMP recognized the changes that might occur at an ecosystem level as finfish bycatch and bycatch mortality were reduced. Increased predation on shrimp could reduce shrimp biomass by 6–8 percent, but any negative effects of increased predation would be masked by the large annual fluctuations in recruitment and landings. Even with the substantial reductions in overall shrimp effort in the Gulf, catch rates have increased substantially since 2003, resulting in total landings at levels comparable to previous high-effort years. At this point, it would not appear there have been more than minimal changes in overall shrimp biomass.

Comment 4: The condition of the fishery is worse than when the bycatch practicability analysis was performed for Amendment 27/14, and is not expected to improve in the near future. The analysis should be redone under today's conditions. Because of the worsening economic conditions in the shrimp fishery, the cost in shrimp loss from new BRDs, and the purchase and installation costs is an impact that cannot be absorbed.

Response: Economic conditions in the Gulf shrimp fishery have worsened since the time period considered in Amendment 27/14 and remain very poor, primarily because of low shrimp prices and rising fuel costs. Amendment 27/14 analyzed trends in the economic status of the Gulf shrimp fishery through 2005, which indicated the average Gulf shrimp vessel was experiencing a significant economic loss in 2002 and that such losses had likely continued through 2005.

The Regulatory Impact Review (RIR) for this rulemaking updated the analysis using all available data, including information regarding permitted vessels' operations in 2006 and certain preliminary data for 2007. Based on the updated analysis, NMFS agrees that economic conditions in the Gulf shrimp fishery have likely worsened and remain poor. Further, NMFS does not expect significant improvement in economic conditions or increases in effort in the foreseeable future. More detailed information regarding the updated analysis and response to the above comment is contained in the FRFA classification summary of this rule.

Classification

The Administrator, Southeast Region, NMFS, determined that this rule is necessary for the conservation and management of the shrimp fishery in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

A FRFA was prepared in support of this final rule. The FRFA incorporates the IRFA, a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analysis completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

This final rule will revise the list of allowable BRDs used in the Gulf shrimp fishery. Specifically, NMFS is decertifying 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 will be certified for use in the Gulf. The allowable placement of the ''fisheye'' BRD will be restricted to no further forward than 9 ft (2.7 m) from the cod end tie-off rings.

The purpose of this final rule is to further reduce total finfish bycatch in the Gulf shrimp fishery to better address the requirements of national standard 9.

Four comments were made by the public in response to the proposed rule; one stated general support for the proposed action, two expressed general opposition to the rule, and one outlined detailed issues. Four issues associated with the economic analysis were raised through public comment on the proposed rule. A summary of all comments is provided in the previous section of this preamble; NMFS's responses to the issues raised on the economic analysis are discussed further below. No changes were made in the final rule as a result of these comments.

The first issue raised on the economic analysis is that economic conditions in the Gulf shrimp fishery have worsened since the time period considered in the Final Environmental Impact Statement (FEIS) for Amendment 27/14 and remain very poor. The FEIS for Amendment 27/14 analyzed trends in the economic status of the Gulf shrimp fishery through 2005. According to projections available at the time, the FEIS for Amendment 27/14 indicated that the average Gulf shrimp vessel was experiencing an economic loss in 2002 and that such losses had likely

continued through 2005. The RIR for this rule updated this analysis by using all available data, including information regarding permitted vessels' operations in 2006 and certain preliminary data for 2007. This information indicated that, in 2006, average total revenue per permitted vessel increased even though shrimp prices fell. The combination of above average abundance and reduced vessel participation and, therefore, effort, led to an increase in catch per unit of effort and, thus, an increase in landings and revenue per vessel. However, diesel fuel prices also increased significantly, by nearly 16 percent, in 2006. Therefore, the updated analysis concluded it is highly likely that the average permitted vessel was operating at an economic loss in 2006. This conclusion is supported by the fact that the actual decline in effort between 2002 and 2006 was greater than originally projected, reflecting the fact that vessels have been exiting the fishery more quickly than originally forecast which in turn is most likely due to worsening economic conditions. Preliminary data indicate that vessel participation, effort, abundance, landings, and, to a lesser extent, catch per unit of effort likely decreased in 2007. Although the preliminary data indicates that shrimp prices increased slightly in 2007, diesel fuel prices apparently increased at a faster rate and, thus, it is highly likely that the average permitted vessel was operating at an economic loss in 2007 as well. Therefore, NMFS agrees that economic conditions in the Gulf shrimp fishery have likely worsened and remain very poor.

The second issue raised on the economic analysis is that the economics of the Gulf shrimp fishery have been worsening primarily due to declines in shrimp prices and increases in fuel costs. The RIR for this rule states that, on average, Gulf shrimp prices decreased by approximately 50 percent between 2002 and 2006 in nominal terms. Adjusting for inflation, the price decrease in real terms was 58 percent. Preliminary data indicated that shrimp prices increased slightly in 2007, particularly for large shrimp. The RIR also states that the price of diesel fuel increased by nearly 138 percent between 2002 and 2006 and that, according to preliminary data, diesel fuel prices increased by an additional 7 percent in 2007. Such increases in fuel prices have led to comparable increases in the fuel expenses associated with operating a Gulf shrimp vessel. Therefore, NMFS agrees that the combination of lower shrimp prices and higher fuel costs has led to deteriorating economic conditions in the Gulf shrimp fishery over the past several years.

The third issue raised on the economic analysis is that economic conditions in the shrimp fishery are not expected to improve significantly and, as a result, no significant increases in shrimp effort are expected in the next several years. The RIR for this rule states that, primarily as a result of adverse economic conditions, participation in the Gulf shrimp fishery by permitted vessels continually declined between 2002 and 2006 and, according to preliminary data, participation likely decreased further in 2007. Furthermore, the RIR states it is reasonable to conclude that, not only will effort and vessel participation continue to decline for the foreseeable future, but the equilibrium level of effort and fleet size will be lower than originally forecasted, and, thus, the reductions in effort and fleet size at the new equilibrium will be greater than originally predicted. Therefore, NMFS agrees that economic conditions are not expected to improve significantly and significant increases in shrimp effort are not expected in the foreseeable future.

The fourth issue on the economic analysis dealt with the economic impacts associated with the loss of shrimp from and purchase/installation of new BRDs given the fishery's poor economic condition. As previously indicated, the RIR for this rule fully discusses the fishery's poor economic condition and its causes. Regarding the rule's economic impacts, not all of the 1,912 vessels with Gulf shrimp moratorium permits will be directly affected by this rule. Approximately 313 permitted vessels will not be directly impacted since they are not currently participating in the fishery. Further, 478 vessels will not be impacted since, based on the best available data, they are currently using BRDs that will still be allowable under this rule.

In addition, the impacts to 696 other vessels, currently using the ''fisheye'' BRD, are expected to be negligible. Although these vessels are expected to switch to more expensive BRDs, these BRDs also have a lower shrimp loss on average than the BRDs these vessels currently use. Further, the adverse impacts arising from the need to purchase more expensive BRDs would be mitigated in the first year by NMFS' provision of one free BRD to most of these vessels. As a result, the net effect on these vessels is most likely zero and potentially positive.

Conversely, the analysis acknowledges that adverse economic impacts will be imposed on vessels using the ''Gulf fisheye'' BRD and particularly the expanded mesh BRD. Specifically, for the 414 vessels currently using the ''Gulf fisheye'' BRD, the rule is expected to impose a loss equal to 2 percent of their average annual gross revenue. NMFS acknowledges that, under current economic conditions, such losses 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 impact on most of these vessels would be mitigated in the first year by NMFS' provision of one free BRD.

For the 11 vessels currently using the expanded mesh BRD, a more substantial loss is expected. NMFS acknowledges that this loss is expected to create additional operational changes since these losses are likely not sustainable.

Based on the above discussions, NMFS believes that it has fully accounted for all of the economic impacts arising from this rule given the prevailing poor economic conditions in the fishery.

As of March 26, 2007, a Federal Gulf shrimp moratorium permit is required to fish for shrimp in the Gulf EEZ. At the time the analysis for this rule was conducted, the number of vessels possessing a Federal Gulf shrimp moratorium permit was 1,912. While these totals have not been updated for this final rule, an update would not be expected to substantially affect any determinations or average expected impacts contained in the original analysis. Also at the time the analysis for this rule was conducted, 2005 and 2006 were the most recent years for which complete and finalized landings and revenue data for this fishery. In developing the FRFA, NMFS used available preliminary data for 2007 to supplement the 2005 and 2006 data. Complete and finalized landings and revenue data for 2007 are now available, but a review of that information indicates that it would not substantively affect the results of the analysis. Specifically, as expected, the number of vessels participating in the fishery decreased in 2007. Since shrimp prices also increased slightly, average landings and revenue per permitted vessel increased in 2007. However, fuel prices also increased in 2007 and at a faster rate than shrimp prices. Therefore, the increase in vessel revenue was likely offset by a similar increase in operating expenses which in turn implies that the average, permitted vessel participating in the fishery was operating at an

economic loss in 2007 comparable to that experienced in 2006.

Of the 1,912 vessels issued 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. Between 2003 and 2006, participation in the fishery by permitted vessels has continually declined, particularly in 2006, and preliminary data suggest participation may have decreased further in 2007. This trend is expected to continue in the foreseeable future. It is unknown whether the 313 permitted vessels not active during the 2005 or 2006 seasons fished during the 2007 season, so these vessels 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.

Of the 1,599 active permitted vessels, an estimated 478 vessels are presently using BRDs that will still be allowable under this final rule. These vessels will 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 will not be allowable under this final rule will have to change the location of their current BRDs or switch to other BRDs. Thus, it is estimated that 1,121 vessels will be directly impacted by this final rule.

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, such as smaller crews, fewer and smaller nets, and less engine horsepower and fuel capacity. 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 from a survey of permitted vessels indicate that the average active permitted Gulf shrimp vessel, whether large or small, was still operating at 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 this final rule are determined, for the purpose of this analysis, to be small entities. As explained above, this final rule is expected to directly affect the 1,121 active permitted vessels that are not equipped with BRDs that will be allowed under this final rule, or 59 percent of all permitted vessels and 70 percent of active permitted vessels. Thus, NMFS determines that this rule will affect a substantial number of small entities.

Adverse direct effects expected as a result of this final rule will 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 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 will 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 of the modified Jones-Davis BRD 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 will be the BRDs of choice.

Assuming all noncompliant BRDs will be replaced, approximately 6,400 replacement BRDs will be required under this final rule. NMFS has contracted for approximately 1,000 of the economically preferable BRDs to be produced for free distribution to vessels that will be forced to change their current BRDs as a result of this final rule. It is expected that one free BRD will be provided to each vessel to ensure that the benefits will be widely distributed. Because there are many more large vessels than small vessels, and 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 assumed for purposes of this analysis that the free BRDs will be provided only to large vessels.

This analysis considers that the shrimp industry will have approximately six months after publication of the final rule to meet the compliance requirements of the 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.

The delayed effective date of this final rule will help ensure the new requirement occurs during the off-season, which will allow vessel captains additional time to determine the best BRD to use and the best methods to use their new BRDs 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 this final rule should minimize the potential for any initial higher than expected shrimp losses as a result of vessel captains moving up the ''learning curve.''

Therefore, in general, the actual impacts of this final 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 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 are expected to experience a substantial economic loss as a result of this final rule. 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 is 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 this final 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 should be 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 will 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 will 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 will be slightly mitigated in the first year by the provision of the one free BRD.

In previous rulemaking (73 FR 8219, February 13, 2008) to revise the bycatch reduction criterion, NMFS considered a number of alternatives. For purposes of this rulemaking, however, given the bycatch reduction criterion established in that previous rulemaking, the only alternative considered to this final rule was 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 indicated 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' Southeast Fisheries Science Center (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 previous rulemaking (73 FR 8219, February 13, 2008), could significantly reduce the potential adverse economic impacts of this final rule on small entities since it will 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 final rule if shrimp vessel owners switch to this particular BRD. The 6 months vessel owners will 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 final rule. Additional mitigation in the first year will accrue due to the distribution of the 1,000 free BRDs.

List of Subjects in 50 CFR Part 622

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

Dated: November 12, 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 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 § 622.4, paragraphs (h)(1)(i) through (h)(1)(iv) are removed, and the first sentence of paragraph (a)(2)(v) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) *Gulf reef fish*. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. * * *

* * * * *

§ 622.16 [Amended]

3. In § 622.16, paragraph (b)(2)(iv) is removed.

■ 4. In § 622.33, paragraph (a)(2)(ii)(A) is revised to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) * * *

(2) * * *

(ii)* * *

(A) *Bajo de Cico*.

Point A	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.4′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.4′

* * * * *

■ 5. In § 622.38, the second sentence of paragraph (d)(1) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(d) * * *

(1) * * * See § 622.31(n) regarding a prohibition on the use of Gulf reef fish as bait. * * *

* * * * *

■ 6. 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 to part 622 for separate specifications in the Gulf and South Atlantic EEZ.

(B) Gulf fisheye—South Atlantic EEZ only.

* * * * *

(E) Expanded mesh—South Atlantic EEZ only.

* * * * *

■ 7. 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 1/4 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.

* * * * *

8. 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. E8–27351 Filed 11–17–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XL77

Atlantic Highly Migratory Species; Inseason Action to Close the Commercial Porbeagle Shark Fishery

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

ACTION: Fishery closures.

SUMMARY: NMFS is closing the commercial fishery for porbeagle sharks in the Atlantic Ocean and Gulf of Mexico. This action is necessary because the porbeagle shark quotas for the 2008 fishing season have reached or are projected to have reached at least 80 percent of the available quota.

DATES: The commercial porbeagle shark fishery is closed effective 11:30 p.m. local time November 18, 2008 until NMFS announces via a notice in the **Federal Register** that additional quota is available.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster–Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under 635.5(b)(1), shark dealers are required to report every two weeks. Dealer reports for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under