

fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any subgrant will be subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs the Corporation will approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to five percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of five percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Utilize such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) Costs attributable to administrative functions as well as program functions should be prorated between administrative costs and program costs.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 970523122-8022-02 ; 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:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Amendment 9 requires, 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.; sets the bycatch reduction criterion for the certification of BRDs; and establishes 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 effect is to reduce the bycatch mortality of juvenile red snapper, while, to the extent practicable, not adversely affecting the shrimp fisheries in the Gulf of Mexico.

**DATES:** This rule is effective May 14, 1998.

**ADDRESSES:** Copies of the final regulatory flexibility analysis and NMFS' Supplement to the Economic Analysis of Amendment 9 to the Fishery Management Plan for the Shrimp fishery of the Gulf of Mexico, U.S. Waters (March 20, 1998) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Copies of Amendment 9, which includes a regulatory impact review, a social impact assessment, a fishery impact statement, and a supplemental final environmental impact statement, may be obtained from 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 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 29, 1997 (62 FR 23211), NMFS announced the availability for public review and comment of (1) Amendment 9, including a regulatory impact review (RIR), an initial regulatory flexibility analysis (IRFA), a social impact assessment (SIA), a fishery impact statement (FIS), and final supplemental environmental impact statement (FSEIS), as prepared and

submitted by the Council for review, approval and implementation, and (2) a minority report submitted by three Council members. On July 2, 1997, NMFS published a proposed rule to implement the measures in Amendment 9 and requested comments on the proposed rule (62 FR 35774). The background and rationale for the measures in Amendment 9 and the proposed rule are contained in the preamble to the proposed rule and are not repeated here. After consideration of the comments on Amendment 9 and the proposed rule, NMFS approved Amendment 9 on July 30, 1997. In support of this final rule, NMFS prepared a supplement to the economic analysis of Amendment 9 (March 20, 1998) (See **ADDRESSES**).

#### Comments and Responses

Comments were received from 3,329 entities on Amendment 9 and its proposed rule. These entities consisted of 3,279 private individuals, shrimp vessel owners and crews, industry support personnel, and business owners; 16 U.S. Congressmen; 14 conservation organizations; eight commercial fishing or business-related organizations; three recreational fishing organizations; three members of the Council; two cities (Port Isabel and Aransas Pass, TX); one bank; and three Federal agencies.

#### Approval and Implementation of Amendment 9

*Comment:* Five hundred sixty-six entities supported approval and implementation of Amendment 9. These entities endorsed the use of NMFS-certified BRDs in shrimp trawls to reduce shrimp trawl bycatch as a means of facilitating the recovery of impacted fish populations, such as red snapper, in the Gulf of Mexico. These entities consisted of 546 private individuals, three Federal agencies, three recreational fishing organizations, and 14 conservation organizations.

*Response:* NMFS agrees, and approved Amendment 9, which is implemented by this final rule.

*Required Use of BRDs in Shrimp Trawls in the Waters East of 85°30' W. Long.*

*Comment:* Eight conservation organizations recommended that NMFS require the use of BRDs in shrimp trawls in the waters east of 85°30' W. long., (i.e., east of Cape San Blas, FL) to reduce the incidental catch of finfish in this area. This would facilitate the recovery of impacted finfish populations.

*Response:* NMFS disagrees. The Council limited the geographical scope of the BRD requirement under Amendment 9 to west of Cape San Blas,

FL, because most red snapper bycatch in the shrimp fisheries occurs in this area. If new scientific information indicates that the use of BRDs should be expanded to beyond east of Cape San Blas, FL, the Council may then propose such action by preparing an FMP amendment, supported by an appropriate administrative record, that would be submitted to NMFS for review, approval, and implementation.

*The Council Minority Report and Other Opposition to Amendment 9*

*Comment:* Three Council members submitted a minority report opposing Amendment 9 that contended that: (1) The Council did not consider best available scientific data; (2) the Council made serious procedural and legal errors in proceeding with submission of Amendment 9 for review by NMFS because its Scientific and Statistical Committee (SSC) did not have a quorum when it met to review Amendment 9 prior to the Council meeting in November 1996 when it adopted Amendment 9, and because Amendment 9 does not assess the impact of BRDs on Gulf of Mexico communities; (3) Amendment 9 is not necessary for the recovery of red snapper; (4) the shrimp industry is being required to bear an unfair regulatory burden compared to the participants in the directed red snapper fisheries; and (5) the economic impacts of requiring BRDs in shrimp trawls will severely affect the shrimp industry and the United States economy.

Opposition to Amendment 9 from the remaining commenters focused on one or more of the same concerns stated in the minority report. Sixteen Congressmen filed comments and 2,682 private individuals, shrimp vessel owners and crews, industry support personnel, and business owners submitted form letters opposing Amendment 9. Eight commercial fishing or business-related associations, owners of 14 companies, one bank, 36 private individuals, and the cities of Port Isabel and Aransas Pass, TX, submitted letters opposing approval of Amendment 9.

*Response (1):* NMFS disagrees that Amendment 9 is not based on the best available scientific information. The Director, Southeast Fisheries Science Center, determined that Amendment 9 was based on the best available scientific information. The General Linear Model (GLM) method of analyzing bycatch data was peer reviewed in 1990, 1992, and 1997. The 1990 peer review was at the request of the Council. The 1992 peer review was done under the direction of the Technical Steering Committee of the regional Cooperative Bycatch Research

Program, administered by the Gulf and South Atlantic Fisheries Development Foundation, Inc., a non-profit, educational and scientific research organization. In each case, the recommendation of the peer reviewers was to use the GLM method. The 1997 peer review was done under the direction of the Council at the request of Texas Shrimp Association (TSA) representatives. This review was conducted in two phases. The first phase consisted of the presentation of data and analyses by NMFS and TSA's consultant, LGL Ecological Research Associates, Inc. (LGL), to a peer review panel for evaluation by each individual panel member. In the second phase, these panel members' evaluations, along with responses from LGL and NMFS, were then presented to the Council's Stock Assessment Panel (SAP) for its review and recommendations to the Council's SSC and to the Council.

The 1997 peer review panel members generally supported the GLM approach but provided recommendations on alternative means of using the available data that might improve the red snapper bycatch estimates. NMFS addressed these recommendations in a presentation to the SAP. The peer review panel members' recommendations usually resulted in increases in the red snapper bycatch estimates, not decreases as had been assumed by LGL. The conclusion of the SAP, the SSC, and the Council was that the original red snapper bycatch estimates represented the best available scientific data.

In addition to the 1997 peer review of the bycatch estimates, the Council contracted with Dr. Phil Goodyear, a prominent stock assessment biologist, to review the 1995 stock assessment and to determine the effects of over-estimates of red snapper bycatch on the scientific advice that bycatch had to be reduced to recover this species. Dr. Goodyear's sensitivity analysis showed that even with overestimates of bycatch up to 33 percent, red snapper bycatch in the shrimp fisheries still had to be reduced significantly for red snapper stock recovery. Based on these peer review results and on all other available information, the Council concluded that Amendment 9 is based on the best available scientific information.

*Response (2):* NMFS disagrees that the Council made serious procedural and legal errors in submitting Amendment 9 for agency review and approval. NMFS reviewed the administrative record and determined that there were no legal or procedural impediments to approval and implementation of Amendment 9. The SSC and Reef Fish SAP met after

the Council's November 1996 meeting and endorsed Amendment 9. The Council was aware the SSC lacked a quorum and considered that fact. The SSC's recommendations are not binding on the Council; however, in this instance, they were consistent with the Council's action and administrative record.

Regarding the assessment of Amendment 9 regulatory impacts on Gulf of Mexico communities, the Council prepared the following analyses of impacts in support of its proposed amendment: IRFA, RIR, FIS, SIA, and FSEIS. The IRFA thoroughly assessed the economic impact of BRDs in shrimp trawls on small entities as required under the Regulatory Flexibility Act and concluded that Amendment 9 would adversely impact a substantial number of small entities in the Gulf of Mexico shrimp fisheries. The RIR clearly estimated the economic and social impacts of requiring the installation of BRDs in shrimp trawls on Gulf of Mexico shrimp fisheries as well as the economic impacts of alternatives considered by the Council. The RIR concluded that there would be adverse economic impacts on the Gulf shrimp fisheries as well as potential long-term economic benefits to the commercial red snapper fisheries. As noted in the SIA, participants in the shrimp fisheries believe that impacts associated with requiring BRDs will be negative. The Council was aware of the potential adverse economic impact of BRDs on the shrimp fisheries, but believed that reduction of the red snapper bycatch was necessary to allow the directed red snapper fisheries to continue while allowing rebuilding of the overfished red snapper resource. In complying with national standard 9 (minimizing bycatch mortality to the extent practicable), the Council, consistent with national standard 8, minimized the adverse economic and social impacts on the shrimp fisheries, including fishing communities, by limiting the BRD requirement to the geographical area where red snapper and shrimp are found together; namely, Federal waters west of Cape San Blas, FL, out to 100 fm (183 m) to the border with Mexico. With this geographical limitation, the Council concluded that the adverse economic and social impacts of BRDs on the Gulf of Mexico shrimp fisheries would be offset by positive biological, ecological, economic, and social impacts of the Gulf of Mexico red snapper fisheries based on a rebuilt red snapper stock. Finally, the FIS succinctly states the overall impact of Amendment 9 on fishery participants

and fishing communities regarding both Gulf of Mexico shrimp and red snapper fisheries.

*Response (3):* NMFS disagrees that implementation of Amendment 9 is unnecessary for the recovery of the red snapper resource in the Gulf of Mexico. Stock assessments prepared in 1988, 1990, and 1995 determined the status of the stock and clearly indicated that red snapper could not recover to the 20-percent spawning potential ratio (SPR) level by 2019 without a significant reduction in bycatch. At the 20-percent SPR level, the stock would no longer be considered overfished under the current provisions of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP). The year 2019 is the Reef Fish FMP's target date for recovery of the stock to the 20-percent SPR level. Under the 1996 amendments to the Magnuson-Stevens Act, the red snapper stock will, in all likelihood, have to be rebuilt to a level above 20-percent SPR. Regulatory actions to date to rebuild the red snapper stock have been limited to controlling the directed recreational and commercial harvest of red snapper. There is also a need to control the significant bycatch of juvenile red snapper in trawls.

*Response (4):* NMFS disagrees that the shrimp industry is being required to bear an unfair regulatory burden compared to the participants in the directed red snapper fisheries. 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. The best available information indicated that elimination of the directed harvest for red snapper would not allow the overfished resource to recover by 2019. Therefore, some device is needed that would reduce the incidental catch of juvenile red snapper in shrimp trawls by 44 percent to allow the overfished red snapper stock to recover.

*Response (5):* NMFS and the Council agree that requiring the use of BRDs in the Gulf of Mexico shrimp fisheries will result in negative economic impacts on the shrimp industry. The IRFA concluded that Amendment 9 would result in significant adverse impacts on a substantial number of small business entities that participate in the Gulf of Mexico shrimp fisheries. In particular, the IRFA concluded that revenues of a large portion of the small businesses in the shrimp fisheries would be reduced by at least 5 percent and that from 0.3 to 7.8 percent of the shrimp-harvesting businesses could cease operations

(depending on the type of BRD they elected to use) if the rule is implemented.

The RIR estimated that if the use of BRDs in shrimp trawls is required, there would be a long-term net loss in benefits to the shrimp fisheries of \$117 million assuming that all shrimpers use the fisheye BRD and that the shrimp loss rate with that BRD is 3 percent. If other BRDs are certified with higher or lower shrimp loss rates, the net loss would differ depending on the mix of BRDs used. The analysis in Amendment 9 was based on an expectation that this \$117 million net loss to the shrimp fisheries would be offset by a net benefit to the commercial red snapper fisheries of roughly \$118 million, assuming that these fisheries are managed to maximize economic benefits (e.g., under an individual transferable quota (ITQ) management system). In the short-term (i.e., 1-4 years), annual adverse impacts on the shrimp fisheries due to use of the fisheye BRD would range from about \$40 million in the first year to \$20 million in the fourth year. Most of the net loss to the shrimp fisheries would have occurred by 2019, the current target date for rebuilding the overfished red snapper resource. The net loss to the shrimp fisheries includes adverse impacts on the shrimp industry and consumers, although the greatest proportion of the adverse impacts would be borne by the shrimp industry. Subsequently, NMFS prepared a supplement to the economic analysis for Amendment 9 to further examine the effects on the red snapper commercial fisheries from 1998 through 2019 (see **ADDRESSES**). Executive Order 12866 typically requires that all changes in net benefits be measured against the status quo. In the case of the red snapper and shrimp fisheries, the status quo is a total allowable catch (TAC) of 9.12 million lb and no BRD requirement. In addition to analyzing the effects under scenarios of ITQ management and no ITQ management, and under TACs for red snapper of 9.12 million lb and 6.0 million lb, benefits were also measured for a baseline of a zero TAC for red snapper. The benefit of the status quo alternative of no BRD requirement and a TAC of 9.12 million lb would be \$58 million. If ITQ management is added to that baseline, the benefit of the BRD rule to the red snapper fisheries would be an increase of \$35 million or a total of \$93 million. In summary, using the 1998 status quo TAC of 9.12 million lb for red snapper, the benefits to the commercial red snapper fisheries as measured against the zero TAC baseline amounts to an increase of \$93 million with ITQ

management and \$58 million without ITQ management. The expanded analysis made no determination regarding changes in benefits to the recreational red snapper fisheries, did not include benefits accruing after 2019 when a larger TAC is expected, and also did not attempt to calculate benefits to the finfish stocks that would benefit in a biological sense from bycatch reduction.

The SIA concluded that Gulf of Mexico shrimp fishermen were experiencing a high level of work-related stress in 1994 versus 1987 due to a variety of factors, including the required use of turtle excluder devices (TEDs), and that additional regulations, such as requiring the use of BRDs, would further raise fishermen's stress levels. The SIA also found that if BRD use increases shrimping efficiency and reduces fishermen's workload (because of a reduced need to cull finfish from the shrimp catch), then stress levels may decrease. Further, according to the SIA, if fishermen take advantage of public hearings and other opportunities (i.e., workshops) to become fully involved in the further development and testing of BRDs and in modifying the bycatch criteria, they should be more willing to accept and comply with bycatch regulations.

The FIS summarized the overall negative impact of Amendment 9 on the shrimp fisheries and summarized the relevant findings of the IRFA, RIR, and SIA.

As required by national standard 8 of the Magnuson-Stevens Act, the Council considered the importance of the shrimp fisheries to the fishing communities and provided for the sustained participation of such communities. Also, the Council minimized adverse economic and social impacts on the shrimp fisheries and associated communities by requiring the use of BRDs only to the area where juvenile red snapper currently are concentrated (Federal waters shoreward of the 100 fm (183 m) curve and west of Cape San Blas, FL, to the Mexican border). Additionally, certain shrimping operations were exempted from the BRD requirements because they do not result in significant mortalities of juvenile red snapper. A shrimp trawler is exempted from the requirement to have a certified BRD: 1) Installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler are royal red shrimp; 2) installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either pulled immediately in front of another net or is not connected to another net; or 3)

installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. Finally, the Council held 14 public hearings where commercial shrimping associations made numerous presentations that the Council carefully considered before adopting final measures to reduce the shrimp trawl fishery finfish bycatch.

*Commercial Shrimp Fisheries Are Major Sources of Employment and Businesses to Residents of the Coastal Areas of the Gulf of Mexico*

*Comment:* Sixteen congressmen, 2,682 shrimp fishermen, support industry personnel, vessel owners, and private individuals, 8 commercial associations, owners of 14 companies, one bank, 36 private individuals, and the cities of Port Isabel, and Aransas Pass, Texas, stated that commercial shrimp fisheries are major sources of employment and businesses for hundreds of thousands of residents.

*Response:* NMFS recognizes the importance of the shrimp and red snapper fisheries to fishermen, support industries, businessmen, coastal communities, and states.

*Number of BRDs Available*

*Comment:* Sixteen Congressmen and one commercial shrimp association objected that, with the decertification of the Andrews TED in December 1997, there is only one BRD, the fishery, available for fishermen to use.

*Response:* Since the Council adopted Amendment 9 on November 14, 1996, for submission to NMFS, the Southeast Fisheries Science Center has analyzed the data on the performance of a new BRD (Jones-Davis) and has recommended that the Regional Administrator, Southeast Region, NMFS (Regional Administrator), certify this BRD as meeting the bycatch reduction criterion of Amendment 9. Upon promulgation of a BRD testing and certification protocol by separate final rule in early 1998, this BRD may be certified for use under the FMP's framework procedure for regulatory adjustments. Additionally, three modified Andrews TEDs recently passed field tests for the exclusion of turtles, and it is anticipated that at least one of these TEDs may be certified as a BRD early in 1998.

*Neutral Panel to Review Status of Red Snapper and Impact of Shrimp Trawl Bycatch*

*Comment:* One Congressman, two commercial shrimping associations, and one shrimp business owner recommended that NMFS and LGL present their respective conflicting scientific information on the status of the red snapper resource, data problems,

and other technical issues to a neutral scientific panel for review and evaluation. This panel would render an opinion on the quality of the science and the need for the BRD requirement.

*Response:* Further reviews are not needed. There have been three assessments of the red snapper stock (1988, 1990, and 1995) in the Gulf of Mexico. Each assessment report concluded that the red snapper resource was overfished and the major contributing factor was shrimp trawl bycatch. In addition, the juvenile red snapper bycatch estimating procedures were peer reviewed in 1990, 1992, and 1997, and the Council's SAP and SSC participated in reviewing all of the scientific information and data associated with the red snapper assessments. See the response above regarding the best available data and the three independent peer review panels and their review of the shrimp fishery bycatch data and the analytic models used for bycatch estimation.

Furthermore, two congressionally-mandated studies on the red snapper stock and shrimp fishery bycatch were completed in December 1997. The first study, as required by the Magnuson-Stevens Act, consisted of a thorough and independent peer review of the scientific and management bases for conserving and managing the red snapper fisheries in the Gulf of Mexico. The final consolidated peer review report concluded that the red snapper stock in the Gulf of Mexico is severely overfished, and that both directed fishing effort and juvenile red snapper bycatch in the shrimp fisheries must be reduced in order for the red snapper stock to recover. These peer review conclusions were based, in part, on a review of the results of the second study. The second study was an independent red snapper stock assessment required by agency appropriations legislation. This independent red snapper stock assessment noted that the shrimp fishery bycatch of red snapper is significant, but concluded that the stock appears to be healthy in that average red snapper size may be increasing and that recruitment appears to be increasing in recent years. The Science and Management Panel, one of three independent review panels, reviewed the preliminary results of this independent red snapper stock assessment. That panel concluded the analysis was incomplete because it did not correctly factor in the impact of the large red snapper bycatch in the Gulf of Mexico shrimp fishery.

*Cumulative Cost of TEDs and BRDs to Shrimpers*

*Comment:* Sixteen congressmen, one commercial shrimping association, and one shrimp fleet owner stated that the shrimp industry is bearing large costs associated with reducing their incidental catch and kill of endangered or threatened sea turtles, and Amendment 9 does not quantify the cost to industry associated with TEDs.

*Response:* The baseline for Amendment 9's economic analysis of the impacts of the BRD requirements on the shrimp industry is the industry with its present regulatory burden. The RIRs done as part of the rules that implemented the TED requirements detail the economic impacts expected to result from the TED requirements on the Southeast shrimp fisheries.

*Statement of Dr. Phil Goodyear Regarding Role of Shrimp Fishery in Causing Overfished Condition of Red Snapper*

*Comment:* One commercial fishing association and one shrimp fleet owner contended that at the Council meeting held on May 12, 1997, Dr. Phil Goodyear, a reef fish biologist under contract to the Council, stated that the commercial shrimp fishery was not responsible for the overfished condition of the red snapper resource and that, instead, the fishermen in the directed fishery for red snapper were responsible.

*Response:* NMFS disagrees. Dr. Goodyear stated at this meeting that the combined effect of excessive mortalities caused by directed fishing by the red snapper fisheries and bycatch by the shrimp fisheries are causing the overfished condition of the resource. NMFS points out that the shrimp trawl fishery removes about 88 percent of the red snapper population. The remaining 12 percent is the basis for the spawning stock and the directed fishery.

*Modification of the Bycatch Reduction Criterion*

*Comment:* One shrimp vessel owner contended that the establishment of the Special BRD Advisory Panel (AP) is redundant and will supplant the Shrimp and Reef Fish APs.

*Response:* NMFS disagrees. This BRD AP will be composed of scientists, engineers, environmentalists, fishermen, or others with knowledge of BRDs and their ability to reduce bycatch of red snapper and will advise the Council on the need for adjustments in the bycatch reduction criterion. Amendment 9 does not contain any statement that the Council intends for this panel to replace or to override the recommendations of the Shrimp and Reef Fish APs or vice versa.

*Shrimp Vessel Costs and Returns*

*Comment:* One commercial shrimping association and one shrimp vessel owner stated that the preamble to the proposed rule contained information that would allow a reader to conclude that the annual pre-tax profit margin per shrimp vessel is \$102,000 or 51 percent of annual revenue. The commenters indicated that this figure is not correct and gives the impression that shrimpers can easily afford to use BRDs in their nets. Furthermore, they contend that new information on vessel costs and returns in a NMFS report of May 1997 should have been used. They claim this new information shows that shrimpers are not financially able to withstand the income losses associated with BRDs.

*Response:* NMFS agrees that the information in the preamble to the proposed rule (62 FR 35778) could allow a reader to conclude that the pre-tax profit margin per vessel is \$102,000 or 51 percent of annual revenue. However, Amendment 9 contains the appropriate cost and earning information for shrimp vessels (Table R-4). The range in annual gross revenue per vessel is from \$8,389 to \$220,412, with an average of \$43,002. Annual net revenue per vessel ranged from \$2,249 to \$41,881, with an average of \$6,564. The net revenue figures did not include taxes so they roughly estimate the pre-tax profit margin. Thus, the average pre-tax margin was 15 percent, not 51 percent of revenue. When the Council finalized Amendment 9 in November 1996, the May 1997 report was not available. For information on the adverse impact of BRDs on the shrimp fishery, see the above response regarding economic impacts on the shrimp industry and the United States.

#### *Exemption for Vessels Using Rigid-Frame Roller Trawls*

*Comment:* One shrimp fisherman questioned why the exemption from the BRD requirement for rigid-frame roller trawls should not apply to his gear. This fisherman fishes off Pasco, Hernando, and Citrus Counties, FL, and uses four rigid-frame roller trawls. He states that his four-trawl rig scares fish away and thereby minimizes bycatch.

*Response:* The exemption for rigid-frame roller trawls applies only to the use of up to two such trawls. However, the BRD requirement applies only west of Cape San Blas, FL. BRDs are not required in waters east of Cape San Blas, FL.

#### **Changes From the Proposed Rule**

Certification of the Andrews TED as a BRD is removed in this final rule. In the proposed rule, the Andrews TED was proposed to be certified as a BRD "only during a time when and in a

geographical area where it is an approved TED." Effective December 19, 1997, approval of the Andrews TED was withdrawn.

#### **Classification**

The Regional Administrator, with concurrence by the Assistant Administrator for Fisheries, NOAA, has determined that Amendment 9 is necessary for the conservation and management of the shrimp fisheries of the Gulf of Mexico and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Council prepared an FSEIS for Amendment 9; a notice of its availability was published by the Environmental Protection Agency on June 6, 1997 (62 FR 31098). The FSEIS assesses the impacts on the human environment of both the Gulf shrimp fisheries and the Council's proposed and alternative management measures for reducing bycatch in the shrimp fisheries. Those impacts were summarized in the proposed rule and are not repeated here. No comments were received on the FSEIS.

NMFS prepared a FRFA based on the Council-prepared IRFA that described the impacts the proposed rule would have on small entities, if adopted. Based on the IRFA, NMFS concluded that Amendment 9, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities. During the public comment periods on Amendment 9 and its proposed implementing regulations, no public comments were received that disagreed with the analysis or conclusions of the IRFA; no additional information was received that would change the analysis or conclusions of the IRFA regarding the impacts on small entities. Accordingly, the FRFA is based on the IRFA and is not substantively changed. Copies of the FRFA are available (see ADDRESSES). A summary of the FRFA 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 are not required to be documented by the U.S. Coast Guard) 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 per vessel ranging from \$8,389 to \$220,412. Net revenue per vessel ranges from \$2,249 to \$41,881.

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, assuming such vessels use a BRD with a shrimp loss rate equal to that of the Fisheye BRD (3 percent), presently the only certified BRD. If other BRDs are developed and certified with higher or lower shrimp loss rates, the reduction in gross revenues would differ depending on the mix of BRDs used by the industry. It should be noted that NMFS is in the process of certifying a number of additional BRDs in order to provide a wider choice to fishermen. Certification of BRDs will be based on bycatch reduction criterion and not on the expected shrimp loss rates. The owners of affected shrimp fishing vessels and boats will have to purchase and use certified BRDs; vessels and boats may fish with 1-5 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 FRFA indicated that, depending on the type of certified BRD shrimpers use, between 9 and 240 full-time shrimp vessels (i.e., between 0.3 and 7.8 percent of the shrimp fleet) would leave the shrimp fishery because of the effects of the BRD requirements. There was a higher end of the range associated with the Andrews TED that had qualified as a BRD, but the Andrews TED is currently not a legal TED and therefore cannot be used.

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 likely would not 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 final rule provides certain exemptions from the BRD requirements to reduce negative economic impacts on shrimp fishermen while still meeting the bycatch reduction objectives.

This rule does not establish any new reporting or recordkeeping requirements. The BRD testing protocol is expected to include a new collection-of-information requirement subject to the PRA—namely, the BRD certification process, consisting of an application for the testing of a new BRD, the testing itself, and the submission of the test results. The estimated burden hours (i.e., response time) for this requirement has not been determined. When determined, the new collection-of-information requirement will be submitted to the Office of Management and Budget for approval. The requirement and its response time/burden hours will be contained in a proposed rule containing the BRD testing protocol to be published subsequently in the **Federal Register** with an opportunity for public comment.

**List of Subjects in 50 CFR Part 622**

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

Dated: April 8, 1998.

**Rolland A. Schmitten,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Services.

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 § 622.2, 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 are royal red shrimp.

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

(iv) A shrimp trawler is exempt from the requirement to have a certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. 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 fisheye BRD is certified for use by shrimp trawlers in the Gulf EEZ. Specifications of the fisheye BRD are contained in Appendix D of this part.

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 certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specifications.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 980408088-8088-01; I.D. 040798A]

RIN 0648-AK98

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures**

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

**ACTION:** Interim rule; request for comments.

**SUMMARY:** This interim rule implements changes to the availability of the recreational red snapper quota and the procedures that allow the recreational and commercial quotas to be taken. Specifically, it makes available 2.94 million-lb (1.33 million-kg) of the recreational quota to recreational fishermen beginning January 1, 1998; reserves 3.12 million lb (1.42 million kg) of the red snapper total allowable catch (TAC), which may be made available on September 1, 1998; establishes a procedure for releasing the reserved TAC on September 1, 1998, based on observed efficiency of BRDs used in shrimp trawls and apportioned between the recreational and commercial fisheries; and reduces the 5-fish red snapper bag limit to 4 fish. The 3.06 million-lb (1.39 million-kg) commercial quota was available on February 1, 1998. The intended effect is to reduce overfishing of red snapper in the Gulf of Mexico.

**DATES:** This rule is effective May 14, 1998 through October 13, 1998 except for the suspension of §§ 622.34(l) and 622.39(b)(1)(iii) and the addition of §§ 622.34(m) and 622.39(b)(1)(vi), which are effective April 29, 1998, through October 13, 1998 and except for the suspension of § 622.42(a)(2) and the addition of § 622.42(g)(2), which are effective April 14, 1998, through October 13, 1998. Comments must be received no later than May 14, 1998.

**ADDRESSES:** Comments on this interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813-570-5305.