service regulations improved. New technologies are emerging, however, and the narrowly crafted on-board recorder provision is becoming obsolete.

Before considering changes to the rule, the FHWA determined that it would be prudent to demonstrate the effectiveness of more recent technology for ensuring compliance with the hours-of-service regulations. On April 6, 1998, the FHWA announced a pilot project that would allow motor carriers to use GPS tracking systems and related computer programs to monitor compliance with the hours-of-service regulations. Drivers would be exempted from the requirement to maintain paper logs (63 FR 16697). Werner Enterprises, Inc., was the first carrier to enter into an agreement with the FHWA to use a GPS system for this purpose. The FHWA believes GPS technology and many of the complementary safety management computer systems currently available to the motor carrier industry provide at least the same degree of monitoring accuracy as 49 CFR 395.15. The FHWA also believes the project will demonstrate that reduced paperwork and recordkeeping requirements are consistent with highway safety, while providing economic advantages to the motor carrier industry.

Reason for Extending the Application Deadline

The FHWA has received letters or telephone calls from 17 entities that have expressed their desire to participate in the pilot program. Development of the related safety management computer systems has been slow. Those motor carriers that wish to participate in the pilot demonstration project have been unable to purchase or develop the requisite computer systems and software that complement the GPS technology before the extended application deadline of June 30, 1999. Two entities have informed us that they now have the requisite software. Others will be coming on-line shortly. Therefore, to ensure the best possible results for this pilot project, the agency is extending the application period to December 31, 1999. Motor carriers that wish to participate in the pilot demonstration project must have GPS technology and complementary safety management computer systems which meet all of the conditions specified in the April 6, 1998, notice.

Authority: 5 U.S.C. 553(b); 23 U.S.C. 315; 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

Issued on: July 7, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–17804 Filed 7–12–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[I.D. 062499B]

Regulations Governing the Taking of Marine Mammals by Alaskan Natives; Marking and Reporting of Beluga Whales Harvested in Cook Inlet

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

ACTION: Interim final rule; notice of public hearing.

SUMMARY: On May 24, 1999, NMFS published an interim final rule amending 50 CFR 216.23 to require that Alaskan Natives harvesting beluga whales in Cook Inlet collect the lower left jaw from harvested whales and complete a report (64 FR 27925). At that time, NMFS requested public comments on the rule and announced that a public hearing would be held as part of the process. NMFS announces the location, date, and time of the hearing.

DATES: The hearing will be held on Thursday, July 29, 1999, beginning at 3:00 p.m.

ADDRESSES: The hearing will be held in room 135 of the Anchorage Federal Office Building, 222 W. 7th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907) 271–5006.

Special Accommodations

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brad Smith (see **FOR FURTHER INFORMATION CONTACT**) by July 26, 1999.

Dated: July 7, 1999.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–17794 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990330083–9166–02; I.D. 031999B]

RIN 0648–AK32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Certification of 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 procedure for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS establishes procedures for the testing and certification of bycatch reduction devices (BRDs) for use in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico. Consistent with these procedures, NMFS certifies the Jones-Davis and Gulf fisheye BRDs for use in the Gulf of Mexico. NMFS also establishes the specifications for the Jones-Davis, Gulf fisheye, and fisheye BRDs. The intended effect is to foster the development and provide for the certification of additional BRDs.

DATES: Effective July 13, 1999, except for the collection-of-information requirements in: § 622.41(h)(3)(i) and (h)(3)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer. This rule is being issued prior to the Office of Management and Budget's (OMB) approval of the information collection requirements in: § 622.41(h)(4)(i) and (h)(4)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer. When OMB approval is received, the effective dates of these paragraphs and appendices will be published in the **Federal Register**.

ADDRESSES: Copies of the regulatory impact review (RIR) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office,

NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the *Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual* should be sent to the Southeast Regional Office, NMFS.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, NMFS, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure for adjusting management measures, NMFS published and requested comments on a proposed rule (64 FR 23039, April 29, 1999) to establish procedures for the testing and certification of BRDs for use in shrimp trawls in the EEZ in the Gulf of Mexico. The preamble to the proposed rule described the testing and certification procedures and the background and rationale for them. That information is not repeated here.

In this rule, in addition to establishing the BRD testing and certification procedures, NMFS is also certifying the Jones-Davis and Gulf fisheye BRDs, providing the specifications for construction and installation of these BRDs (specifications), and amending the fisheye BRD specifications. NMFS previously certified the Jones-Davis and Gulf fisheye BRDs by interim rule (63 FR 27499, May 19, 1998; 63 FR 64430, November 20, 1998). The interim rule published May 19, 1998, and amended by the interim rule published November 20, 1998, also established the specifications for the newly certified BRDs. The fisheye BRD, as distinguished from the Gulf fisheye BRD, was certified in a final rule published April 16, 1997 (62 FR 18536). The specifications included in this final rule are identical to the specifications in the April 16, 1997, final rule (62 FR 18536), as amended by the interim rule of November 20, 1998 (63 FR 64430).

To be certified for use in the Gulf of Mexico, a BRD must reduce the bycatch mortality of juvenile red snapper by a minimum of 44 percent from the average level of mortality for these age groups during the years 1984–1989 (bycatch reduction criteria). The NMFS' Galveston Laboratory assembled a database of field evaluations for the Gulf fisheye and Jones-Davis BRDs under a research plan developed by the Gulf and South Atlantic Fisheries Development Foundation and an initial BRD-testing protocol developed by NMFS prior to the development of the protocol established by this rule. The NMFS Pascagoula Laboratory reviewed this database to determine whether the BRDs met the red snapper bycatch reduction criterion established in Amendment 9 to the FMP. NMFS' Pascagoula Laboratory determined that the data were collected according to the established protocol at the time. That protocol required that an adequate sample consisting of data from no less than 30 successful tows be collected aboard commercial shrimp trawlers in the act of fishing shoreward of the 100-fm (183-m) depth contour west of 85°30′ W. long., that trawl nets be equipped with certified hard turtle-excluder-devices (TEDs), that only outboard nets be used as control and experimental nets, and that the control and experimental nets be alternated from one side of the vessel to the other during the period of the test. NMFS' analyses of the data collected on the Gulf fisheye and the Jones-Davis BRD indicated that the BRDs met the bycatch reduction criterion. These analyses formed the basis for interim certification of these BRDs pending the implementation of the protocol in this final rule. The conditions under which the data were collected and analyzed for the interim certification also meet the criteria outlined in the protocol implemented by this rule. Therefore, NMFS certifies in this rule the Jones-Davis and Gulf fisheye BRDs for use in the Gulf of Mexico shrimp fishery.

Comments and Responses

Comments were received from three entities on the proposed rule; an industry organization, a consulting firm, and a Sea Grant office. Relevant comments and responses are included here.

Pre-certification Phase Testing

Comment 1: One commenter stated that the objective of the pre-certification phase test should be to allow the applicant to examine the overall functionality of the proposed BRD design without a focus on red snapper exclusion or shrimp retention.

Response: The pre-certification procedures are specifically designed to allow the applicant to modify the design and configuration of a prototype BRD during pre-certification phase testing and to evaluate the overall effectiveness and operational functionality of the prototype BRD. However, in addition to evaluating the operational functionality of the prototype BRD, the applicant will need to know if the prototype BRD has the potential to meet the red snapper bycatch reduction criterion. This information will allow the applicant to decide whether or not to apply for certification testing authorization.

Certification Phase Testing

Comment 2: One commenter suggested that a particular BRD candidate's performance, as evaluated during a certification test, might not be applicable when the BRD is used in different styles of nets, or with different TEDs, or under different fishing conditions. The commenter suggested that, prior to certification, extensive commercial field evaluations of the BRD candidate be conducted under a variety of fishing conditions aboard different vessels and/or with different fishing gear designs to obtain statistically sound estimates of the BRD's true ability to meet the bycatch reduction criterion.

Response: NMFS disagrees. The protocol describes a statistically valid procedure to determine whether a BRD candidate meets the bycatch reduction criterion, and, thus, can be certified for general use in the shrimp fishery. If a certified BRD is subsequently found not to meet the certification criterion, the protocol provides a mechanism for the Regional Administrator to decertify that particular BRD through the FMP framework procedure.

Comment 3: Two commenters suggested that, even after the tuning tests are completed, the catch efficiency of the two nets used in the certification phase testing may begin to deviate over the 30-tow test period and that any such biases should be incorporated into the final statistical analyses.

Response: The protocol requires that the BRD candidate be moved from the net on one side of the vessel to the net on the other side of the vessel at specific time intervals. This procedure is intended to negate any undetected net/side bias by introducing that bias into both the experimental net and control net data.

Comment 4: Two commenters had several technical concerns about the procedures to be used when testing a soft TED for certification as a BRD, and recommended that both nets should be equipped with soft TEDs during both the tuning and certification phases of the certification test. The commenters were also concerned about an undue burden being placed on the trawler and its crew because installation of a soft TED must be done by a skilled installer, which will require the vessel to return to port between the tuning and certification phases. One of the

commenters further suggested that this problem could be avoided by testing the soft TED against a control net containing a disabled soft TED; this would ensure that the efficiency was similar between the two nets because they were both equipped with the same TED.

Response: NMFS disagrees that the trawler or its crew, which is voluntarily participating in the test, will be unduly burdened from having to return to port to replace the TED in the experimental net. NMFS disagrees that the test should be conducted using a soft TED in the experimental net and a disabled soft TED in the control net. BRD performance is to be measured against the performance of a standard net, and a standard net is a net equipped with a functioning certified TED. Using hard TEDs in both the control and experimental nets during the tuning tows will ensure that the two nets are fishing with equivalent efficiency, and, once the soft TED is installed in the experimental net, any changes in catch rates can be attributed to the influence of the soft TED.

Comment 5: Two commenters requested clarification of the statement ''A gear change (i.e., changing nets, doors, or rigging) during a test constitutes the beginning of a new test.'', noting that, under this definition, the repair of damaged gear that did not change the original gear configuration of the trawl could still be interpreted as meeting the criterion for beginning a new test.

Response: NMFS intends the word ''gear change'' in this section of the protocol to represent wholesale replacement of gear components, such as doors, nets, or alterations in the configuration, including such actions as shortening tickler chains, adjusting the leg lines, or removing or adding headrope floats or footrope weights. These kinds of changes would alter the fishing efficiency of that particular trawl array, and, thus the test would need to be re-started. NMFS does not intend the definition of ''gear change'' to include the repair of damaged components of the trawl array to the original configuration, such as sewing up tears in the net or repairing a damaged tickler chain.

Comment 6: Two commenters questioned the requirement to restrict tow times during a test to a specific timeframe with an allowance of only 10 percent. They noted that consistent tow times do not necessarily represent normal fishing activities and that tow times might need to be adjusted, based on fishing conditions, during a test. One commenter noted that a 10-percent allowance for a tow-time range of 2 to 8 hours could range from 12 to 48 minutes, thus introducing unnecessary bias into the calculations of catch-per-unit-effort and catch composition. This commenter indicated that this allowance was unnecessary and that tow times should be standardized.

Response: NMFS recognizes that fishers do not necessarily tow their nets for a standard length of time, and that tow times may vary for reasons including changing environmental conditions or catch rates. BRD certification tests are to be conducted under normal operational conditions, but they must also be conducted in a scientifically rigorous manner suitable for standard statistical analyses. Any foreseeable deviations from the prescribed protocol must be described and justified in the application and must be approved by the Regional Administrator prior to beginning the certification test. Additionally, deviations from the prescribed protocol required by unforeseen events during a certification test must be made in a scientifically sound manner and must be described and explained in the final report submitted to the Regional Administrator. The Regional Administrator will evaluate the appropriateness of the deviation prior to making a final determination concerning the BRD candidate's ability to meet the certification criterion. NMFS disagrees with the comment that the tow times must be standardized without an allowance or that the allowance would introduce an unacceptable bias into the catch per unit of effort data. Catch per unit effort will not change if the catchability co-efficient of the net does not change during the tow, which is a basic assumption of this sampling protocol. The ranges in tow time variations given as examples by the commenter are not applicable to any given test. The applicant will be establishing a specific tow time prior to beginning the tests, and, thus the allowance will remain constant as long as the applicant adheres to that designated tow time. Thus, no changes to the protocol are necessary.

Statistical Analysis

Comment 7: Two commenters questioned the continued use of the Goodyear (1995) VPA-based stock assessment model for calculating fishing mortality reduction attributable to the BRD candidate. One commenter further noted that the more recent observer-based data sets indicated that the size distributions of red snapper in the shrimp trawl bycatch were different than the size distribution of the red snapper shrimp trawl bycatch data set used by Goodyear.

Response: NMFS recently provided a report to the Gulf of Mexico Fishery Management Council summarizing a data collection effort by NMFS during the summer of 1998 concerning BRD efficiency. In that report, NMFS compared results from the original (1995) Goodyear procedure with results from an update of the underlying data set. Analyses by NMFS indicated that updates to the underlying information used by the Goodyear procedure agreed with the original analysis. NMFS will continue to evaluate the procedure for routine evaluations of BRD effectiveness as additional information becomes available and will implement any appropriate changes to this protocol through the FMP framework procedure.

Comment 8: One commenter questioned the use of a two-sided confidence interval in the statistical analysis.

Response: The BRD candidate will be evaluated for its ability to meet the bycatch reduction criterion through the use of a modified one-sided t-test. The null hypothesis, $R \leq R_o$, will be rejected if $t > t_{alpha-1}$. This test will determine whether the BRD meets the certification criterion and is eligible for certification by the Regional Administrator. Confidence intervals, while illustrating the range of expected results of the BRD candidate, are not used as part of the certification determination.

Observer Requirements

Comment 9: Two commenters expressed concerns about the requirement that the observer not have a previous or current financial relationship with the applicant, noting that this requirement would restrict certain agencies and organizations that have trained observers on staff from effectively participating as applicants in BRD certification testing.

Response: NMFS disagrees. An applicant must select an observer from a list of qualified observers maintained by the Regional Administrator. A qualified observer who is associated with a specific organization or agency and who is on the list of observers maintained by the Regional Administrator could still participate in the test, as long as the organization or agency is not the applicant.

Comment 10: Two commenters stated that the requirement for an observer to have a Bachelor's Degree in fishery biology or in a closely related field might exclude some very capable observers without degrees.

Response: NMFS does not intend to exclude any qualified candidates from

being included on the list of qualified observers. The qualification criteria include having a Bachelor's Degree, having 6 months experience as an observer, or successfully completing a training course conducted or approved by the Director of the NMFS Southeast Fisheries Science Center. An observer candidate need meet only one of these three criteria. No changes are necessary.

Changes From the Proposed Rule

In § 622.7, paragraph (aa) has been revised to eliminate an incorrect cross reference and to clarify the intent of the prohibition.

In § 622.41, paragraph (h)(2) was revised to reflect certification of the Jones-Davis and Gulf fisheye BRDs in this rule. Also in § 622.41, references to paragraph (h)(4) were revised to read (h)(3) to conform to reorganization of codified text due to expiration of interim rule text. Other than the paragraph designations, there were no changes to codified text.

In Appendix D to part 622, paragraph C.2. was revised and paragraphs D and E were added to incorporate specifications for the Jones-Davis and Gulf fisheye BRDs certified in this rule and to incorporate a minor revision of the specifications for the fisheye BRD. These specifications, including the minor revision, are identical to those implemented previously by an interim rule that expired May 15, 1999.

In Appendix H to the *Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual*, the explanations of type I and type II errors were corrected.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification and the basis for it has not changed. As a result, a regulatory flexibility analysis was not prepared. Copies of the RIR are available (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA—namely, the BRD certification process, consisting of applications for pre-certification or certification of a new BRD, pre-certification adjusting, the testing itself, the submission of the test results, application for observer position, and references for observers. These requirements have been submitted to OMB for approval. The public reporting burden for this collection of information which includes the application, pre-certification phase, testing, and submission of results, is estimated to average 211 hours. The public reporting burden for applying for an observer position will average 1 hour per response and the burden for obtaining references will average 1 hour per response. The collection consists of an Application Form, Vessel Information Form, Gear Specification Form, TED/BRD Specification Form, Station Sheet Form, Species Characterization Form, Length Frequency Form, and Condition and Fate Form. The average response time for each of these forms is 20 minutes, except for the Species Characterization Form which has a 5-hour response time and the Application Form which has a 2.3-hour response time. In addition, 4 hours will be needed to prepare the final report. Send comments regarding these burden estimates or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

These collection-of-information requirements are contained in § 622.41(h)(3)(i) and (h)(3)(ii), Appendix—Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual, and Appendix I—Qualifications of Observer. This rule is being issued prior to approval by OMB of these information collection requirements. When OMB approval is received, a notice will be published in the **Federal Register** making the information requirements in those sections and appendices effective.

This rule establishes the procedures for testing and certification of BRDs, thus providing the mechanism for increasing the number and types of certified BRDs available for use by the Gulf of Mexico shrimp trawl fishery. Certification of additional BRDs will provide the industry greater flexibility in choosing a BRD that is optimal for particular fishing operations and conditions. The BRD specifications incorporated in this rule are essential for the proper construction and installation of the newly certified BRDs and are identical to the specifications previously implemented by NMFS via interim rule that recently expired. For these reasons, under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, for good cause, finds that it would be unnecessary and contrary to the public interest to delay for 30 days the effective date of this rule.

Immediate implementation of these testing and certification procedures also allows for immediate certification of the Jones Davis and Gulf fisheye BRDs that NMFS has determined are in compliance with the procedures based on prior testing. Because these certifications relieve a restriction on the affected public, under 5 U.S.C. 553(d)(1), they are not subject to a 30-day delay in effective date.

As noted above, the collection-of-information components of this rule will not take effect until approval by OMB and publication of a separate notice in the **Federal Register** making these components effective.

List of Subjects in 50 CFR Part 622

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

Dated: July 1, 1999.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, 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 § 622.7, paragraph (bb) is reserved and paragraph (aa) is added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Falsify information submitted regarding an application for testing a BRD, testing of a BRD, or the results of such testing, as specified in § 622.41(h)(3).

(bb) [Reserved]

3. In § 622.41, the first sentence of paragraph (h)(1)(i) and paragraph (h)(2) are revised and paragraph (h)(3) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) * * *

(1) * * *

(i) Except as exempted in paragraphs (h)(1)(ii) through (iv) and paragraph (h)(3)(iii) 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. * * *

* * * * *

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

(i) Fisheye.

(ii) Gulf fisheye.

(iii) Jones-Davis.

(3) *Procedures for certification of additional BRDs.* The process for the certification of additional BRDs consists of two phases—an optional pre-certification phase and a required certification phase.

(i) *Pre-certification.* The pre-certification phase allows a person to test and evaluate a new BRD design for up to 60 days without being subject to the observer requirements and rigorous testing requirements specified for certification testing in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual.*

(A) A person who wants to conduct pre-certification phase testing must submit an application, as specified in the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual,* to the RD. The *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual,* which is available from the RD, upon request, contains the application forms.

(B) After reviewing the application, the RA will determine whether to issue a letter of authorization (LOA) to conduct pre-certification trials upon the vessel specified in the application. The RA will issue a pre-certification phase LOA if the BRD design is substantially unlike any BRD design previously determined not to meet the BRD certification criterion or, if the design is substantially similar to a BRD design previously determined not to meet the BRD certification criteria, and the application demonstrates that the design could meet the certification criterion through design revision or upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as using a larger sample size than that previously used). If the RD authorizes pre-certification, the RD's letter of authorization must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification.* A person who proposes a BRD for certification for use in the Gulf EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual.* The RA will issue a LOA to conduct certification trials upon the vessel specified in the application if the RA finds that: The test plan meets the requirements of the protocol; the observer identified in the application is qualified and has no current or prior financial relationship with the entity seeking BRD certification; the application presents a BRD candidate substantially unlike BRDs previously determined not to meet the current bycatch reduction criterion, or the applicant has shown good cause for reconsideration (such as the likelihood of improved statistical results yielded from a larger sample size than that previously used); and for BRDs not previously tested for certification, the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If authorization to conduct certification trials is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. If a BRD meets the certification criterion, as determined under the testing protocol, NMFS will publish a notice in the **Federal Register** adding the BRD to the list of certified BRDs in paragraph (h)(2) of this section providing the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(iii) A shrimp trawler that is authorized to participate in the pre-certification phase or to test a BRD in the EEZ for possible certification has such written authorization on board and is conducting such test in accordance with the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* is granted a limited exemption from the BRD requirement specified in paragraph (h)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

4. In Appendix D to part 622, paragraph C.2. is revised and paragraphs D and E are added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

* * * * *

C. * * *

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed at the top center of the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend drawstring (tie-off rings) or 70 percent of the distance between the codend drawstring and the forward edge of the codend, excluding any extension, whichever is the shorter distance. In the Gulf EEZ only, when the fisheye BRD is installed in this position, 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 codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system.

D. *Gulf fisheye.*

1. *Description.* The Gulf fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel that is inserted into the top center of the codend, or is offset not more than 15 meshes perpendicular to the top center of the codend, to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The Gulf fisheye is a cone-shaped rigid frame constructed of aluminum or steel rods. The rods must be at least ¼-inch (6.35-mm) diameter. Any dimension of the escape opening must be at least 5.0 inches (12.7 cm), and the total escape opening area must be at least 36.0 in^2 (232.3 cm^2). The Gulf fisheye must be installed in the codend of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 12.5 ft (3.81 m) and no less than 8.5 ft (2.59 m) from the codend tie-off rings. When installed in this position, 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 codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system. The Gulf fisheye may not be offset more than 15 meshes perpendicular to the top center of the codend.

E. *Jones-Davis.*

1. *Description.* The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements.* The Jones-

Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single piece of 1⅝-inch (3.5-cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42-mesh side together.

(b) *28-inch (71.1-cm) cable hoop.* A single hoop must be constructed of ½-inch (1.3-cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3-inch (7.6-cm) piece of ½-inch (1.3-cm) aluminum pipe and pressed with a ⅜-inch (0.95-cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(c) *24-inch (61.0-cm) hoop.* A single hoop must be constructed of either number 60 twine 80 inches (203.2 cm) in length or ⅜-inch (0.95-cm) steel cable 75½ inches (191.8 cm) in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe and pressed together with a ¼-inch (0.64-cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with ⅜-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel.* The funnel must be constructed from four sections of 1½-inch (3.8-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23-mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension.* The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings.* The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Alternative Method for Constructing the Funnel and Escape Openings.* The following method for constructing the funnel and escape openings may be used instead of the method described in paragraphs F.2.d., F.2.e., and F.2.f. of this section. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include: (1) The funnel's top and bottom back edges must be attached one mesh behind the 28-inch (71.1-cm) cable hoop (front hoop); (2) clearance between the side of the funnel and the 28-inch (71.1-cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position; (3) the leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid; and, (4) the area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). To construct the funnel and escape openings using this method, begin 3½ meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4½-mesh by 26-mesh rectangular section of webbing to the 26-mesh edge. Attach the 18-mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7-inch piece of number 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6-mesh by 10½-mesh section of webbing to 6 meshes of the center of the 26-mesh cut on the extension and 6 meshes centered between the 13-mesh cuts 3½ meshes from the leading edge. This forms two 10-mesh by 13-mesh openings on each side.

(h) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.13-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10–14 inches (25.4–35.6 cm) of the posterior edge of the funnel.

(i) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5⁄16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(j) *Installation of the cone in the extension.* The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28-inch (71.1-cm) cable

hoop at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8-inch (20.3-cm) pieces of number 60 twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch (61-cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11-inch (27.9-cm) cone hoop.

Note: The *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* and appendices H and I to the Manual are published as appendices to this document. These appendices will not appear in the Code of Federal Regulations.

Appendix—Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual

Definitions

Bycatch reduction criterion is that the BRD reduces the mortality of juvenile (age 0 and age 1) red snapper by a minimum of 44 percent from the average level of bycatch mortality (F=2.06) on these age classes during the years 1984–1989.

Bycatch reduction device (BRD) is any gear or trawl modification designed to allow finfish to escape from a shrimp trawl.

BRD candidate is a bycatch reduction device to be tested for certification for use in the commercial shrimp fishery of the Gulf of Mexico.

Catch per unit of effort (CPUE) means the number or pounds of fish (e.g., red snapper) or shrimp taken during a pre-defined measure of fishing activity (e.g., per hour).

Certification phase is a required testing phase whereby an individual so authorized by the RA may conduct a discrete testing program, with a sample size adequate for statistical analysis (no less than 30 tows), to determine whether a BRD candidate meets the bycatch reduction criterion.

Certified BRD is a BRD that has been tested according to this protocol and has been determined by the RA as having met the bycatch reduction criterion.

Control trawl means a trawl used during the certification testing that is not equipped with a BRD. The catch of this trawl is compared to the catch of the experimental trawl.

Experimental trawl means the trawl used during the certification tests that is equipped with the BRD candidate.

Evaluation and oversight personnel includes scientists, observers, and other technical personnel who, by reason of their occupational or other experience, scientific expertise or training, are approved by the RA as qualified to evaluate and oversee the application and testing process. Scientists and other technical personnel will (1) review a BRD certification test application for its merit, and (2) critically review the scientific validity of the certification test results.

Observer means a person on the list maintained by the RA of individuals qualified to supervise and monitor a BRD certification test. Applicants may obtain the list of individuals qualified to be an observer from the RA. The observer chosen by the applicant may not have any current or prior financial relationship with the entity seeking BRD certification. For information on observer qualification criteria and the observer application process, see Appendix I.

Pre-certification phase is an optional testing phase whereby an individual, so authorized by the RA, can experiment with the design, construction, and configuration of a BRD and gather data.

Regional Administrator (RA) means the Southeast Regional Administrator, National Marine Fisheries Service, 9721 Executive Center Drive North, St. Petersburg, Florida 33702, phone 727–570–5301.

Required measurements refers to the quantification of the dimensions and configuration of the trawl, the BRD candidate, the doors, the location of the BRD in relation to other parts of the trawl gear, and other quantifiable criteria used to assess the performance of the BRD candidate.

Sample size means the number of successful tows (a minimum of 30 tows per test are required).

Shrimp loss means the percent difference in average CPUE (e.g. kg/hr) between the amount of shrimp caught in the control trawl and the amount of shrimp caught in the experimental trawl.

Successful tow means that the control and experimental trawl were fished in accordance with the requirements set forth in the protocol and the terms and conditions of the letter of authorization, that the control or experimental net caught at least five red snapper during the tow, and that no indication exists that problematic events, such as those listed in Appendix D–5, occurred during the tow which would impact or influence the fishing efficiency (catch) of one or both nets.

Tow time means the total time (hours and minutes) an individual trawl was fished while being towed (i.e., the time between ''dog-off'' and start of haul back).

Trawl means a net and associated gear and rigging, as illustrated in Appendix B–5 of this manual, used to catch shrimp. The terms trawl and net are used interchangeably throughout the manual.

Tuning a net means adjusting the trawl and its components to minimize the differences in shrimp catch between the two nets that will be used as the control and experimental trawls during the certification tests.

I. Introduction

Purpose of the Protocol

This protocol sets forth a standardized scientific procedure for the testing of a BRD candidate and for the evaluation of its ability to meet the bycatch reduction criterion. For a BRD candidate to be certified by the RA, the BRD candidate must meet the bycatch reduction criterion.

There are two phases to this procedure: An optional, but recommended, pre-certification phase and a required certification phase. An applicant is encouraged to take advantage of the pre-certification phase which allows experimentation with different BRD designs and configurations prior to certification phase testing (see below for details). The certification phase requires the applicant to conduct a discrete testing program, with a sample size of no less than 30 tows to determine whether the BRD candidate meets the bycatch reduction criterion. There is no cost to the applicant for the RA's administrative expenses such as preparing applications, issuing letters of authorization (LOAs), or evaluating test results or certifying BRDs. However, all other costs associated with either phase (e.g., field testing) are at the applicant's expense.

II. Pre-Certification Phase (Optional)

The pre-certification phase provides a mechanism whereby an individual can experiment with the design, construction, and configuration of a prototype BRD for up to 60 days to improve the design's effectiveness at reducing the bycatch of red snapper and to determine whether it is likely to meet the bycatch reduction criterion. To conduct pre-certification phase evaluations of a prototype BRD, the applicant must apply for, receive, and have on board the vessel during testing, an LOA from the RA.

A. Application

In order to obtain an LOA to conduct pre-certification phase evaluations of a prototype BRD, an individual must submit a complete application to the RA. A complete application consists of a completed application form, Application to Test A Bycatch Reduction Device in the Exclusive Economic Zone (the form is appended as Appendix J–1), and the following: (1) a brief statement of the purpose and goal of the activity for which the LOA is requested; (2) a statement of the scope, duration, dates, and location of the testing; (3) an 8.5-inch x 11-inch (21.6-cm x 27.9-cm) diagram drawn to scale of the BRD design; (4) an 8.5-inch x 11-inch (21.6-cm x 27.9-cm) diagram drawn to scale of the BRD and approved TED in the shrimp trawl; (5) a description of how the BRD is supposed to work; and (6) a copy of the testing vessel's documentation or its state registration.

An applicant requesting a pre-certification LOA of an unapproved hard or soft TED as a BRD must first apply for and obtain from the RA an experimental TED authorization pursuant to 50 CFR 227.72(e)(5)(ii). The pre-certification phase LOA application must also append a copy of that authorization.

B. Issuance

The RA will review the application for completeness. If the application is incomplete, the RA will inform the applicant of the incompleteness and give the applicant an opportunity to cure. If incompleteness is not cured within 30 days, the application will be returned to the applicant. Upon receipt of a complete application, the RA will issue a LOA to conduct pre-certification phase testing upon the vessel specified in the application if the BRD design is substantially unlike BRD designs previously determined not to meet the current performance criterion, or if the design is substantially similar to BRD designs previously determined not to meet the current performance criteria and the application

demonstrates that the design could meet the bycatch reduction criterion through design revision or upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as a larger sample size than that previously used). If a pre-certification phase LOA is denied, the RA will return the application to the applicant along with a letter of explanation including relevant recommendations as to curing the deficiencies which caused the denial. In arriving at a decision, the RA may consult with evaluation and oversight personnel. Issuance of a LOA allows the applicant to remove or disable the existing BRD in one net (to create a control net), and to place the prototype BRD in another net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the test must be equipped with a certified BRD. All trawls under tow during the pre-certification phase tests must be equipped with an approved TED unless operating under an authorization issued pursuant to 50 CFR 227.72(e)(5)(ii). The LOA, and experimental TED authorization if applicable, must be on board the vessel while the pre-certification phase tests are being conducted. The term of the LOA will be 60 days.

C. Applicability

The pre-certification phase allows an individual to compare the catches of a control net to the catches of the experimental net (net equipped with the prototype BRD) to estimate the potential efficiency of the prototype BRD. If that individual subsequently applies for a certification phase LOA to test this design he/she must include the results of the pre-certification phase evaluation with the certification application. The RA will use this information to determine if there is a reasonable scientific basis to conduct certification phase testing. Therefore, for each paired tow, the applicant should keep a written record of the weight of the shrimp catch, the weight of the finfish catch, and the total catch (in numbers) of red snapper of each net. The form contained in Appendix D should be used to record this information.

III. Certification Phase (Required)

In order to have a BRD certified, it must, under certification phase testing, be consistent with the requirements of the testing protocol and LOA and be determined by the RA to meet the bycatch reduction criterion.

A. Application

To conduct certification phase testing, an individual must obtain a certification phase LOA. To obtain a certification phase LOA, an individual must submit a complete application to the RA. The complete test application consists of an Application to Test A Bycatch Reduction Device in the Exclusive Economic Zone (Appendix J–1), a copy of the vessel's current Coast Guard certificate of documentation or, if not documented, its state registration certificate; the name of a qualified observer who will be on board the vessel during all certification test operations (see Appendix I); and a test plan showing: (1) an 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD candidate; (2) an 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD candidate and approved TED in the shrimp trawl; (3) a description of how the BRD candidate is supposed to work; (4) the results of previous pre-certification phase tests; (5) the location, time, and area where the certification phase tests would take place; and (6) the identity of the observer from the list of qualified individuals maintained by the RA and certification that the observer has no current or prior financial relationship with the applicant or entity seeking BRD certification.

An applicant requesting a certification phase LOA to test an unapproved hard or soft TED as a BRD must first apply for and obtain from the RA an experimental TED authorization pursuant to requirements of 50 CFR part 227.72(e)(5)(ii). The application for the certification phase LOA also must append a copy of that authorization.

A.1 Special Circumstances Not Covered By Protocol

Because actual testing conditions may vary, it may be necessary to deviate from the prescribed protocol to determine if a BRD candidate meets the bycatch reduction criterion. Any foreseeable deviations from the protocol must be described and justified in the application, and if scientifically acceptable will be approved by the RA in the LOA. The RA may consult with evaluation personnel to determine whether the deviations are scientifically acceptable. Without the RA's approval in the LOA, results from any tests deviating from the protocol may be rejected as scientifically unacceptable, and could result in a denial of certification.

B. Observer Requirement

A qualified observer must be on board the vessel during all certification testing operations (See Appendix I). A list of qualified observers is available from the RA. Observers may include employees or individuals acting on behalf of NMFS, state fishery management agencies, universities, or private industry who meet the minimum requirements outlined in Appendix I, but the individual chosen may not have a current or prior financial relationship with the entity seeking BRD certification. It is the responsibility of the applicant to ensure that a qualified observer is on board the vessel during the certification tests. Compensation to the observer, if necessary, must be paid by the applicant. Any change in information or testing circumstances, such as replacement of the observer, must be reported to the R.A. within 30 days. Under 50 CFR 600.746, the owner and operator of any fishing vessel required to carry an observer as part of a mandatory observer program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) is required to comply with guidelines, regulations, and conditions to ensure their vessel is adequate and safe to carry an observer, and to allow normal observer functions to collect scientific information as described in this protocol. A vessel owner is deemed to meet this requirement if the vessel displays one of the following: (i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I, and 46 CFR, chapter I; (ii) a certificate of compliance issued pursuant to 46 CFR 28.710; or (iii) a valid certificate of inspection pursuant to 46 U.S.C. 3311.

C. Issuance

The RA will review the application for completeness. If the application is not complete, the RA will notify the applicant of the incompleteness and give the applicant an opportunity to cure. If the incompleteness is not cured within 30 days, the RA will return the application to the applicant. Upon receipt of a complete application, the RA will issue a LOA to conduct certification phase testing of the BRD candidate specified in the application if: (1) the test plan meets the requirements of the protocol; (2) the qualified observer named in the application has no current or prior financial relationship with the entity seeking BRD certification; (3) the BRD candidate design is substantially unlike BRD designs previously determined not to meet the current bycatch reduction criterion, or if the BRD candidate design is substantially similar to a BRD design previously determined not to meet the current bycatch reduction criterion, the application demonstrates that the design could meet the bycatch reduction criterion upon retesting (e.g., the application shows that statistical results could be improved upon retesting by such things as a larger sample size than that previously used); and (4) the results of any pre-certification phase testing conducted indicate a reasonable scientific basis for further testing. The submission of pre-certification phase data to provide a scientific basis for the conduct of certification testing is not an absolute requirement for the issuance of a certification phase LOA. For example, a request to conduct certification phase testing of a minor modification of a certified BRD design would not need to include pre-certification phase data. Similarly, a request for certification phase testing of a previously failed design that under a different test plan (e.g., larger sample sizes) could yield improved statistical results would likewise not need pre-certification phase data. However, pre-certification phase data would normally be needed to establish a reasonable scientific basis for conducting certification phase testing (e.g., that the BRD could meet the certification criterion upon certification testing). In making these determinations, the RA may consult with evaluation and oversight personnel. If a LOA to conduct certification phase testing is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. Issuance of a LOA allows the applicant to remove or disable the existing certified BRD in one net (to create a control net) and to place the BRD candidate in another net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the tests must be equipped with a BRD. All trawls under tow during the certification tests must be equipped with an approved TED unless operating under an

authorization issued pursuant to 50 CFR 227.72(e)(5)(ii). The LOA will specify the date when the applicant may begin to test the BRD candidate, the observer who will conduct the onboard data collection, and the vessel to be used during the test. The LOA and experimental TED authorization, if applicable, must be onboard the vessel while the certification phase tests are being conducted.

D. Testing Protocol

Certification testing must be conducted in areas and at times when commercial quantities of penaeid shrimp and juvenile (age 0 and age 1) red snapper are available to the gear. The best time for testing a BRD candidate is July and August (July 1—August 31) due to the availability of red snapper on the penaeid shrimp commercial grounds located shoreward of the 100-fm (183-m) depth contour west of 85°30′ W. longitude, the approximate longitude of Cape San Blas, FL. Data should be recorded on the forms found in Appendices B through G, using the instructions provided for each form.

D.1. Tuning the Control and Experimental Trawls Prior to BRD Certification Trials

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 that of the control net. Therefore, it is imperative that the fishing efficiency of the two nets be as similar as possible prior to starting the certification tests. Catch data from no more than 20 tuning tows should be collected on nets that will be used as control and experimental trawls to determine if there is a between-net or between-side (port vs. starboard) difference in fishing efficiency (bias). Any net/side bias will be reflected as differing catch rates of shrimp and red snapper between two nets that were towed simultaneously. During the tuning tows, these nets should be equipped with identical approved hard TEDs, without the BRD candidate being installed. Using this information, the applicant should identify and minimize the causes for any net/side bias, to the extent practicable, by making appropriate trawl gear adjustments. Form D–1 from Appendix D should be used to record the net/side bias data collected from these tows. These data will enable the RA to determine if any net/side bias existed in either trawl in assessing the BRD candidate's performance.

If the applicant is testing a soft TED as a BRD, it will be imperative that little or no position or side bias with the trawl nets be demonstrated before the certification trials are initiated. Once any net/side bias is corrected using identical approved hard TEDs in both nets, any alterations in catch rate following the substitution of the soft TED into the experimental net can then be attributed to that TED's influence.

D.2. Retention of Data Collected During Tuning Trials

All data collected during tuning trials and used for minimizing the net/side bias must be documented and submitted to the RA along with the testing data for evaluation. Additional information on tuning shrimp trawls is available from the Harvesting Technology Branch, Mississippi Laboratories, Pascagoula Facility, 3209 Frederic Street, Pascagoula, Mississippi 39568–1207; phone (601) 762–4591.

D.3. Certification Tests

The certification tests must follow the testing protocol where paired identical trawls are towed by a trawler in areas west of Cape San Blas, Florida, where shrimp and juvenile red snapper occur. For tests of BRD candidates that do not encompass testing a hard or soft TED as the BRD candidate, identical approved hard TEDs are required in each trawl and one of the trawls must be equipped with a functioning BRD candidate. To test a hard or soft TED as a BRD candidate, the control net must be equipped with an approved hard TED, and the experimental net must be equipped with the TED that is acting as the BRD candidate.

A minimum sample size of 30 successful tows per test is required. Additional tows may be necessary for sufficient statistical evidence, especially if red snapper catch is highly variable. A gear change (i.e., changing nets, doors, or rigging) during a test constitutes the beginning of a new test. All certification tows must be no less than 2 hours and no more than 8 hours in duration. The applicant may select any tow time within this range. Once a tow time is selected, no tow time during a series of tests may vary by more than 10 percent.

To avoid potential biases associated with trynet catches, the outside trawls on quad-rigged vessels must be used as the control and experimental trawls, and for double-rigged vessels, the use of a trynet is prohibited.

The functioning BRD candidate must be switched every 4–6 tows (approximately every 2 days) between the two trawl nets. This process must be repeated, ensuring that an equal number of successful tows are made with the BRD candidate employed in both the port and starboard nets, until a minimum of 30 successful tows have been completed. For BRDs incorporated in the codend of the net, this process can be facilitated by the use of zippers, or other quick-connection devices, to more easily move the codends between nets; however, simply switching the entire net will not satisfy this requirement because doing so would not resolve net bias. Such quick-connection devices must be attached behind the TED. The TED must not be moved unless the BRD is actually incorporated into the TED portion of the net. Where a hard TED is being tested as a BRD candidate, that portion of the net including the TEDs must be moved, and again, quick-connection devices located in front of the TEDs may be used.

A different procedure must be followed to conduct tests of an approved or experimental soft TED as a BRD candidate. To conduct these tests, the applicant must first demonstrate that little or no side/net bias exists between the two nets to be used in the test (see D.1.). Removing the soft TED from one trawl net and installing it in the other net is not required. For these tests, the control (with a hard TED) and experimental (with the soft TED) nets must be disconnected from the doors and their positions switched from one side of the vessel to the other. The first switch must be made after successfully completing approximately 25 percent of the total number of intended tows. This process must be repeated, at 25 percent intervals, until at least 30 successful tows are completed (i.e., every 7–8 successful tows).

Following each paired tow, the catches from the control and experimental nets must be examined separately. This requires that the catch from each net be kept separate from each other, as well as from the catch taken in other nets fished during that tow. First, the observer must weigh the total catch of each test net (control and experimental nets). If the catch in a net does not fill one standard 1-bushel [ca. 10 gallon] (30 liters) polyethylene shrimp basket (ca. 70 pounds) (31.8 kg), but the tow is otherwise considered successful, data must be collected on the entire catch of that net, and recorded as a ''select'' sample (see Appendix E). If the catch in a net exceeds 70 pounds (31.8 kg), a well-mixed sample consisting of one standard 1-bushel [ca. 10 gallon] (30 liters) polyethylene shrimp basket must be taken from the total catch of that net.

Data must be collected on Form E–1 for the following species or general groups found in each of the samples: (1) penaeid shrimp—brown, white and pink shrimp from each sample must be separated by species, counted and weighed; in addition, the weight for those penaeid shrimp species caught in each test net, but that were not included in the sample, must be recorded so that a total shrimp catch for each net (by weight) is documented; (2) crustacea—mantis shrimp, sugar shrimp, seabobs, crabs, lobsters and other similar species—must be weighed as an aggregate; (3) other invertebrates—squid, jellyfish, starfish, sea pansies, shells, and other similar species—must be weighed as an aggregate; (4) each finfish species or species group listed in Appendix E must be weighed and counted; (5) other finfish—including all other fish not listed on the above-referenced form must be weighed as an aggregate; and (6) debris (mud, rocks, and related matter) must be weighed as an aggregate.

''Select'' finfish species (page E–3) (i.e., particular species to be quantified from the total catch and not just the sample) are red snapper, Spanish mackerel, and king mackerel. All individuals of the ''Select'' species from each test net (control and experimental net) must be collected, counted, weighed, and recorded. Lengths for as many as 30 individuals of each select species must be recorded on Form F–1. These data are necessary to robustly determine age-class composition, and specific mortality reductions attributable to each of the age classes.

Applicants must also collect qualitative information, using Form G–1, on the condition (alive or dead) and fate (floated off, swam down, eaten) of the discards whenever possible, and note the presence of any predator species such as sharks, porpoises, and jacks that are observed. The condition and fate of the bycatch is important for determining the fishing mortality and waste associated with this discard.

E. Reports

A report on the BRD candidate test results must be submitted for certification. The report must contain a comprehensive description of the tests, copies of all completed data forms used during the certification trials, and photographs, drawings, and similar material describing the BRD. The captain or owner must sign and submit the cover form (Appendix A). The report must include a description and explanation of any unforeseen deviations from the protocol which occurred during the test. Applicants must provide information on the cost of materials, labor, and installation of the BRD candidate. In addition, any unique or special circumstances of the tests, including special operational characteristics or fishing techniques which enhance the BRD's performance, should be described and documented as appropriate.

F. Certification

The RA will determine whether the required reports and supporting materials are sufficient to evaluate the BRD candidate's efficiency. The RA also will determine whether the applicant adhered to the prescribed testing protocol, and whether the BRD candidate meets the bycatch reduction criterion for juvenile red snapper. In making a decision, the RA may consult with evaluation and oversight personnel.

The RA will determine the effectiveness of the BRD candidate. The statistical protocol in Appendix H provides the methodology that the RA will use to estimate the reduction in bycatch mortality on age-1 juvenile red snapper if the test is conducted during the primary period (July or August). Tests conducted during other parts of the year will, most likely, catch both age 0 and age 1 red snapper. To evaluate the overall reduction in mortality rate of these juvenile age classes attributable to the BRD candidate will require alternative extensive analysis, involving use of the Goodyear (1995) stock assessment model to assign mortality reductions by specific size classes within the age 0 and age 1 red snapper catch.

Following a favorable determination of these criteria, the RA will certify the BRD (with any appropriate conditions as indicated by test results) and publish the certification in the **Federal Register**.

IV. BRDs Not Certified and Resubmission Procedures

The RA will advise the applicant, in writing, if a BRD is not certified. This notification will explain why the BRD was not certified and what the applicant may do to either modify the BRD or the testing procedures to improve the chances of having the BRD certified in the future. If certification was denied because of insufficient information, the RA will explain what information is lacking. The applicant must provide the additional information within 60 days from receipt of such notification; thereafter, the applicant must re-apply. If the RA subsequently certifies the BRD, the RA will announce the certification in the **Federal Register**.

V. Decertification of BRDs

The RA will decertify a BRD whenever it is determined that it no longer satisfies the bycatch reduction criterion for juvenile red snapper. Before determining whether to decertify a BRD, the Council and public will be advised and provided an opportunity to comment on the advisability of any proposed decertification. The RA will consider any comments from the Council and public, and if the RA elects to proceed with decertification of the BRD, the RA will publish proposed and final rules in the **Federal Register** with a comment period of not less than 15 days on the proposed rule.

VI. Interactions With Sea Turtles

The following section is provided for informational purposes. Sea turtles are listed under the Endangered Species Act as either endangered or threatened. The following procedures apply to incidental take of sea turtles under 50 CFR 227.72(e)(1):

''(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(1) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot; or (2) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period from 1 to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to 24, if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, off-loaded, transshipped, or kept below deck.''

References

Gulf of Mexico Fishery Management Council, 1997. Amendment 9 to the Fishery Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, Including a Final Supplemental Environmental Impact Statement and Regulatory Impact Review and Social Impact Assessment. Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619, 153 p.

Goodyear, C. P.; 1995. Red snappers in U.S. waters of the Gulf of Mexico. National Marine Fisheries Service, Southeast Fisheries Science Center, Miami Laboratory, Miami, FL. Laboratory Report, Contribution ι MIA 95/96–05, 171 p.

Hoese, H. Dickson and Richard H. Moore; 1977. Fishes of the Gulf of Mexico, Texas, Louisiana, and Adjacent Waters. Texas A&M University Press. College Station, TX, 327 p.

SAFMC; 1997. Final Bycatch Reduction Device Testing Protocol Manual. South Atlantic Fishery Management Council, 1 Southpark Cir., Ste 306, Charleston, S.C. 29407, 34 p.

Ward, John M., Teofilo Ozuma and Wade Griffen; 1995 Cost and Revenues in the Gulf of Mexico Shrimp Fishery . NOAA Tech. Mem. NMFS–SEFSC–371, 76 p.

Appendix H Statistical Procedures for Analyzing BRD Evaluation Data

NMFS will calculate the reduction in bycatch mortality (F) based on data gathered during the testing. Both age 0 and age 1 red snapper, ranging in length from 10 mm to 200 mm, occur frequently in shrimp trawls. During the July/August (July 1–August 31) period, the most recently spawned year class of fish have not fully recruited to the shrimp grounds; thus the catch is represented by a relatively narrow length range of individuals, all of which are considered to be age 1. The numerical reduction in catch-per-unit-effort (CPUE) of this specific age class is expected to be a good predictor of fishing mortality (F) reduction, although the size composition data will be checked for any particular test. The analysis of the data collected under this testing protocol will be based on a modified paired t-test. Because of the varying age and size composition of the red snapper catch taken at other times of the year, more detailed analyses through use of a stock assessment model (Goodyear 1995) incorporating the size-specific reduction performance of the device and the seasonal progression of F must be conducted to determine if the BRD candidate will meet the bycatch reduction criterion. Based on the time of the year that the test is conducted, NMFS will utilize the appropriate technique to assess the performance of the BRD candidate as a service for the BRD sponsor.

All experimental tows must be conducted in conformance with the requirements of the BRD testing protocol. Data collected from no more than 20 tuning tows of the control and experimental trawls (without the BRD candidate installed) must be included to determine if any net bias exists prior to beginning certification phase testing. To further reduce problems caused by no or low catches, a tow must contain a minimum catch of 5 red snapper in at least one trawl for inclusion in the analysis. Once conducted, the tow and the corresponding collected data become the permanent part of the record and cannot be discarded. Only the successful tows will count toward the minimum required; however, information from other tows, if appropriate, will be used in the analysis.

Statistical Approach for Calculation of Bycatch Mortality (F) Reduction for Devices Tested in July/August

The statistical approach assumes that the BRD to be tested does not achieve the minimum required reduction rate, (R_o). The hypotheses to be tested are as follows:

H_o: BRD does not achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} \leq R_o, \text{ i.e. } (1 - R_o)\,\mu_c - \mu_b \leq 0.$$

H_a: BRD does achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} > R_o, \text{ i.e. } (1 - R_o)\,\mu_c - \mu_b > 0.$$

R denotes the actual reduction rate (unknown), R_o denotes the minimum required reduction rate, μ_c denotes the actual mean CPUE with the control, and μ_b denotes the actual mean CPUE with the BRD.

With any hypothesis testing, there are two risks involved known as type I error (rejection of true H_o) and type II error (acceptance of false H_o). The probabilities of committing these errors are denoted by alpha and beta, respectively. The probabilities are inversely related to each other. As alpha increases, beta decreases and vice versa. An alpha of 10 percent will be used. The two hypotheses are tested using a 'modified' paired t-test.

The CPUE values for the control and BRD trawls for each successful tow is computed first and is used in the following computations:

$$t = \frac{(1 - R_o)\,\bar{x} - \bar{y}}{s_{d0}/\sqrt{n}},$$

Where:

$\bar{x}$ is the observed mean CPUE for the control,

$\bar{y}$ is the observed mean CPUE for the BRD,

s_{d0} is the standard deviation of $d_i = \{(1 - R_o)X_i - Y_i\}$ values,

n is the number of successful tows used in the analysis, and

i = 1,2,...,n.

The H_o will be rejected if $t > t_{alpha,\ n-1}$ where $t_{alpha,\ n-1}$ denotes the (1 − alpha)100th percentile score in the t distribution with (n − 1) degrees of freedom.

A (1 − alpha)100% two-sided confidence interval on R consists of all values of R_o for which H_o: $R = R_o$ (versus H_a $R \neq R_o$) cannot be rejected at the level of significance of alpha. One-sided confidence intervals on R could also be computed appropriately.

Appendix I Qualifications of Observer

An observer:

1. Must have a Bachelor's degree in fisheries biology or closely related field from an accredited college, have at least 6 months experience working with a university, college, state fisheries agency, NMFS, or private research organization such as the Gulf and South Atlantic Fisheries Development Foundation as an observer on a trawler (including research trawlers) in the southeast region, or have successfully completed a training course conducted or approved by the Director of the NMFS Southeast Fisheries Science Center.

2. Must not have a current or prior financial relationship with the entity seeking BRD certification.

In addition, any individual:

1. Applying to serve as an observer must provide the names, addresses, and telephone numbers of at least three references who can attest to the applicant's background, experiences, and professional ability. These references will be contacted; unsatisfactory references may be a basis for disapproval of an applicant as an observer.

2. Wishing to serve as an observer should submit a resume and supporting documents to the Director, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149. The Center will use this information to determine which names will to be included on a list of qualified observers. If an applicant is not approved as an observer, the RA will notify the applicant of the disapproval and will provide an explanation for the denial.

[FR Doc. 99–17488 Filed 7–12–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 981216308–9180–03; I.D. 052699A]

RIN 0648–AJ67

Atlantic Highly Migratory Species (HMS) Fisheries; Regulatory Adjustments

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is amending the final consolidated regulations governing the Atlantic HMS fisheries to clarify the applicability of recreational retention limits to persons aboard charter/headboat vessels; to set Atlantic bluefin tuna (BFT) quotas for the period beginning January 1, 1999, and ending May 31, 1999; to clarify the requirements for embarking observers aboard shark gillnet vessels; to reestablish certain enforcement provisions inadvertently edited from the consolidated HMS regulations; to clarify transfer provisions for limited access