Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Clear Lake, Channel 296C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9829 Filed 4–15–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 92–235, DA 97–592]

Efficiency of Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for clarification.

SUMMARY: On February 14, 1997, Motorola filed a petition seeking clarification of the Commission's decision in the *Memorandum Opinion and Order* in PR Docket 92–235, FCC 96–492 (released Dec. 30, 1996) (*Refarming MO&O*). Specifically, Motorola notes that the *Refarming MO&O* allows frequency coordinators to recommend frequencies inconsistent with the adopted band plan, provided that such a system will not cause harmful interference to any existing system. This action seeks public comment on Motorola's petition.

DATES: Comments are due May 2, 1997; reply comments are due May 12, 1997.

ADDRESSES: All comments should be filed with the Office of Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. A copy of each filing should be sent to International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800 and Ira Keltz, Federal Communications Commission, Wireless Telecommunications Bureau, Private Wireless Division, 2025 M Street, N.W., Room 8119, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0616 or via E-Mail to mayday@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released April 10, 1997.

1. On February 14, 1997, Motorola filed a petition seeking clarification of the Commission's decision in the *Memorandum Opinion and Order* in PR Docket 92–235, FCC 96–492 (released Dec. 30, 1996) (*Refarming MO&O*) (62 FR 2027, January 15, 1997). Specifically, Motorola notes that the *Refarming MO&O* allows frequency coordinators to recommend frequencies inconsistent with the adopted band plan, provided that such a system will not cause harmful interference to any existing system. For example, a frequency coordinator could recommend approval of applications for 5 kHz channels within a user's existing 25 kHz assignment, even though such applications would be inconsistent with the channel plan adopted in this proceeding (which calls for 6.25/7.5 kHz channel spacing). This policy was designed to increase the efficient use of the spectrum.[1]

2. Although supportive of this policy, Motorola notes that implementing this flexibility for ''any technology'' may be constrained by other Commission regulations. For example, Motorola observes that a user who seeks to double the capacity of its system by implementing two 12.5 kHz channels within its existing 25 kHz assignment would have to use the channel centers that are 6.25 kHz removed from its existing channel center. This type of operation, however, is prohibited because these channels are restricted to emissions of 6.0 kHz or less. Motorola asks that the Commission clarify its policy to allow the described operation, thereby achieving a consistent policy of technological neutrality and encouraging migration from existing equipment to more efficient technologies.

[1] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services and Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket Nos. 92–235 and 92–257, *Memorandum Opinion and Order,* 11 FCC Rcd 17676 (1996) at para. 11.

3. The full text of the petition, comments, and reply comments are available for inspection and duplication during regular business hours in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 8010, Washington, D.C. 20554. Copies may also be obtained from International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–9797 Filed 4–15–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961226370–7074–02; I.D. 111896A]

RIN 0648–AI15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2

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 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). Amendment 2 adds brown and pink shrimp to the FMP's fishery management unit, defines overfishing for brown and pink shrimp, defines optimum yield (OY) for brown and pink shrimp, requires the use of certified bycatch reduction devices (BRDs) in all penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic, and establishes a framework procedure for adding to the list of certified BRDs or modifying their specifications. The intended effects are to minimize the bycatch of finfish in shrimp trawling operations in the South Atlantic and to implement consistent, and therefore more enforceable, Federal and state management measures requiring the use of BRDs for reducing finfish bycatch in the penaeid shrimp fishery.

EFFECTIVE DATE: April 21, 1997.

ADDRESSES: Requests for copies of Amendment 2, which includes a regulatory impact review (RIR) and a final supplemental environmental impact statement (FSEIS), and the *Bycatch Reduction Device Testing Protocol Manual* may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

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

Background on the shrimp fishery off the southern Atlantic states and the rationale for the management measures in Amendment 2 were contained in the preamble to the proposed rule (62 FR 720, January 6, 1997) and are not repeated here.

The availability of Amendment 2 for public comment was announced in the **Federal Register** on November 25, 1996 (61 FR 59856), and comments were invited through January 24, 1997. Public comments were invited on the proposed rule through February 20, 1997, and on the FSEIS through January 21, 1997. After consideration of the comments on the amendment and the proposed rule, NMFS approved Amendment 2 on February 24, 1997.

Comments were received from two fisheries associations, two commercial fishermen, two personnel from the Georgia Marine Extension Service, the Environmental Protection Agency (EPA), and the Southwest Florida Regional Planning Council. The EPA concluded that it has no objection to the implementation of the amendment. The Regional Planning Council concluded that Amendment 2 was regionally significant and consistent with adopted goals, objectives, and policies of its Strategic Regional Policy Plan.

Comments and Responses

Comment: Two fisheries associations, two commercial fishermen, and two personnel from the Georgia Marine Extension Service questioned the need to reduce bycatch mortality on Spanish mackerel and weakfish. They stated that the catch of weakfish and Spanish mackerel amounts to less than 1 percent of the total bycatch. Further, they suggest that weakfish found off Georgia and Florida may belong to a different stock than those found farther north and claim that appropriate management measures have been implemented in the northern area to safeguard weakfish. They add that Spanish mackerel currently are not overfished.

Response: Weakfish (*Cynoscion regalis*) is considered a single stock along the Atlantic coast, ranging from Maine to Florida. Weakfish populations are overfished—total landings have declined yearly, from 35,667 mt in 1980 to 3,573 mt in 1994, before increasing slightly in 1995 to 3,933 mt. In 1995, only 5 percent of the population achieved spawning age, far short of the 20 percent or greater needed to sustain and rebuild the stock. There has been a severe reduction in the number of age classes (age-4 or older) in the population since 1989. Recruitment studies indicate that juvenile recruitment was extremely low in 1993 and 1994, although recruitment appeared to improve in 1995. Even though juvenile weakfish abundance was very low in 1994, the 1994 weakfish stock assessment estimated that 21.7 million age-0 and 2.4 million age-1 weakfish were killed in the South Atlantic shrimp trawl fishery. The estimate of average annual deaths of juvenile weakfish caused by the shrimp trawl fishery since 1979 is 37.3 million age-0 and 4.3 million age-1 weakfish. The Council, Atlantic States Marine Fisheries Commission, and NMFS believe that the weakfish stock is severely depressed and that the bycatch mortality caused by the South Atlantic shrimp trawl fishery is substantial and must be reduced to sustain and rebuild the weakfish resource.

The 1996 report of the Mackerel Stock Assessment Panel (SAP) noted for South Atlantic Spanish mackerel that including bycatch mortality data in the assessment would have lowered the median spawning potential ratio (SPR) from 29 to 24 percent, and the median estimate of acceptable biological catch would have been lowered from 6.0 to 2.6 million lb (2,722 to 1,179 mt). Although the SAP concluded that the Atlantic group of Spanish mackerel is not overfished based on its findings and on its current recommended overfishing SPR level (i.e., SPR of 20 percent), it is clear that, should bycatch mortality continue, the SPR would continue to decrease, which would result in the stock becoming overfished. The Council added Spanish mackerel to its bycatch reduction effort to prevent the resource from becoming overfished.

National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry. National Standard 9 requires that conservation and management measures, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Given the relatively few ways available to reduce bycatch mortality (e.g., area and/or seasonal closures), the Council and NMFS believe that the use of BRDs will have the least onerous impact upon shrimp fishermen while achieving the goals of Amendment 3 to the Interstate Fishery Management Plan for Atlantic Weakfish regarding restoration of the weakfish resource and the management objectives of the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic regarding preventing overfishing of Spanish mackerel.

Comment: The above commenters stated that the use of turtle excluder devices (TEDs) has reduced finfish bycatch substantially and that fishermen should be granted a credit for the use of TEDs.

Response: The decline in abundance of weakfish and the estimates of weakfish bycatch mortality were obtained with TED-equipped nets. Similarly, the bycatch mortality of Spanish mackerel has occurred, and is occurring, with TED-equipped shrimp trawls. It is clear that excessive bycatch mortality of weakfish and Spanish mackerel has occurred, and is occurring, with TED-equipped shrimp trawls. The Council recognized that inconsistent Federal and state bycatch regulations would result in unenforceable state regulations and preclude effective reduction of bycatch of weakfish and Spanish mackerel throughout the range of the species. Amendment 2 was developed to complement the required use of BRDs in state waters. The amendment allows the use of three state-certified BRDs in Federal waters to minimize the impact on fishermen. Also, the amendment establishes a procedure to certify new, more efficient BRDs, and encourages their development.

Comment: The commenters claimed that the use of BRDs will result in excessive shrimp loss, perhaps as high as 38 percent.

Response: Eighty-two prototype BRDs were field-tested. Only 24 of these advanced to proof-of-concept testing. Only 3 of the 24 have met the criteria of reducing bycatch by at least 50 percent with less than 3 percent shrimp loss. The shrimp loss rate was derived from data collected by observers on commercial shrimp trawlers making simultaneous tows of trawls with and without BRDs. Some trawlers undoubtedly will experience higher loss

rates if they fail to use the BRDs correctly, while others, depending upon fishing conditions, may experience lower rates of loss. Research is ongoing to identify factors affecting shrimp loss, so that information can be provided to fishermen on ways to better control this loss. In addition, Amendment 2 establishes a procedure to certify more efficient BRDs when they become available. The Council and NMFS believe that the certified BRDs are the best available gear to reduce finfish bycatch while minimizing the loss of shrimp.

Comment: One fisheries association disagrees with the conclusion of the Council that Amendment 2 will not have a significant effect on small businesses.

Response: The southern Atlantic states require state-certified BRDs to be used in state waters while shrimp trawling. Amendment 2 will extend that requirement to Federal waters. Three certified BRDs may be used in both state and Federal waters. Since the vast majority of shrimp trawling operations occur in both state and Federal waters during the same trip, there will be no additional burden on fishermen that fish in Federal waters, because they can use the same BRDs that are required now for state waters. Amendment 2 complements state BRD regulations and enhances enforceability of state regulations by requiring similar BRDs for use in Federal waters.

Approximately 30 million pounds (heads on) of shrimp are harvested annually in the South Atlantic area, with an ex-vessel value of some $60 million. The use of certified BRDs in all designated shrimp trawls in both state and Federal waters of the South Atlantic area would likely result in an annual 3 percent reduction in shrimp catch, which would amount to 0.9 million pounds. It is estimated that shrimp loss from the use of a certified BRD in a shrimp trawl averages 3 percent by weight per trawl tow; however, the shrimp that are not retained in each trawl tow are still available for harvest by succeeding tows. In the worst case scenario, with no recapture of the shrimp comprising the 3 percent loss per trawl tow, the reduction in annual gross revenues to the fishing industry in the South Atlantic area would be between $1.86 and $2.36 million. The Council's best estimate of the maximum annual loss of gross revenues from the application of BRDs in Federal as well as state waters is $1.8 million. This revenue loss represents a small percentage reduction in gross revenues for the industry. Since shrimp trawlers in the South Atlantic area take most of their catch from state waters (60 to 80 percent), the adverse economic impacts of this rule, requiring BRDs only for shrimp trawls in the EEZ, will represent only a portion of the above estimates of fishery-wide impacts.

Comment: The fisheries association mentioned in the previous comment also stated that the biological impact on shrimp stocks caused by releasing high percentages of fish species that are shrimp predators has not been assessed or evaluated. It recommended that more information be obtained before Amendment 2 is approved by the Secretary of Commerce.

Response: There is virtually no information available concerning the interactions between predatory fish and shrimp populations in the South Atlantic. However, it is well documented that commercial landings of shrimp, which vary considerably on an annual basis, have remained stable in the South Atlantic for approximately 70 years. Also, the decline in weakfish, as shown by commercial landings, has been approximately 90 percent from 1980 to 1995; yet, South Atlantic shrimp landings in 1980 (29.l million lb (13,200 mt)) were slightly higher than those experienced in 1993 (28.3 million lb (8,301 mt)) when weakfish commercial landings were at an all-time low. It follows that, if abundance of weakfish controlled the abundance of shrimp, shrimp landings should have increased dramatically from 1980 through 1995. This did not happen; rather, shrimp landings exhibited the same pattern that has been observed since the 1920s. The lack of any increase in shrimp landings despite a 90-percent decline in commercial landings of weakfish, which indicates a similar decline in weakfish abundance, suggests that weakfish have little effect upon shrimp abundance. Thus, the concern of the fisheries association that an increase in weakfish abundance could lead to a significant decline in shrimp landings does not appear warranted. Similarly, the abundance of Spanish mackerel has varied considerably in the past 20 years with no apparent effect on shrimp abundance.

Changes from the Proposed Rule

The title of Appendix D, which contains the specifications for certified BRDs, is revised to be more generic, rather than applicable only to the shrimp fishery off the southern Atlantic states. BRDs certified for use in the Gulf of Mexico may be added to Appendix D in the future.

The construction and installation requirements for the Fisheye BRD (Appendix D to part 622, paragraph C.2.) are clarified. The fisheye is required to be located at the top center of the trawl and no farther forward of the codend drawstring than 70 percent of the distance between the codend drawstring and the forward edge of the codend. NMFS is not aware of any current fisheye BRDs that do not meet these criteria.

BRD Testing Protocol

The Council has proposed and NMFS has approved a testing protocol for the certification of BRDs. That protocol is published as an appendix to this final rule. (The appendix will not appear in the Code of Federal Regulations.) Potential testers of BRDs should obtain the *Bycatch Reduction Device Testing Protocol Manual,* which contains the testing protocol and additional guidance on the testing of BRDs. The manual is available from the Council (see **ADDRESSES**).

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that Amendment 2 is necessary for the conservation and management of the shrimp fishery off the southern Atlantic states and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Council prepared an FSEIS for this amendment. A notice of availability of the FSEIS for public comments through January 21, 1997, was published on December 20, 1996 (61 FR 67330).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (62 FR 720, January 6, 1997) and are not repeated here. One comment was received regarding this certification. It is addressed above under ''Comments and Responses.''

Currently, Florida, Georgia, North Carolina, and South Carolina, to reduce the bycatch of weakfish, require the use by penaeid shrimp trawlers in their waters of one of the certified BRDs required by this rule for use in the EEZ. The states' BRD requirements are in response to state obligations under the Atlantic States Marine Fisheries

Commission's Interstate Fishery Management Plan for Atlantic Weakfish (ISFMP) to reduce shrimp fishery bycatch mortality of juvenile weakfish sufficient to allow recovery of this overfished resource.

Most of the shrimp trawling in the South Atlantic occurs in state waters. It is unlikely that a shrimp trawling trip in the South Atlantic would be conducted solely in the EEZ. Standard practice for shrimp fishermen has been to leave the BRD in the trawl net when leaving state waters to pursue shrimp in the EEZ even though there were no Federal requirements for BRDs. Removal of a BRD from a trawl would require considerable time and effort and disrupt efficient shrimping operations. This rule is not expected to have any effects on this practice. For these reasons, the requirement for use of a BRD in the EEZ should pose little, if any, additional compliance burdens on fishermen because their nets are already equipped with BRDs that this rule approves for use in Federal waters. The costs associated with shrimp loss caused by BRDs are discussed above under ''Comments and Responses'' and are not expected to be significant.

In support of the ISFMP and as a complement to state BRD measures, this rule will enhance the states' ability to enforce their BRD requirements and will provide direct and biologically important benefits from reducing bycatch mortality of weakfish in the EEZ. The finfish conservation objectives of Amendment 2 and this rule were discussed in the preamble of the proposed rule and are not elaborated upon here. NMFS is concerned that if the rule does not become effective without delay, major quantities of juvenile weakfish taken as bycatch in the shrimp trawl fishery will have significant adverse effects on weakfish populations and fisheries even outside of the South Atlantic Bight area. The South Atlantic states have made major advances in their own requirements for BRDs to reduce weakfish bycatch, but without similar restrictions in Federal waters as soon as possible, the effectiveness of state BRD enforcement efforts will be seriously jeopardized.

For the reasons above, the Assistant Administrator for Fisheries, NOAA, finds that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to waive the general requirement of the Administrative Procedure Act to delay for 30 days the effective date of this rule. Instead, NMFS will delay the effectiveness of this rule for 3 days after its publication in the **Federal Register**, during which time NMFS intends to notify all state fishery management agencies as well as affected fishermen of the BRD-related requirements of this rule.

List of Subjects in 50 CFR Part 622

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

Dated: April 10, 1997.

Rolland A. Schmitten,

Assistant 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 § 622.2, definitions for ''BRD'', ''Headrope length'', ''Penaeid shrimp trawler'', and ''Try net'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

BRD means bycatch reduction device.

* * * * *

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

* * * * *

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of brown, pink, or white shrimp (penaeid shrimp) is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses).

* * * * *

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

§ 622.41 Species specific limitations.

* * * * *

(g) *Shrimp in the South Atlantic*—(1) *BRD requirement.* On a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. A trawl net, or try 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.

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

(i) Extended funnel.

(ii) Expanded mesh.

(iii) Fisheye.

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

§ 622.48 Adjustment of management measures.

* * * * *

(h) *South Atlantic shrimp.* Certified BRDs and BRD specifications.

5. Appendix D is added to part 622 to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

A. *Extended Funnel.*

1. *Description.* The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is

attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh.* The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend.

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.

The Testing Protocol for BRD Certification is published as an appendix to this document.

Appendix—Testing Protocol for BRD Certification

Note: This appendix will not appear in the Code of Federal Regulations.

Introduction

The development of a bycatch reduction device (BRD) testing protocol is mandated in Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region. A ''BRD'' is defined as any device, trawl modification, or a combination of devices (e.g., BRD/TED combination) which reduces finfish bycatch when compared to an unmodified ''standard'' trawl. This BRD testing protocol was developed based on the deliberations of the South Atlantic Fishery Management Council's Ad Hoc BRD Advisory Panel and Scientific and Statistical Committee. This protocol specifies minimum data requirements, outlines a basic experimental design, and specifies a statistical technique for testing and analyzing new or modified BRDs.

This protocol is to be used by the states and researchers testing the effectiveness of any new or modified BRD in reducing bycatch of target species as specified by the South Atlantic Fishery Management Council (Council). The target species currently specified by the Council are Spanish mackerel and weakfish.

This testing protocol is designed for researchers conducting discrete testing programs (i.e., testing one BRD design to determine reduction performance so that it can be certified for use in the South Atlantic EEZ). The protocol is also designed to minimize the cost of testing while ensuring adequate sampling is completed to evaluate if the new gear achieves the desired

reduction of target species. The Council is requiring that new bycatch reduction devices reduce bycatch by 40 percent in number, of both target species, Spanish mackerel and weakfish. This protocol establishes a basic experimental design that a researcher must follow to increase the likelihood of certification of a new or modified BRD. The analysis of the data under this testing protocol will be based on a modified paired t-test (see Statistical Procedures for Analyzing BRD Evaluation Data, below). A 95-percent confidence interval should be calculated for the reduction estimate. The experimental design is therefore based on using paired comparisons of the BRD and control gear operating in commercial conditions. Tow times, time of day, and fishing techniques should simulate commercial fishing conditions. Consistent tow times are required in a given series of tows that constitute a test for an individual BRD. However, a window around a specific tow time is allowed (plus or minus 10 percent of tow time). Researchers must pre-tune the trawl gear to identify and eliminate bias between nets (e.g., make tows before placing experimental gear in the net to determine and compensate for bias, if necessary). A minimum sample size of 30 successful tows is required. However, additional tows may be needed to attain an adequate sample for statistical testing.

The total catch, total finfish catch, and total shrimp catch must be recorded. This will provide shrimpers with information on shrimp retention and whether the tow is acceptable for analysis. All target species (currently Spanish mackerel and weakfish, others to be addressed through the framework procedure) will be counted, weighed as a species lot, and individuals will be measured. This complete work-up of these species will provide absolute numbers to determine percent reduction and age-class composition.

During testing, the trawls, rigging, BRD, and TED types must be standardized. The BRD must be rotated between outside nets on opposite sides to reduce net bias and increase the probability of collecting a valid sample. Specifying these basic parameters in the experimental design for testing new or modified BRDs should reduce statistical problems by standardizing data. If the gear is modified during the testing, it constitutes the beginning of a new test.

In order to reduce error, testing should be accomplished with at least the minimum number of tows of a net with an experimental BRD and certified TED compared to a net with only the same type of TED. Testing should also be done in an area where, and at a time when, shrimp are commercially harvested and the catch of target species is likely. Researchers should refer to information presented in the *Bycatch Reduction Device Testing Protocol Manual* for guidance on the occurrence and the bycatch of weakfish and Spanish mackerel. If catches of shrimp do not approximate commercial harvest levels or target species are not abundant, additional tows may be necessary.

Amendment 2 established responsibility of the researchers testing BRDs to also develop information on shrimp retention attributable to the new gear. The intent of this requirement is to ensure that fishermen who consider using any new BRDs will know what level of shrimp retention has been observed during testing of a particular device. The fisherman has the opportunity to weigh the benefits of using a gear with a specified shrimp retention against the new gear's ability to reduce large quantities of other unwanted bycatch. This protocol will ensure that new gear achieves desired bycatch reduction while minimizing time needed to test and certify a bycatch reduction device for use in the South Atlantic EEZ. This protocol was developed specifically for collection of the target species (at this time Spanish mackerel and weakfish) to determine the effectiveness of a new or modified BRD in achieving the targeted reduction as specified by the Council (40 percent in number of weakfish and 40 percent in number of Spanish mackerel).

BRD Certification and Development of This Testing Protocol

The Council is providing a timely and effective certification process that will be in place in conjunction with Shrimp Amendment 2, that affords industry the chance to use conservation engineering in the development of new or modified BRDs. The Regional Administrator, Southeast Region, NMFS (RA), is responsible for review and certification of BRDs for use in the South Atlantic EEZ.

A BRD will be certified through public notice in the **Federal Register** if the RA determines that it meets the certification criteria and testing protocol specified by the Council. This process will lead to faster processing of BRD certification applications. Pursuant to Amendment 2, a state fishery management agency, a university, and other scientific investigators can work with shrimp fishermen and others in developing and testing BRDs for certification. BRDs reviewed and recommended by state agencies and that meet the criteria and testing protocol specified in Amendment 2 may be used throughout the South Atlantic EEZ when certified by NMFS.

The RA will consider the following factors when certifying BRDs for use in the South Atlantic EEZ. These factors include bycatch reduction performance, as well as adherence to the BRD testing protocol. The RA will certify new BRDs for use throughout the South Atlantic EEZ if the BRD reduces the bycatch component of fishing mortality for Spanish mackerel and weakfish by 50 percent or demonstrates a 40-percent reduction in number of each of these species, and the researcher has complied with testing parameters of the Council's BRD testing protocol.

Basic Provisions of the BRD Testing Protocol Specified in Shrimp Amendment 2

All tests must be conducted in accordance with state or Federal laws. An applicant planning to use shrimp trawls for testing that do not have legally approved and fully operational TEDs installed, regardless of where the testing is to take place, must obtain a special permit from NMFS, as authorized under the sea turtle conservation regulations.

The certification tests will follow a standardized testing protocol where paired identical trawls are towed by a trawler in areas expected to contain concentrations of shrimp and the target species or species groups. One of the identical trawls will contain the test BRD, while the other is the control. The experimental gear must be rotated daily, at a minimum, to ensure that any positioning bias is eliminated. Identical TEDs are required in each of the trawls unless other arrangements have been made through the RA. Consistent tow times are required in a given series of tows that constitute a test for an individual BRD. However, a nominal overage/underage window around a specific tow time is allowed (plus or minus 10 percent of tow time). The contents of each trawl will be separated and sorted following each paired tow. Shrimp, total finfish, and total catch will be weighed. A basket (70–80 lb) (31.8–36.3 kg) subsample will be weighed and sorted to obtain a percentage of finfish in the subsample. The percentage of finfish in the subsample will be used to estimate the total finfish in the catch. All target finfish species (currently Spanish mackerel and weakfish) will be weighed as a species lot, and individuals counted and length measured. Information on other important species is required (total weight and total numbers of individual species in subsample to estimate total weight and total numbers in catch). Important species for which information is required are seatrouts (weakfish, spotted, and silver), Spanish mackerel, king mackerel, cobia, gag, seabasses (black, bank, and rock), spot, croaker, red drum, black drum, pompano, kingfishes (southern and northern), flounders (southern and summer), bluefish, scup, juvenile sharks, sturgeon, shad, and sea turtles (take only measurements that can be taken without harming turtles). All certification tests must be conducted with a state or NMFS approved observer on the trawler. These observers can be from NMFS, state fishery management agencies, universities, or private industry. It is the responsibility of the applicant, or his agent, conducting the certification tests to ensure that a qualified observer is on board during the tests. Compensation, if necessary, will be paid by the applicant, or his agent.

Summary of BRD Testing Experimental Design and Basic Data Requirements

- The tests should use paired comparisons where one net is equipped with the new BRD design and the second net is a control net.
- Bycatch reduction will be computed using a ratio method (catch per unit effort (CPUE) or numbers).
- The burden of proof is on the industry to verify that a new BRD achieves the minimum required reduction rate.
- Both nets are to pull identical certified TEDs during the sampling.
- Experimental gear should be rotated daily between outboard/outside nets, at a minimum.
- The total catch, total finfish, total shrimp, and total target species weight must be recorded. A basket (70–80 lb) (31.8–36.3 kg) subsample will be weighed and sorted to obtain a percentage of finfish in the

subsample. The percentage of finfish in the subsample will be used to estimate the total finfish in the catch.

- Target species (weakfish and Spanish mackerel) must be weighed as a species lot, and each individual counted and length measured. For large catches, a subsample of selected individuals for each age-class shall be measured.
- Information must be obtained on other important species (collect total weight and total numbers of individual species in subsample to estimate total weight and total numbers in catch). (Species list: Seatrouts (weakfish, spotted, and silver), Spanish mackerel, king mackerel, cobia, gag, seabasses (black, bank, and rock), spot, croaker, red drum, black drum, pompano, kingfishes (southern and northern), flounders (southern and summer), bluefish, scup, juvenile sharks, sturgeon, shad, and sea turtles (take only measurements that can be taken without harming turtles).)
- A modified paired t-test is the statistical technique to be used for analyzing the data.
- A minimum of 30 successful tows are required to test a new or modified gear.
- A minimum catch (fish per tow) of five weakfish and/or one Spanish mackerel is required to qualify as a successful tow.
- Tow times, time of day, catch rates, and fishing techniques should be comparable to commercial operations.
- Consistent tow times are required in a given series of tows that constitute a test for an individual BRD. A nominal time window (plus or minus 10 percent of tow time) around a specific tow time is allowed.
- Basic operational cost differences should be recorded.
- Shrimp retention must be recorded.

Statistical Procedures for Analyzing BRD Evaluation Data

All experimental tows must be conducted strictly under the guidelines specified under the BRD testing protocol. To reduce problems caused by no or low catches, a tow must contain a minimum catch of five weakfish and/or one Spanish mackerel in at least one net for inclusion in the analysis. Once conducted, the tow (and the corresponding data) become the permanent part of the record and cannot be discarded. Only the successful tows (meeting the minimum catch and other requirements) will count toward the minimum required, however all tows will be used in the analysis.

Statistical Approach

You should start with the assumption that the BRD to be tested does not achieve the minimum required reduction rate, say R_o. This assumption will be accepted if the data provide sufficient evidence to do so. Hence, the hypotheses to be tested are as follows:

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

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

Ha : BRD does achieve the minimum required reduction rate,

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

Here 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 (rejecting the true H_o) and type II error (accepting a false H_o). The probabilities of committing these errors are denoted by alpha and beta, respectively, and those are inversely related to each other. As alpha increases, beta decreases, and vice versa. The above test will be conducted with an alpha to be specified by the RA. The above hypotheses should be tested using a ''modified'' paired t-test.

The CPUE values for the control and BRD nets for each successful tow should be computed first and these will be used in the following computations. The test statistic to be used is given by:

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

Where:

x is the observed mean CPUE for the control,
y is the observed mean CPUE for the BRD,
s_{d0} is the standard deviation of d_i= (1—R_o)xi—yi 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.

The computation of beta (for various assumed reduction rates, $R_1 < R_0$) is somewhat involved and requires the knowledge of unknown parameters (or at least good estimates) of μ_c and $alpha^2_{d0}$. Note that $alpha^2_{d0}$ is dependent on the R_o specified (under H_0) and equals:

$(1—R_o)^2\ alpha^2_{xi} + alpha^2_{yi}—2(1—R_o)p \bullet alpha_{xi} \bullet alpha_{yi}$, where p is the population correlation coefficient between x_i and y_i values.

The computation of beta in advance (in the absence of any preliminary data, i.e., without good parameter estimates) is almost impossible. More work in this direction is still needed. However, it is clear that beta could be reduced by increasing alpha or n or both.

A (1—alpha) 100-percent two-sided confidence interval on R consists of all values of R_o for which

Ho: R = R_o (versus H∂R ≠R_o) cannot be rejected at the level of significance of alpha. One-sided confidence intervals on R could also be computed appropriately.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 041097E]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by

vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 1997 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), April 12, 1997, until 1200 hrs, A.l.t., July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under