(i) Share, directly or indirectly, substantial financial risk (as defined in § 422.356(a)) for the provision of items and services that are the obligation of the PSO under the Medicare+Choice contract, and

(ii) Have at least a majority financial interest in the PSO.

§ 422.352 Basic requirements.

(a) *General rule.* An organization is considered a PSO for purposes of a Medicare+Choice contract if the organization—

(1) Is licensed by the State or has obtained a waiver of such licensure as provided for under section 1855(a)(2) of the Act;

(2) Meets the definition of a PSO set forth in § 422.350 and other applicable requirements of this subpart; and

(3) Is effectively controlled by the health care provider or, in the case of a group, by one or more of the affiliated providers that established and operate the PSO.

(b) *Provision of services.* A PSO must demonstrate to HCFA's satisfaction that it is capable of delivering to Medicare enrollees the range of services required under a contract with HCFA. Each PSO must deliver a substantial proportion of those services directly through the health care provider or the affiliated providers responsible for operating the PSO. Substantial proportion means—

(1) For a non-rural PSO, not less than 70% of Medicare items and services covered under the contract.

(2) For a rural PSO as defined in § 422.354, not less than 60% of Medicare items and services covered under the contract.

(c) *Rural PSO.* To qualify as a rural PSO, a PSO must demonstrate to HCFA that—

(1) It has available in the rural area (as defined in § 412.62(f) of this chapter) routine services, including but not limited to primary care, routine specialty care, and emergency services, and that the level of use of providers outside the rural area is consistent with referral patterns; and

(2) As the PSO enrolls Medicare beneficiaries, a majority of these enrollees reside within the rural area served by the PSO.

§ 422.354 Requirements for affiliated providers.

A PSO that consists of by two or more health care providers must demonstrate to HCFA'S satisfaction that it meets the following requirements:

(a) The providers are affiliated. For purposes of this subpart, providers are affiliated if, through contract, ownership, or otherwise—

(1) One provider, directly or indirectly, controls (as defined in paragraph (d) of this section), is controlled by, or is under common control with another;

(2) Each provider is part of a lawful combination under which each shares substantial financial risk (as defined in § 422.356(a)) in connection with the PSO's operations;

(3) Both, or all, providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986; or

(4) Both, or all, providers are part of an affiliated service group under section 414 of that Code.

(b) Each affiliated provider of the PSO shares, directly or indirectly, substantial financial risk (as defined in § 422.356(a)) for the provision of items and services under the Medicare contract that are the obligation of the PSO.

(c) Affiliated providers, as a whole or in part, have at least a majority financial interest (as defined in § 422.356(b)) in the PSO.

(d) For purposes of paragraph(a)(1) of this section, control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance right of another.

§ 422.356 Determining substantial financial risk and majority financial interest.

(a) *Determining substantial financial risk.* The PSO must demonstrate to HCFA's satisfaction that it apportions a significant part of the financial risk of the PSO enterprise under the Medicare+Choice contract to each affiliated provider. The PSO must demonstrate that the financial arrangements among its affiliated providers constitute ''substantial'' risk in the PSO for each affiliated provider. The following mechanisms may constitute risk-sharing arrangements, and may have to be used in combination to demonstrate substantial financial risk in the PSO enterprise.

(1) Agreement by a health care provider to accept capitation payment for each Medicare enrollee.

(2) Agreement by a health care provider to accept as payment a predetermined percentage of the PSO premium or the PSO's revenue.

(3) The PSO's use of significant financial incentives for its affiliated providers, with the aim of achieving utilization management and cost containment goals. Permissible methods include the following:

(i) Affiliated providers agree to a withholding of a significant amount of the compensation due them, to be used for any of the following:

(A) To cover losses of the PSO.

(B) To cover losses of other affiliated providers.

(C) To be returned to the affiliated provider if the PSO meets its utilization management or cost containment goals for the specified time period.

(D) To be distributed among affiliated providers if the PSO meets its utilization management or cost-containment goals for the specified time period.

(ii) Agreement by the affiliated provider to preestablished cost or utilization targets for the PSO and to subsequent significant financial rewards and penalties (which may include a reduction in payments to the provider) based on the PSO's performance in meeting the targets.

(4) Other mechanisms that demonstrate significant shared financial risk.

(b) *Determining majority financial interest.* Majority financial interest means maintaining effective control of the PSO.

(Catalog of Federal Domestic Assistance Program Nos. 93.778, Medical Assistance Program; Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 25, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 27, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–9810 Filed 4–13–98; 8:45 am]

BILLING CODE 4120–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2516, 2517, 2519, 2521, and 2540

Administrative Costs for Learn and Serve America and AmeriCorps Grants Programs

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule.

SUMMARY: The Corporation issues this interim final rule to amend provisions relating to administrative costs in parts 2510, 2516, 2517, 2519, 2521, and 2540. For national service programs assisted by the Corporation that are subject to a statutory limit on the percentage of assistance that may be used to pay for administrative costs, the interim final

rule clarifies the definition of administrative costs, adds an explicit definition of program costs that are not subject to the limitation on administrative costs, and provides additional guidelines for applying the limitation on administrative costs.

DATES: This interim final rule is effective April 14, 1998. Written comments must be received on or before June 15, 1998.

ADDRESSES: Comments may be mailed or delivered to Kenneth L. Klothen, General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, D.C. 20525 or sent by facsimile transmission to (202) 565–2796. Copies of all communications received will be available for public inspection at the Corporation.

FOR FURTHER INFORMATION CONTACT: Michael Kenefick, Director of Grants Management, Corporation for National and Community Service, (202) 606–5000, ext. 101.

SUPPLEMENTARY INFORMATION:

Substantive Changes

Under the National and Community Service Act of 1990, as amended (the Act), the Corporation for National and Community Service is authorized to provide assistance to States and other eligible entities to support national and community service programs. The Act provides that not more than five percent of assistance for a fiscal year may be used to pay for administrative costs in the following types of programs: (1) School-based service-learning programs; (2) community-based service-learning programs; (3) higher education innovative programs for community service; and (4) national service programs assisted under sections 121(a) and 121(b) of the Act through grants to State Commissions, Indian Tribes, U.S. Territories, and national nonprofit organizations.

The Act itself does not define ''administrative costs'' but directs the Corporation to prescribe by rule the manner and extent to which assistance provided may be used to pay for administrative costs and the distribution of such costs between grantees and sub-grantees. Based on issues raised in recent audits of several national service programs, the Corporation has reviewed its regulations relating to administrative costs and determined that a revision is desirable. Because programs applying for assistance from the Corporation this year need to have clear guidance as to the rules governing their awards, the Corporation has determined that it would be contrary to the public interest to publish this amendment as a proposed rule. Therefore the amendments are made through an interim final rule that takes effect immediately.

The Corporation seeks to clarify what types of costs are considered subject to the five percent limitation on administrative costs. The interim final rule includes a more explicit itemization of costs that are directly related to programs and projects, and therefore properly excluded from the definition of administrative costs. The interim final rule also provides guidelines for the implementation of the statutory requirements, including the use of indirect cost rates and the use of fixed rates for administrative costs.

Executive Order 12886

The Corporation has determined that this regulatory action is not a ''significant'' rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other impact analyses

This regulatory action contains no information collection requirements that are subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*).

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2516

Elementary and secondary education, Grant programs—social programs, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2517

Community development, Grant programs—social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2519

Colleges and universities, Grant programs—social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2521

AmeriCorps, Grant programs—social programs, Volunteers.

45 CFR Part 2540

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

Dated: April 8, 1998.

Kenneth L. Klothen,

General Counsel.

For the reasons stated in the preamble, parts 2510, 2516, 2517, 2519, and 2540 of chapter 25, title 45 of the Code of Federal Regulations are amended to read as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. In § 2510.20, the definition of ''administrative costs'' is revised and a new definition of ''program costs'' is added in alphabetical order to read as follows:

§ 2510.20 Definitions

* * * * *

Administrative costs. The term *administrative costs* means general or centralized expenses of overall administration of an organization that receives assistance under the Act and does not include program costs.

(1) For organizations that have an established indirect cost rate for Federal awards, administrative costs mean those costs that are included in the organization's indirect cost rate. Such costs are generally identified with the organization's overall operation and are further described in Office of Management and Budget Circulars A–21 (Cost Principles for Educational Institutions), A–87 (Cost Principles for State, Local and Indian Tribal Governments), and A–122 (Cost Principles for Nonprofit Organizations) that provide guidance on indirect cost to Federal agencies. Copies of Office of Management and Budget Circulars are available from the Executive Office of the President, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, D.C. 20503. They may also be accessed on-line at: http://www.whitehouse.gov/WH/EOP/OMB/grants/index.html.

(2) For organizations that do not have an established indirect cost rate for Federal awards, administrative costs include:

(i) Costs for financial, accounting, auditing, contracting, or general legal services except in unusual cases when they are specifically approved in writing by the Corporation as program costs.

(ii) Costs for internal evaluation, including overall organizational management improvement costs (except for independent evaluations and internal evaluations of a program or project).

(iii) Costs for general liability insurance that protects the organization(s) responsible for operating a program or project, other than insurance costs solely attributable to a program or project.

* * * * *

Program costs. The term *program costs* means expenses directly related to a program or project, including their operations and objectives. Program costs include, but are not limited to:

(1) Costs attributable to participants, including: living allowances, insurance payments, and expenses for training and travel.

(2) Costs (including salary, benefits, training, travel) attributable to staff who recruit, train, place, support, coordinate, or supervise participants, or who develop materials used in such activities.

(3) Costs for independent evaluations and internal evaluations to the extent that the evaluations cover only the funded program or project.

(4) Costs, excluding those already covered in an organization's indirect cost rate, attributable to staff that work in a direct program or project support, operational, or oversight capacity, including, but not limited to: support staff whose functions directly support program or project activities; staff who coordinate and facilitate single or multi-site program and project activities; and staff who review, disseminate and implement Corporation guidance and policies directly relating to a program or project.

(5) Space, facility, and communications costs for program or project operations and other costs that primarily support program or project operations, excluding those costs that are already covered by an organization's indirect cost rate.

(6) Other allowable costs, excluding those costs that are already covered by an organization's indirect cost rate, specifically approved by the Corporation as directly attributable to a program or project.

* * * * *

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

1. The authority citation for part 2516 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

Subpart G—Funding Requirements

2. Section 2516.710 is revised to read as follows:

§ 2516.710 Are there limits on the use of funds?

Yes. The following limits apply to funds available under this part:

(a) (1) Not more than five percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

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

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

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

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

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

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

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

(b) (1) An SEA or Indian tribe must spend between ten and 15 percent of the grant to build capacity through training, technical assistance, curriculum development, and coordination activities.

(2) The Corporation may waive this requirement in order to permit an SEA or a tribe to use between ten percent and 20 percent of the grant funds to build capacity. To be eligible to receive the waiver, the SEA or tribe must submit an application to the Corporation.

(c) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS

1. The authority citation for part 2517 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

Subpart G—Funding Requirements

2. Section 2517.710 is revised to read as follows:

§ 2517.710 Are there limits on the use of funds?

Yes. The following limits apply to funds available under this part:

(a) (1) Not more than five percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

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

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

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

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

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

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

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

(b) (1) An SEA or Indian tribe must spend between ten and 15 percent of the grant to build capacity through training, technical assistance, curriculum development, and coordination activities.

(2) The Corporation may waive this requirement in order to permit an SEA or a tribe to use between ten percent and 20 percent of the grant funds to build capacity. To be eligible to receive the waiver, the SEA or tribe must submit an application to the Corporation.

(c) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

1. The authority citation for part 2519 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

Subpart G—Funding Requirements

2. Section 2519.710 is revised to read as follows:

§ 2519.710 Are there limits on the use of funds?

Yes. The following limits apply to funds available under this part:

(a) (1) Not more than five percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

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

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

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

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

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

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

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

PART 2521—ELIGIBLE AMERICORPS PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

1. The authority citation for part 2521 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2521.30(h) is revised to read as follows:

§ 2521.30 How will AmeriCorps program grants be awarded?

* * * * *

(h)(1) Not more than five percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

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

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

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

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

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

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

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

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

1. The authority citation for part 2540 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

2. Section 2540.110 is revised to read as follows:

§ 2540.110 Limitation on use of Corporation funds for administrative costs.

(a)(1) Not more than five percent of the grant funds provided under 45 CFR 2516, 2517, 2519, and 2521 for any

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

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

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

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

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

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

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

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

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

[FR Doc. 98–9761 Filed 4–13–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970523122–8022–02 ; I.D. 041897B]

RIN 0648–AH52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 9

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Amendment 9 requires, with limited exceptions, the use of certified bycatch reduction devices (BRDs) in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico shoreward of the 100-fathom (fm) (183-m) depth contour west of 85°30' W. long.; sets the bycatch reduction criterion for the certification of BRDs; and establishes an FMP framework procedure for modifying the bycatch reduction criterion, for establishing and modifying the BRD testing protocol and its specifications, and for certifying and decertifying BRDs. The intended effect is to reduce the bycatch mortality of juvenile red snapper, while, to the extent practicable, not adversely affecting the shrimp fisheries in the Gulf of Mexico.

DATES: This rule is effective May 14, 1998.

ADDRESSES: Copies of the final regulatory flexibility analysis and NMFS' Supplement to the Economic Analysis of Amendment 9 to the Fishery Management Plan for the Shrimp fishery of the Gulf of Mexico, U.S. Waters (March 20, 1998) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Copies of Amendment 9, which includes a regulatory impact review, a social impact assessment, a fishery impact statement, and a supplemental final environmental impact statement, may be obtained from the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North; Suite 1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-570- 5305.

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

On April 29, 1997 (62 FR 23211), NMFS announced the availability for public review and comment of (1) Amendment 9, including a regulatory impact review (RIR), an initial regulatory flexibility analysis (IRFA), a social impact assessment (SIA), a fishery impact statement (FIS), and final supplemental environmental impact statement (FSEIS), as prepared and submitted by the Council for review, approval and implementation, and (2) a minority report submitted by three Council members. On July 2, 1997, NMFS published a proposed rule to implement the measures in Amendment 9 and requested comments on the proposed rule (62 FR 35774). The background and rationale for the measures in Amendment 9 and the proposed rule are contained in the preamble to the proposed rule and are not repeated here. After consideration of the comments on Amendment 9 and the proposed rule, NMFS approved Amendment 9 on July 30, 1997. In support of this final rule, NMFS prepared a supplement to the economic analysis of Amendment 9 (March 20, 1998) (See **ADDRESSES**).

Comments and Responses

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

Approval and Implementation of Amendment 9

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

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

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

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

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