

FOR FURTHER INFORMATION CONTACT:
Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-194, adopted April 29, 1998, and released May 8, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

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:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 293C and adding Channel 275C at Island Park.

3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 300C and adding Channel 292C1 at Shelley.

Federal Communications Commission.

John A. Karousos,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980505118-8118-01;
I.D.042798C]

RIN 0648-AL14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Bycatch Reduction Device Certification

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

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule certifies the Jones-Davis and Gulf fisheye bycatch reduction devices (BRDs) for use in the Gulf of Mexico shrimp fishery. The intended effects of this rule are to provide flexibility to Gulf shrimp trawlers for complying with the requirement to use a BRD. This will allow shrimpers to select a BRD based on how it matches the operating conditions their vessel encounters. This should enhance compliance, help minimize shrimp loss, and further increase bycatch reduction and, thus, further reduce overfishing of red snapper.

DATES: This rule is effective May 14, 1998, through November 16, 1998. Comments must be received no later than June 18, 1998.

ADDRESSES: Comments on this interim rule must be mailed to, and copies of documents supporting this rule may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702. Requests for copies of construction and installation instructions for the Jones-Davis and Gulf fisheye BRDs should be addressed to the Chief, Harvesting Systems Division, Mississippi Laboratories, Southeast Fisheries Science Center, NMFS, P.O. Drawer 1207, Pascagoula, MS 39568-1207.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, phone: 813-570-5305 or fax: 813-570-5583.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (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.

Background

Shrimp trawling results in a significant, inadvertent bycatch of non-target finfish and invertebrates, most of which are discarded dead. Recent concerns about bycatch in the Gulf of Mexico have focused on the high mortality of juvenile (ages 0 and 1) red snapper, a valuable reef fish species for commercial and recreational fisheries.

The Council developed Amendment 9 to the FMP to reduce shrimp trawler bycatch of juvenile red snapper while, to the extent practicable, minimizing adverse effects on the shrimp fishery. The red snapper stock of the Gulf of Mexico is overfished. Even if the

directed fisheries for adult red snapper were eliminated, the bycatch of juvenile red snapper in shrimp trawls would still need to be reduced for the adult spawning stock to recover under the Council's rebuilding schedule.

The critical management measure in Amendment 9 is the required use of NMFS-certified BRDs in shrimp trawls towed in the Gulf of Mexico exclusive economic zone (EEZ), shoreward of the 100-fm (183-m) depth contour west of 85°30' W. long., the approximate longitude of Cape San Blas, Florida. To be certified, a BRD must meet the FMP's bycatch reduction criterion for red snapper (i.e., it must reduce the shrimp trawl bycatch mortality of age 0 and 1 red snapper by a minimum of 44 percent from the average level of fishing mortality on these age groups during the period 1984-89).

The final rule implementing Amendment 9 (63 FR 1813, April 14, 1998) certified the fisheye BRD for use in the Gulf shrimp fishery effective May 14, 1998, the effective date of the requirement to use BRDs in the Gulf EEZ. The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rods of at least 1/4 inch (6.35 mm) diameter, which is inserted into the codend of the trawl to form an escape opening. The fisheye BRD must have an opening dimension of at least 5 inches (12.7 cm) and a total opening area of at least 36 in² (232.3 cm²). The fisheye BRD 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 fisheye, located within this position of the codend, also has been certified for use by penaeid shrimp trawlers in the South Atlantic EEZ.

Recent research indicates that the Jones-Davis BRD and the Gulf fisheye BRD also meet the Gulf red snapper bycatch reduction criterion. This rule certifies these two BRDs for use in the Gulf of Mexico shrimp fishery on an interim basis. NMFS expects to certify these two BRDs permanently after implementation of a BRD testing protocol later this year.

The Gulf fisheye BRD is constructed the same as the fisheye BRD but has different installation requirements. 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. The Gulf fisheye may not be offset by more than 15 meshes perpendicular to the top center of the codend. This provides a broader range of allowable installation locations within the codend compared with the originally certified fisheye. Specifically, it allows for an offset of no more than 15 meshes perpendicular to top center (left or right) and allows for more forward placement in the codend—an alternative that appears to minimize shrimp loss while meeting the red snapper bycatch reduction criterion.

The Jones-Davis BRD is a funnel type BRD. It incorporates the same basic design principle as the expanded mesh and the extended funnel BRDs that were certified for use in the South Atlantic EEZ only, except that the fish escape openings are created by cutting windows around the funnel rather than using large-mesh sections. The Jones-Davis BRD design also incorporates a webbing, cone fish deflector behind the funnel which acts as a fish stimulator, discouraging fish from passing into the aft portion of the codend and, thus, increasing fish bycatch reduction.

Specifications for these BRDs are set forth in Appendix D to 50 CFR part 622. Information, including diagrams of the Gulf fisheye and Jones-Davis BRDs and construction and installation instructions, is also available to aid fishermen and gear manufacturers (see ADDRESSES).

Certification of the Jones-Davis and Gulf fisheye BRDs provides Gulf shrimp trawlers three BRD options from which to choose. These options will allow shrimpers to select a BRD based on how it matches the operational conditions that their trawler encounters. This should enhance compliance, help minimize shrimp loss, and further increase bycatch reduction, thus contributing to further reduction in the overfishing of Gulf red snapper.

NMFS finds that the timely regulatory action provided by this interim rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico. NMFS issues this interim rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This interim rule may be extended for an additional 180 days, provided that the public has had an opportunity to comment on the interim rule. Public comments on this interim rule will be considered in determining whether to maintain or extend this rule to address overfishing of red snapper.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined

that this rule is necessary to enhance compliance with the BRD requirement for the Gulf shrimp fishery, improve effectiveness of bycatch reduction, and, thereby, reduce overfishing of red snapper in the Gulf of Mexico. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS prepared a regulatory impact review (RIR) that provides an estimate of the costs and benefits of this rule. The RIR notes that the only identifiable costs associated with this rule are administrative costs of rule preparation; this cost has been estimated at \$5,000. This rule is expected to have positive effects on shrimp harvests and effort patterns because shrimpers will have the ability to choose among three BRD options instead of having to use the one BRD that was certified in Amendment 9. The positive effects will accrue because different shrimpers employ different harvesting tactics, pursue different shrimp species, operate in different geographical areas, and operate at varying times during the year. These differences in shrimp harvesting operations and conditions make it more efficient overall if a variety of BRDs are available. Over time, it is fully expected that a mix of available BRDs will be used to meet the BRD requirement. While the resulting benefits cannot be quantified, they may be fairly large. It is also expected that given the expanded choice of BRDs, compliance will be enhanced and the reduction in bycatch mortality will be increased relative to the status quo of a single BRD choice; therefore, there should be increased benefits to the red snapper fishery. Copies of the RIR are available (see ADDRESSES).

This rule certifies the Jones-Davis and Gulf fisheye BRDs for use in the Gulf shrimp fishery, thereby providing shrimp trawlers flexibility in complying with the BRD requirement. This should enhance the compliance rate and reduce the bycatch mortality rate, and, thus, reduce the overfishing of Gulf red snapper. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public

comment, as the delay associated with such procedures would be contrary to the public interest.

Similarly, under 5 U.S.C. 553(d)(3), the Assistant Administrator finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. This rule imposes no additional regulatory burden but does relieve a restriction by providing Gulf shrimp trawlers a choice of certified BRDs that may be used to comply with the BRD requirement that becomes effective on May 14, 1998. To the extent that this rule relieves restrictions by providing a choice, it is not subject to a delay in effective date under 5 U.S.C. 553(d). This rule will be effective May 14, 1998, the implementation date of the BRD requirement.

List of Subjects in 50 CFR Part 622

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

Dated: May 13, 1998.

David L. Evans,

Deputy 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. Effective May 14, 1998, through November 16, 1998, in § 622.41, paragraph (h)(2) is suspended and paragraph (h)(3) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) * * *

(3) *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. Effective May 14, 1998, through November 16, 1998, in Appendix D to part 622, paragraphs D and E are added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

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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 1/4-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 in² (232.3 cm²). 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. 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 1 5/8-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 1/2-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 1/2-inch (1.3-cm) aluminum pipe and pressed with a 3/8-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 17 1/2 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 3/8-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(c) *24-inch (61.0-cm) cable hoop.* A single hoop must be constructed of 3/8-inch (0.95-cm) steel cable 75 1/2 inches (191.8 cm) in length. The cable must be joined at its ends by a 3-inch (7.6-cm) piece of 3/8-inch (0.95-cm) aluminum pipe and pressed together with a 1/4-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 3/8-inch (0.95-cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel.* The funnel must be constructed from four sections of 1 1/2-inch (3.8-cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29 1/2 meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29 1/2 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 in² (5,574.2 cm²). 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) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1 5/8-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.

(h) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or 3/8-inch (0.95-cm) cable 34 1/2 inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of 3/8-inch (0.95-cm) aluminum pipe pressed together with a 1/4-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.

(i) *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.

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