designation of critical habitat for five distinct population segments (DPSs) of Atlantic sturgeon. Critical habitat for the five DPSs was proposed in two separate proposed rules, published on June 3, 2016, with a 90-day comment period.

DATES: The comment period for the proposed rules that published on June 3, 2016 (81 FR 35701 and 81 FR 36078) are reopened. Comments must be submitted via the Federal eRulemaking Portal or received at the appropriate address (see **ADDRESSES**) by October 14, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0107 for the proposed rule for the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs and identified by NOAA–NMFS–2015–0157 for the Carolina and South Atlantic DPSs, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0107* or *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0157,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* For docket NOAA–NMFS–2015–0107, submit comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. For docket NOAA–NMFS–2015–0157, submit comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Andrew Herndon, NMFS, SERO at 727–824–5312; Lynn Lankshear, NMFS, GARFO at 978–282–8473; or Lisa Manning, NMFS, Office of Protected Resources at 301–427–8466.

SUPPLEMENTARY INFORMATION:

Reopening

On June 3, 2016, we, NMFS, published two proposed rules (81 FR 35701and 81 FR 36078) to designate critical habitat for the Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon under the Endangered Species Act of 1973 (ESA), as amended. A 90-day public comment period was provided. Public comments were due by September 1, 2016. NMFS received multiple requests for extension of the comment period. Based on the requests, the comment period for each of these proposed rules is reopened for an additional 15 days to provide further opportunity for public comment.

We are soliciting comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts. Comments already received during the 90-day comment period and additional comments received during the reopened 15-day comment period will be considered prior to making the final designations.

Background

We propose to designate critical habitat for the Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic Distinct Population Segments (DPSs) of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*). The specific areas proposed for designation include approximately 244 kilometers (152 miles) of aquatic habitat for the Gulf of Maine DPS, 547 kilometers (340 miles) of aquatic habitat for the New York Bight DPS, and 729 kilometers (453 miles) of aquatic habitat for the Chesapeake Bay DPS. Our proposed determinations for the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs are described in the document identified by NOAA–NMFS–2015–0107. We also propose to designate approximately 1,997 kilometers (1,241 miles) of occupied aquatic habitat and 383 kilometers (238 miles) of unoccupied aquatic habitat for the Carolina DPS, and approximately 2,911 kilometers (1,809 miles) of occupied aquatic habitat and 33 kilometers (21 miles) of unoccupied aquatic habitat for the South Atlantic DPS. Our proposed determinations for the Carolina and South Atlantic DPSs are described in the document identified by NOAA–NMFS–2015–0157. We do not propose to exclude any particular areas from the proposed critical habitat designations.

Authority: 16 U.S.C. 1533.

Dated: September 26, 2016.

Samuel D Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–23530 Filed 9–28–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160815740–6740–01]

RIN 0648–BG28

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP), NMFS proposes to make administrative revisions to the Bycatch Reduction Device Testing Manual (BRD Manual). The BRD Manual contains procedures for the testing and certification of BRDs for use in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico (Gulf) and South Atlantic. The proposed changes to the BRD Manual remove outdated or obsolete data collection forms currently appended to the BRD Manual and revise the text to make several procedural steps outlined in the BRD Manual clearer and easier to understand. The intended effect of these revisions is to increase understanding of the BRD certification protocols.

DATES: Comments must be received by October 14, 2016.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA–NMFS–2016–0109, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0109,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Susan Gerhart, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Requests for copies of the BRD Manual should be sent to the NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

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

The shrimp fishery in the South Atlantic EEZ is managed under the FMP for the Shrimp Fishery of the South Atlantic Region (South Atlantic FMP). The South Atlantic FMP was prepared by the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Initially, the South Atlantic and Gulf Councils developed separate amendments to their respective FMPs to require the use of certified BRDs, and the South Atlantic Council developed their own BRD Manual, in cooperation with NMFS. The South Atlantic Council established these requirements through Amendment 2 to the South Atlantic FMP in 1997 (62 FR 18536, April 16, 1997). Subsequently, the Gulf Council required, with limited exceptions, the use of certified BRDs through Amendment 9 to the Gulf FMP (63 FR 18139, April 14, 1998). Amendment 9 specified that NMFS would develop a testing protocol for examining the bycatch reduction performance of additional BRD designs. Regulations implementing this initial testing protocol were effective July 13, 1999 (64 FR 37690, July 13, 1999), except for a collection-of-information requirement, which became effective September 29, 1999 (64 FR 52427, September 29, 1999). In 2005, in Amendment 6 to the South Atlantic FMP, the South Atlantic Council transferred authority to NMFS to maintain and revise the BRD Manual, and established a certification criterion identical to the Gulf Council's eastern Gulf criterion (70 FR 73383, December 12, 2005). In 2008, NMFS combined the separate BRD Manuals, and established a single procedural process for testing BRDs, and a single BRD certification criterion for both the Gulf and South Atlantic (73 FR 8219, February 13, 2008). The proposed administrative changes would not change the existing BRD certification criterion.

When the two BRD Manuals were initially developed, no mandatory observer programs existed for Gulf and South Atlantic Council-managed species, thus there was no officially established set of data collection forms. To provide BRD testing applicants with a standardized reporting method, forms and instructions developed and used by NMFS and other researchers during a 1990s Congressionally-mandated Shrimp Trawl Bycatch Research Program were provided with the BRD Manual as Appendices A–I. This family of forms was officially submitted for review and approval under the Paperwork Reduction Act and assigned a control number by the Office of Management and Budget (OMB), OMB–0648–0345. Subsequently, mandatory observer programs were established by NMFS for the reef fish fishery and the shrimp fishery in the Gulf, and the various fisheries managed by NMFS' Highly Migratory Species Division. NMFS established a package of observer data collection forms to cover all of these programs with an assigned control number of OMB–0648–0593, and incorporated the family of forms in a standardized Observer Training Manual, including the BRD testing and certification family of forms.

Over time, the various data collection forms used by NMFS have been revised or discarded, making many of the forms in the BRD testing family of forms obsolete (OMB–0648–0345). Currently, only three of the eight original BRD testing data forms in the Observer Training Manual are specific to BRD testing. NMFS intends to incorporate those forms into the OMB–0648–0593 family of forms, and has already discontinued the OMB–0648–0345 family of forms. Therefore, the forms need to be removed as appendices to the BRD Manual and text revised within the BRD Manual to remove references to those forms.

NMFS has also revised some text and instructions in the BRD Manual to make the manual clearer and easier to understand. For example, where forms were referenced, the instructions only stated that ''The applicant should submit a completed application form (Appendix A)''; given this action would remove that form from the BRD Manual, the instructions have been revised to reflect the information that the applicant must submit. Other revisions to the BRD Manual include increased consistency of terms; for example, ''test'' and ''trawl'' were used interchangeably, as were ''trawl'' and ''net.''

These proposed changes to the BRD Manual were presented to the Gulf and South Atlantic Councils for their consideration and no substantive comments were received from either Council regarding these administrative changes.

These proposed changes to management measures would not add to or change any existing Federal regulations. Therefore, no codified text is associated with these proposed changes to management measures.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Gulf and South Atlantic FMPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed change to management measures, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to make non-regulatory administrative revisions to the BRD Manual to simplify test reporting procedures and make the procedural steps outlined in the BRD Manual clearer and easier to understand. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would directly affect entities that apply

for and participate in BRD testing. The primary entities expected to apply for the BRD testing are state government, academic, and not-for-profit entities. Independent commercial shrimping businesses in either the Gulf or South Atlantic may also be included among applicants. NMFS has not identified any other small entities that would be expected to be directly affected by this proposed change to management measures.

The SBA defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field of operation. This definition includes private educational institutions. The SBA also defines a small governmental jurisdiction as the government of cities, counties, towns, townships, villages, school districts, or special districts with a population less than 50,000. For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

Over the period 2011–2015, a total of 5 separate entities applied for BRD testing. These entities were NMFS, the Gulf and South Atlantic Fisheries Foundation (Foundation), the University of Mississippi, Texas A&M University, and one commercial shrimp fisherman. Individual applications are required for each BRD tested and a total of 26 applications were submitted by these 5 entities over this period. The most applications in any year during this period was 10 (2011), submitted by 3 applicants, and the fewest applications was 1 (2015). NMFS submitted the most applications, 10, followed by the Foundation with 9. The University of Mississippi submitted three applications, and both Texas A&M University (2013) and the commercial shrimp fisherman (2015) submitted a single application.

In addition to these entities, previous applicants have included the Texas Parks and Wildlife Department, the Florida Department of Environmental Protection, and the University of Georgia. The respective state agencies are extensions of their state governments and, as such, exceed the SBA population thresholds for small government entities. Similarly, the public academic institutions are extensions of the respective state government educational systems and, therefore, are similarly classified as large entities. Although no private colleges or universities have applied for BRD testing, these institutions are generally understood to be smaller than public institutions in terms of student population, staff, and operational budgets. As a result, any private educational institutions that might apply for BRD testing would be expected to be a small entity. Any commercial shrimp fisherman that might apply for BRD testing would do so from the perspective of research and not commercial fishing. However, as a commercial shrimp fisherman, this entity would be expected to primarily engage in commercial fishing and not research. Thus, for these entities, the commercial fishing revenue threshold would apply. From 2011 through 2013, the greatest average annual revenue for a single commercial shrimp fishing business in the Gulf was approximately $2.48 million. More recent information is not available, nor is similar information available on commercial shrimp fishermen in the South Atlantic. Nevertheless, because of the low maximum revenue total in the Gulf, it is assumed that any commercial shrimp fisherman that would apply for BRD testing would be a small business entity. In summary, this proposed change to management measures would be expected to directly affect a few small entities, such as not-for-profit institutions, commercial shrimp businesses, and private colleges or universities.

The proposed revisions to the BRD Manual would not directly affect fishery participation, harvest, or the business operation of any small entity. As discussed in the Summary and Supplementary Information sections of this proposed change to management measures, the proposed changes are administrative in nature. This proposed change to management measures would only eliminate test reporting forms in the BRD Manual that are either obsolete or available elsewhere (NMFS standardized Observer Training Manual), revise text and instructions that reference these forms, list the information needed to be reported for BRD testing instead of the specific forms, and improve the consistency of terms used in the BRD Manual. These proposed changes are purely administrative. They would not be expected to affect actual BRD testing or the costs associated with such, but would be expected to improve understanding of the testing process and requirements, and facilitate better circumstances under which BRD research and gear development may proceed. Although subsequent BRD testing could result in future changes in allowable BRDs, the use of which could have direct economic consequences, these would be indirect effects of this proposed rule and outside the scope of the Regulatory Flexibility Act.

Based on the discussion above, NMFS determines that this proposed change to management measures, if implemented, would not have a significant adverse economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

The BRD Manual published as an appendix to a final rule published in the **Federal Register** on February 13, 2008 (73 FR 8219, February 13, 2008), is revised to read as follows.

Note: The following appendix will publish in the **Federal Register** but will not appear in the Code of Federal Regulations. See the contacts under **ADDRESSES** to obtain the complete BRD Manual.

Appendix—Bycatch Reduction Device Testing Manual

Definitions

Bycatch reduction criterion is the standard by which a BRD candidate will be evaluated. To be certified for use by the shrimp fishery in the Exclusive Economic Zone (EEZ) off the southeastern United States (North Carolina through Texas), the BRD candidate must demonstrate a successful reduction of total finfish bycatch by at least 30 percent by weight.

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

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

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

Control trawl means a trawl that is not equipped with a BRD during a test.

Experimental trawl means the trawl that is equipped with the BRD candidate during a test.

Evaluation and oversight personnel means scientists, observers, and other technical personnel who, by reason of their occupation or scientific expertise or training, are approved by the RA as qualified to evaluate and review the application and testing process.

Gear Test Authorization (GTA) means a document signed by the RA that specifically exempts a person/vessel from Federal regulations requiring the use of BRDs in Federal waters. This GTA must be issued prior to conducting any tests on BRD candidates in Federal waters.

Net/side bias means when the net(s) being fished on one side of the vessel demonstrate a different catch rate (fishing efficiency) than the net(s) being fished on the other side of the vessel during paired-net tests.

Observer means a person on the list maintained by the RA of individuals qualified to supervise and monitor a BRD certification test.

Paired-net test means a tow during certification trials where a control net and an experimental net are fished simultaneously, and the catches and catch rates between the nets are compared.

Provisional Certification Criterion means a secondary benchmark that would allow a BRD candidate to be used for a time-limited period in the southeastern shrimp fishery. To meet the criterion, the BRD candidate must demonstrate a successful reduction of total finfish bycatch by at least 25 percent by weight.

Provisionally certified BRD means a BRD that has been tested according to the procedure outlined herein and has been determined by the RA as having met the provisional certification criterion. A BRD meeting the provisional certification criterion would be certified by the RA for a period of 2 years.

Regional Administrator (RA) means the Southeast Regional Administrator, National Marine Fisheries Service.

Required measurements refers to the quantification of gear characteristics such as the dimensions and configuration of the trawl, the BRD candidate, the doors, or the location of the BRD in relation to other parts of the trawl gear that are used to assess the performance of the BRD candidate.

Sample size means the number of successful tows.

Shrimp trawler means any vessel that is equipped with one or more trawl nets where the on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Successful tow means that the control and experimental trawl were fished in accordance with the requirements set forth herein and the terms and conditions of the Letter of Authorization, and there is no indication problematic events occurred during the tow that would impact or influence the fishing efficiency (catch) of one or both nets.

Tow time means the total time (hours and minutes) an individual trawl was fished (*i.e.,* the time interval beginning when the winch is locked after deploying the net overboard, and ending when retrieval of the net is initiated).

Trawl means a net and associated gear and rigging used to catch shrimp. The terms trawl and net are used interchangeably throughout this manual, although in most instances, ''trawl'' is used to reflect the entire fishing rig (*e.g.,* doors, tickler chain, net, turtle excluder device, etc.), whereas a ''net'' is used to reflect a component of that fishing rig.

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

Tuning a net means adjusting the trawl and its components to minimize or eliminate any net/side bias that exists between the two nets that will be used as the control and experimental trawls during the certification test.

I. Introduction

This Bycatch Reduction Device Testing Manual (BRD Manual) establishes a standardized process for evaluating whether bycatch reduction device (BRD) candidates meet the established bycatch reduction criterion. BRDs that meet the criterion can be certified for use in the EEZ by the southeastern shrimp fishery. Requirements for BRDs used in shrimp trawls in the Gulf of Mexico and South Atlantic can be found in 50 CFR part 622.

The requirement to use BRDs in state waters varies by state. Persons wishing to conduct BRD candidate tests exclusively in state waters do not need to apply to the National Marine Fisheries Service (NOAA Fisheries) for authorization to conduct these tests but should contact the appropriate state officials for authorizations. However, for NOAA Fisheries to certify a BRD candidate for use in Federal waters, tests conducted in state waters must meet the criteria for the operations plan and data collection procedures established in this manual.

II. BRD Candidate Tests

A. Application

Persons interested in evaluating the effectiveness of a BRD candidate to reduce finfish from a shrimp trawl must apply for, receive, and have on board the approved vessel(s) during the test, a Gear Test Authorization (GTA) from the NOAA Fisheries Southeast Regional Office Regional Administrator (RA). To receive a GTA, the applicant must submit the following documentation to the RA: (1) Name, address, and contact information of the applicant; (2) a list of vessels to be used during the sampling program, including the vessels' U.S. Coast Guard documentation numbers or state registration numbers; (3) name, address, and contact information of the vessel owners and/or vessel operators; (4) a brief statement of the purpose and goal of the activity for which the GTA is requested; (5) an operations plan (see Section C below) describing the scope, duration, dates, and location of the test, and methods that will be used to conduct the test; (6) an 8.5 inch x 11 inch (21.6 cm x 27.9 cm) diagram drawn to scale of the BRD candidate design; (7) an 8.5 inch x 11 inch (21.6 cm x 27.9 cm) diagram drawn to scale of the BRD in the shrimp trawl; and (8) a description of the mechanism by which the BRD candidate is expected to exclude finfish.

An applicant requesting an GTA to test an unapproved turtle excluder device (TED) as a BRD (including modifications to a certified TED where the modifications would make the configuration of the TED illegal) must first apply for and obtain from the RA an experimental TED authorization pursuant to 50 CFR 223.207(e)(2). Applicants should contact the Protected Resources Division of NOAA Fisheries Southeast Regional Office for further information. The GTA applicant must include a copy of that authorization with the application.

Incomplete applications will be returned to the applicant along with a letter from the RA indicating what actions the applicant may take to make the application complete.

There is no cost to the applicant for the RA's administrative expenses such as reviewing applications, issuing GTA, evaluating test results, or certifying BRDs. However, all other costs associated with the actual testing activities are the responsibility of the applicant, or any associated sponsor.

If an application for a GTA is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies that resulted in the denial.

B. Allowable Activities

Issuance of a GTA to test a BRD candidate in the South Atlantic or Gulf of Mexico allows the applicant to remove or disable the existing certified BRD in one outboard net (to create a control net), and to place the BRD candidate in another outboard net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the test must have a certified BRD, unless these nets are specifically exempted in the GTA. All nets under tow during the test must have an approved TED unless operating under an authorization issued pursuant to 50 CFR 223.207(e)(2), whereby the test is being conducted on an experimental TED. The GTA, and experimental TED authorization if applicable, must be on board the vessel(s) while the test is being conducted. The term of the GTA will be 60 days; should circumstances require a longer test period, the applicant may request a 60-day extension.

C. Operations Plan

An operations plan should be submitted with the application describing a method to compare the catches of shrimp and fish in a control

net (net without a BRD candidate installed) to the catches of the same species in an experimental net (a net configured identically to the control net but also equipped with the BRD candidate).

The applicant may choose to conduct a pre-certification test of a prototype BRD candidate. A pre-certification test would be conducted when the intent is to assess the preliminary effectiveness of a prototype BRD candidate under field conditions, and to make modifications to the prototype BRD candidate during the field test. For pre-certification testing, the operations plan must include only a description of the scope, duration, dates, and location of the test, along with a description of methods that will be used to conduct the test. No observer is required for a pre-certification test, but the applicant may choose to use an observer to maintain a written record of the test. The applicant will maintain a written record for both the control and experimental net during each tow. Mandatory data collection is limited to the weight of the shrimp catch and the weight of the total finfish catch in each test net during each tow. Although not required, the applicant may wish to incorporate some or all the certification test requirements listed below.

For a BRD candidate to be considered for certification, the operations plan must be more detailed and address the following topics:

- The primary assumption in assessing the bycatch reduction effectiveness of a BRD candidate during paired net tests is that the inclusion of the BRD candidate in the experimental net is the only factor causing a difference in catch from the control net. Therefore, the nets to be used in the tests must be calibrated (tuned) to minimize, to the extent practicable, any net/side bias in catch efficiency prior to beginning a test series, and tuned again after any gear modification or change. Additional information on tuning shrimp trawls to minimize bias is available from NOAA Fisheries, Harvesting Technology Branch, Mississippi Laboratories, Pascagoula Facility, 3209 Frederic Street, Pascagoula, MS 39567; phone 601–762–4591.
- A standard tow time for a proposed evaluation should be defined. Tow times must be representative of the tow times used by commercial shrimp trawlers. The applicant should indicate what alternatives will be considered should the proposed tow time need adjustment once the test begins.
- A minimum sample size of 30 successful tows using a specific BRD candidate design is required for the statistical analysis described in Section F. No alterations of the BRD candidate design are allowed during a specific test series. If the BRD candidate design is altered, a new test series must be started. If a gear change (*i.e.,* changing nets, doors, or rigging) is required, the nets should be tuned again before proceeding with further tests to complete the 30-tow series. Minor repairs to the gear (*e.g.,* sewing holes in the webbing; replacing a broken tickler chain with a new one of the same configuration) are not considered a ''gear change.''
- For tests conducted on twin-rig vessels (one net on the port side and one net on the starboard side), biases that might result from the use of a try net should be minimized. Total fishing times for a try net must be a consistent percentage of the total tow time during each tow made in the test.
- To incorporate any potential net/side bias that remains after the tuning tows (*e.g.,* the effect of a try net), or to accommodate for bias that develops between the control and experimental nets during the test, the operations plan should outline a timetable ensuring that an equal number of successful tows are made with the BRD candidate employed in both the port and starboard nets.
- Mandatory data to be collected during a test includes: (1) Detailed vessel and gear specifications and (2) pertinent information concerning the location, duration, and catch from individual tows as set forth in forms available from the Science and Research Director (SRD) of the Southeast Fisheries Science Center. Applicants should contact the NOAA Fisheries, Galveston Laboratory, 4700 Avenue U, Galveston, TX 77551; phone 409–766–3500.
- Following each paired tow, the catches from the control and experimental nets must be examined separately. This requires that the catch from each net be kept separate from each other, as well as from the catch taken in other nets fished during that tow. Mandatory data collections include recording the weight of the total catch of each test net (control and experimental nets), and the weight of the total shrimp catch (*i.e.,* brown, white, pink, rock, or other shrimp by species) in each test net.
- To determine the total finfish catch in each test net, two procedures may be used under different conditions. If the total catch in a net does not fill one standard 1-bushel (ca. 10 gal or 30 L) polyethylene shrimp basket (ca. 70 lb [31.8 kg] of catch), but the tow is otherwise considered successful, data must be collected on the entire catch of the net, and recorded as a ''select'' sample, indicating that the values represent the total catch of the particular net. If the catch in a net exceeds 70 lb (31.8 kg), a well-mixed sample consisting of one standard 1-bushel [ca. 10 gal] (30 L) polyethylene shrimp basket must be taken from the total catch of the net. The total weight of the sample must be recorded, as well as the weight (and number as applicable) of finfish in aggregate.
- The forms available from the SRD include record keeping opportunities for additional species; collection of this information is optional for certification evaluation purposes. However, applicants testing BRD candidates are encouraged to collect additional information that may be pertinent to addressing bycatch issues in their respective regions. For example, in the western Gulf of Mexico applicants are especially encouraged to collect information on the bycatch of juvenile red snapper. Such data collection would follow the same procedure as sampling the total finfish catch.

The operations plan should address what the applicant will do should it become necessary to deviate from the primary procedures outlined in the operations plan. The plan should describe in detail what will be done to continue the test in a reasonable manner that is consistent with the primary procedures. For example, it may become necessary to alter the pre-selected tow time to adapt to local fishing conditions to successfully complete the test. Prior to issuing a GTA, the RA may consult with evaluation personnel to review the acceptability of these proposed alterations.

D. Observer Requirement

It is the responsibility of the applicant to ensure that a qualified observer is on board the vessel during the certification tests. Observers may include employees or individuals acting on behalf of NOAA Fisheries, state fishery management agencies, universities, or private industry. Any change in information or testing circumstances, such as replacement of the observer, must be reported to the RA within 30 days. Under 50 CFR 600.746, when any fishing vessel is required to carry an observer as part of a mandatory observer program under the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*), the owner or operator of the vessel must comply with guidelines, regulations, and conditions to ensure their vessel is adequate and safe to carry an observer, and to allow normal observer functions

to collect information as described in this Manual. A vessel owner is deemed to meet this requirement if the vessel displays one of the following: (1) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I, and 46 CFR, chapter I; (2) a certificate of compliance issued pursuant to 46 CFR 28.710; or (3) a valid certificate of inspection pursuant to 46 U.S.C. 3311. The observer has the right to check for major safety items, and if those items are absent or unserviceable, the observer may choose not to sail with the vessel until those deficiencies are corrected.

E. Reports

A report on the BRD candidate test results must be submitted by the applicant or associated sponsor before the RA will consider the BRD for certification. The report must contain a comprehensive description of the test, copies of all completed data forms used during the test, and photographs, drawings, and similar material describing the BRD. The report must include a description and explanation of any unanticipated deviations from the operations plan that occurred during the test. These deviations must be described in sufficient detail to allow evaluation and oversight personnel selected by NOAA Fisheries to determine if the tests were continued in a reasonable manner consistent with the approved operations plan procedures. Applicants must provide information on the cost of materials, labor, and installation of the BRD candidate. In addition, any unique or special circumstances of the tests, such as special operational characteristics or fishing techniques, which enhance the BRD's performance, should be described and documented as appropriate.

F. Certification

The RA will determine whether the required reports and supporting materials are sufficient to evaluate the BRD candidate's effectiveness. The determination of sufficiency would be based on whether the applicant adhered to the prescribed testing procedure or provided adequate justification for any deviations from the procedure during the test. If the RA determines that the data are sufficient for evaluation, the BRD candidate will be evaluated to determine if it meets the bycatch reduction criterion. In making a decision, the RA may consult with evaluation and oversight personnel. Based on the data submitted for review, the RA will determine the effectiveness of the BRD candidate, using appropriate statistical procedures such as Bayesian analyses, to determine if the BRD candidate meets the following conditions:

(1) There is at least a 50-percent probability that the true reduction rate of the BRD candidate meets the bycatch reduction criterion (*i.e.,* the BRD candidate demonstrates a best point estimate [sample mean] that meets the certification criterion); and

(2) There is no more than a 10-percent probability that the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion.

To be certified for use in the fishery, the BRD candidate will have to satisfy both conditions. The first condition ensures that the observed reduction rate of the BRD candidate has an acceptable level of certainty that it meets the bycatch reduction criterion. The second condition ensures the BRD candidate demonstrates a reasonable degree of certainty the observed reduction rate represents the true reduction rate of the BRD candidate. This determination ensures the operational use of the BRD candidate in the shrimp fishery will, on average, provide a level of bycatch reduction that meets the established bycatch reduction criterion. Interested parties may obtain details regarding the hypothesis testing procedure to be used by contacting NOAA Fisheries, Harvesting Technology Branch, Mississippi Laboratories, Pascagoula Facility, 3209 Frederic Street, Pascagoula, MS 39567; phone 228–762–4591. Following a favorable determination of the certification analysis, the RA will certify the BRD (with any appropriate conditions as indicated by test results) and publish the notice of certification in the **Federal Register**.

In addition, based on the data provided, if the BRD candidate does not meet the bycatch reduction certification criterion in accordance with the conditions outlined above, the RA may provisionally certify a BRD candidate based on the following condition:

There is at least a 50-percent probability that the true reduction rate of the BRD candidate is no more than 5 percentage points less than the bycatch reduction criterion (*i.e.,* the BRD candidate demonstrates a best point estimate [sample mean] within 5 percentage points of the certification criterion).

A provisional certification will be effective for 2 years from the date of publication of a notice in the **Federal Register** announcing this provisional certification. This time period will allow additional wide-scale industry evaluation of the BRD candidate, during which additional effort would be made to improve the efficiency of the BRD to meet the certification criterion.

III. BRDs Not Certified and Resubmission Procedures

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

IV. Decertification of BRDs

The RA will decertify a BRD whenever NOAA Fisheries determines a BRD no longer satisfies the bycatch reduction criterion. Before determining whether to decertify a BRD, the RA will notify the appropriate Fishery Management Council(s) in writing, and the public will be provided an opportunity to comment on any proposed decertification through a publication of a proposed rule in the **Federal Register** with a comment period of not less than 15 days. The RA will consider any comments from the affected Council(s) and public, and if the RA elects to proceed with decertification of the BRD, the RA will publish a final rule in the **Federal Register**, which would remove the BRD from the certified list of BRDs.

V. Interactions With Sea Turtles

The following section is provided for informational purposes. Sea turtles are listed under the Endangered Species Act as either endangered or threatened. The following procedures apply to incidental take of sea turtles under 50 CFR 223.206(d)(1):

Any sea turtles taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead (as described in paragraph (B)(4) below) must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the

engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 to 24 hours. The amount of elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(3) Sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(4) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise, the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

Any sea turtle so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 2016.

Samuel D. Rauch III,

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