

species under section 4(a) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
  - (b) Overutilization for commercial, recreational, scientific, or educational purposes;
  - (c) Disease or predation;
  - (d) The inadequacy of existing regulatory mechanisms; or
  - (e) Other natural or manmade factors affecting its continued existence.
- (3) The potential effects global climate change may have on the Sacramento splittail or its habitat.
- Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.
- If, after the status review, we determine that listing the Sacramento splittail is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), as per section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request specific comments and information as to what, if any, critical habitat you think should be proposed for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act. Specifically, for areas within the geographical range currently occupied by the species, we request data on:
- (1) The amount and distribution of Sacramento splittail habitat;
  - (2) The physical and biological features of Sacramento splittail habitat that are essential to the conservation of the species;
  - (3) Special management considerations or protections that the features essential to the conservation of Sacramento splittail may require, including managing for the potential effects of climate change;
  - (4) Any areas that are essential to the conservation of Sacramento splittail and why;
  - (5) Land use designations and current or planned activities in Sacramento splittail habitats and their possible impacts on proposed critical habitat;
  - (6) Conservation programs and plans that protect Sacramento splittail and its habitat; and,
  - (7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

In addition, we request data and information on “specific areas outside the geographical area occupied by the species.”

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and supporting documentation that we received and used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Bay Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Previous Federal Actions

On September 22, 2003, the Service published a Notice of Remanded Determination of Status for the Sacramento splittail in the **Federal Register** (68 FR 55140) that removed the Sacramento splittail from the endangered species list. Please refer to the September 22, 2003 **Federal Register** notice (68 FR 55140) for previous Federal actions taken on Sacramento splittail prior to September 22, 2003.

On August 13, 2009 the Center for Biological Diversity (CBD) filed a complaint in U.S. District Court for the Northern District of California, challenging the Service on the merits of the 2003 determination and alleging improper political influence of the former Department of Interior, Deputy Assistant Secretary for Fish Wildlife and Parks, Julie MacDonald. In a settlement dated February 1, 2010 (Case4:09-cv-03711-PJH), the Service agreed to open a 30-day public comment period to allow for the submission of additional

information by the public. The Service also agreed to submit to the **Federal Register** a new status review and 12-month finding as to whether listing the Sacramento splittail is warranted or not warranted. If warranted, the Service further agreed to publish, concurrently with the 12-month finding, a proposed rule to list the Sacramento splittail and a final determination on or before September 29, 2011. This notice constitutes notification of the opening of the 30-day public comment period.

You may obtain copies of the 2003 remanded determination, and other previous Federal actions relating to the Sacramento splittail by mail from the San Francisco Bay-Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section), or on the Internet at <http://www.fws.gov/sfbaydelta/>, or by visiting the *Federal eRulemaking Portal* at <http://www.regulations.gov>.

#### Author

The primary authors of this notice are the staff members of the Bay-Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 8, 2010.

#### Rowan Gould,

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2010-8962 Filed 4-19-10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 100121040-0178-01]

RIN 0648-AY58

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico and South Atlantic; Revisions to Allowable Bycatch Reduction Devices

**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 procedures for adjusting management measures of the Fishery

Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP) and the Fishery Management Plan for the Shrimp Fishery of the South Atlantic region (South Atlantic FMP) NMFS proposes to provisionally recertify two bycatch reduction devices (BRDs) and revise the construction and installation requirements of one of these BRD designs in the southeastern shrimp fishery. The intended effect of this proposed rule is to improve bycatch reduction in the shrimp fishery, reduce regulatory confusion, and better meet the requirements of National Standard 9.

**DATES:** Comments must be received no later than 4:30 p.m., eastern time, on May 5, 2010.

**ADDRESSES:** You may submit comments, identified by 0648–AY58, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal at <http://www.regulations.gov>, enter “NOAA-NMFS–2010–0020” in the keyword search, then select “Send a Comment or Submission.” NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review and a regulatory flexibility act analysis, are available from NMFS at the address above.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, telephone: 727–824–5305.

**SUPPLEMENTARY INFORMATION:** The fishery for shrimp in the exclusive economic zone (EEZ) of the Gulf is

managed under the FMP prepared by the Gulf of Mexico Fishery Management Council. The fishery for shrimp in the EEZ of the South Atlantic is managed under the FMP prepared by the South Atlantic Fishery Management Council. The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

### Background

Regulations implementing Amendment 2 to the South Atlantic Shrimp FMP (73 FR 18536, April 16, 1997) established BRD requirements in the South Atlantic EEZ. The rule established a certification criterion, descriptions of BRD designs and configurations allowed for use in the South Atlantic shrimp fishery, as well as procedures to develop and test new BRDs for certification.

Regulations implementing Amendment 9 to the Gulf Shrimp FMP were published April 14, 1998 (63 FR 18139), and established a requirement, with limited exceptions, for the use of certified BRDs in shrimp trawls towed in the Gulf EEZ shoreward of the 100–fm (183–m) depth contour west of 85 30' W. longitude (western Gulf), the approximate longitude of Cape San Blas, FL. The rule established descriptions of BRD designs and configurations allowed for use in the western Gulf shrimp fishery.

To better address the requirements of National Standard 9 of the Magnuson-Stevens Act, regulations implementing Amendment 10 to the Gulf FMP (69 FR 1538, January 9, 2004) required BRDs in shrimp trawls fished in the EEZ east of 85 30' W. longitude (eastern Gulf).

In accordance with the BRD framework procedures of the Gulf FMP, NMFS recently modified the existing BRD certification criterion for the western Gulf (73 FR 8219, February 13, 2008) to be consistent with the criterion for the eastern Gulf and South Atlantic. The new standardized certification criterion for the Gulf of Mexico and the South Atlantic specifies data must demonstrate a BRD achieves a 30–percent reduction in the weight of finfish bycatch to be certified for use in the southeastern shrimp fishery. In addition, this rule established a provisional certification criterion. To be provisionally certified, on a time-limited basis, the data must demonstrate that there is at least a 50–percent probability that the BRD reduces the weight of finfish bycatch by 25 percent.

In accordance with these new criteria, NMFS provisionally certified the Extended Funnel BRD for use in the

Gulf of Mexico, and the Composite Panel BRD for use in both the Gulf of Mexico and the South Atlantic. By regulation, the provisional certification of both BRDs automatically expired on February 16, 2010. However, no new information exists regarding the effectiveness of these BRDs as they are used in the fishery that would indicate if the BRDs have been improved, or that they do not continue to meet the provisional certification requirement. Collection of new data and sufficient industry-level evaluation of these BRDs was hindered, in part, because of delays in getting compatible regulations allowing their use in state waters off Texas and state waters off both the Gulf of Mexico and South Atlantic coasts of Florida. Texas developed compatible regulations allowing the use of these two BRDs in November 2008; Florida in December 2009. Thus, fishermen in these states have not had the opportunity to use these new BRDs or to make improvements to them. In addition, net shops that would be manufacturing these BRDs needed to wait on the final regulatory specifications before they could begin producing the BRDs, thus there was an initial shortage of these BRDs.

Because no new information exists to decertify these BRDs, and because of the limited time fishermen in two major shrimping states have had to evaluate these BRDs, the proposed rule would reestablish a new provisional certification for these two BRD types for two additional years from the date of publication of the final rule in the **Federal Register**. This proposed rule would also revise the construction and installation requirements for the Composite Panel BRD in order to provide more flexibility for what material and size mesh may be used to construct this particular BRD design. The intended effect of this proposed rule is to maintain adequate bycatch reduction in the shrimp fishery, reduce regulatory confusion, and better meet the requirements of National Standard 9.

### 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 FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, 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 Council for Regulation of the Department of Commerce certified

to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not impose any new requirements on fishing entities in the southeastern shrimp fishery. Shrimp trawlers in the Gulf and South Atlantic EEZ are already required to have a BRD installed in their shrimp nets and fishermen can continue to use their existing BRD. This proposed rule would simply allow fishermen, at their discretion, to use an alternative BRD in their shrimp nets, and provide greater flexibility in the construction and installation requirements for the Composite Panel BRD. Any decision to use this gear would be expected to occur only if it is expected to result in improved performance by the fishing vessel. As a result, any effects would be expected to be positive and no adverse economic impacts on any of the 2,144 vessels (which is the total number of unique vessels with a permit to harvest shrimp in the EEZ of the Gulf and South Atlantic) would be expected to accrue. Providing greater flexibility in the construction and installation requirements for the Composite Panel BRD is also expected to lower costs and result in no additional adverse economic impacts.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

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

Dated: April 15, 2010.

Samuel D. Rauch III, Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.41, paragraphs (g)(3)(ii)(A) and (B) are revised to read as follows:

§ 622.41 Species specific limitations.

- (g) \* \* \*
(3) \* \* \*
(ii) \* \* \*

(A) Extended funnel—Gulf EEZ only; through [date 2 years after date of publication of the final rule in the Federal Register].

(B) Composite Panel—Gulf EEZ and South Atlantic EEZ; through [date 2

years after date of publication of the final rule in the Federal Register].

\* \* \* \* \*

3. In Appendix D to part 622, section G, the first sentence of paragraph 2(a), and paragraph 2(b) are revised to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

\* \* \* \* \*

G. \* \* \*

2. \* \* \*

(a) \* \* \* The webbing extension must be constructed from a single rectangular piece of 1 1/2-inch to 1 3/4-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24 1/2 meshes by 150 to 160 meshes. \* \* \*

(b) Funnel. The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1 1/2-inch to 1 5/8-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1 1/2 meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

\* \* \* \* \*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205-91207-01]

RIN 0648-AY14

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2010-2012 specifications for the Atlantic herring (herring) fishery. These proposed specifications and management measures promote the utilization and conservation of the herring resource and provide for a sustainable fishery. This proposed rule would also make minor corrections to existing regulations.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on May 20, 2010.

ADDRESSES: Copies of supporting documents used by the New England Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. The EA/RIR/IRFA is also accessible via the Internet at http://www.nero.nmfs.gov.

You may submit comments, identified by 0648-AY14, by any one of the following methods:

-Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal http://www.regulations.gov;

-Fax: (978) 281-9135, Attn: Carrie Nordeen;

-Mail to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2010-2012 Herring Specifications."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to http://www.regulations.gov without change. All Personal Identifying Information (e.g., name, address)