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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160222132-6132-01]

RIN 0648-BF77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Shrimp Fishery of the Gulf of Mexico; Amendment 17A

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 17A to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This proposed rule would extend the current Gulf commercial shrimp permit moratorium. The intent of this proposed rule and Amendment 17A is to protect federally managed Gulf shrimp stocks while promoting catch efficiency, economic efficiency, and stability in the fishery.

DATES: Written comments must be received on or before [*insert*

date 30 days after date of publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0018" 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-2016-0018, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Susan Gerhart, Southeast Regional Office, NMFS, 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).

Electronic copies of Amendment 17A, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/shrimp/2016/am17a/index.html.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, or e-mail: Susan.Gerhart@noaa.gov.

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

Management Measure Contained in this Proposed Rule

This proposed rule would extend the Gulf shrimp permit moratorium until October 26, 2026. In 2002, through Amendment 11 to the FMP, the Council established a Federal commercial permit for all vessels harvesting shrimp from Federal waters of the Gulf (67 FR 51074, August 7, 2002). That permit was a Federal open access permit for Gulf shrimp. Approximately 2,951 vessels had been issued these open access permits by 2006. After the establishment of the permit, the shrimp fishery experienced

economic losses, primarily because of high fuel costs and reduced shrimp prices caused by competition from imports. These economic losses resulted in decreasing numbers of vessels in the fishery, and consequently, reduction of effort. The Council determined that the number of vessels would likely decline to a point where the fishery again would become profitable for the remaining participants, and new vessels might want to enter the fishery. That additional effort could negate, or at least lessen, profitability for the fleet as a whole. Consequently, through Amendment 13 to the FMP, the Council established a 10-year moratorium on the issuance of new Federal commercial shrimp vessel permits (71 FR 56039, September 26, 2006). The moratorium on permits indirectly controls shrimping effort in federal waters and thereby bycatch levels. Allowing the moratorium to expire would remove this control. The moratorium on permits also indirectly controls shrimping effort in Federal waters and thereby, bycatch levels of juvenile red snapper and sea turtles. The final rule implementing the moratorium was effective October 26, 2006, and the moratorium permits became effective in March 2007. Extending the moratorium for an additional 10 years until October 26, 2026, is expected to maintain the biological, social, and economic benefits to the shrimp fishery achieved

under the moratorium permit over the past 10 years.

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 Amendment 17A, 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 Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The current moratorium on Gulf shrimp permits became effective on October 26, 2006 (71 FR 56039, September 26, 2006). This proposed rule, if implemented, would extend the current moratorium on Federal Gulf shrimp permits until October 26, 2026. The purpose of this proposed rule is to maintain the biological, social, and economic benefits to the Gulf shrimp fishery achieved under the current moratorium. The objectives of

this proposed rule are to protect federally managed Gulf shrimp stocks, and promote catch efficiency, economic efficiency, and stability in the Gulf shrimp fishery. The Magnuson-Stevens Act serves as the legal basis for the rule.

This action is expected to directly regulate businesses that possess Federal Gulf shrimp moratorium permits. As of September 21, 2015, there were 1,464 vessels with valid or renewable Gulf shrimp moratorium permits. Although some permits are thought to be held by businesses with the same or substantively the same individual owners, and thus would likely be considered affiliated, ownership data for Gulf shrimp permit holders is incomplete and thus it is not currently feasible to accurately determine whether businesses that have these permits are in fact affiliated. NMFS is currently making changes to its permit application forms so that such determinations can be accurately made for future regulatory actions in this fishery. As a result of the incomplete ownership data, for purposes of this analysis, it is assumed each vessel is independently owned by a single business, which will result in an overestimate of the actual number of businesses directly regulated by this proposed rule. Thus, the number of businesses directly regulated by this proposed rule is estimated to be 1,464.

Based on landings and economic data from 2013, which is the most current year for which complete economic data is available, all of these businesses are thought to be primarily engaged in shellfish harvesting activities (e.g., Gulf shrimp, South Atlantic shrimp, and Atlantic sea scallops fisheries). In 2013, the primary source of gross revenue for approximately 84 percent of these businesses was landings from one or more of these shellfish fisheries, while the other 16 percent did not have commercial landings in any fishery. It is common for a certain percentage of businesses with Gulf shrimp permits to be commercially inactive in a given year, because of economic conditions in the Gulf shrimp fishery, other fisheries, or other industries (e.g., oil and gas) in which these businesses, their owners, and their crew sometimes participate. Some businesses may have also been inactive due to issues associated with the Deepwater Horizon MC252 event in 2010 and subsequent payouts from British Petroleum (BP). NMFS only possesses data on such payouts and other transfer payments for a sample of the permitted businesses, and thus cannot confirm the extent to which such payouts contributed to the lack of commercial harvesting activity by all of the inactive businesses. Given the lack of data to the contrary and because these businesses

possess Gulf shrimp moratorium permits, for the purpose of this analysis, these 1,464 businesses are assumed to be primarily engaged in commercial shellfish harvesting.

From 2011 through 2013, the greatest average annual gross revenue earned by a single business was approximately \$2.48 million. On average, a business with a Gulf shrimp moratorium permit had an annual gross revenue of approximately \$247,000, annual net revenue from operations (commercial fishing activities) of approximately \$6,300, and an annual economic profit of approximately \$37,000. All monetary estimates are in 2001 dollars. Average annual economic profit was greater between 2011 and 2013 compared to the 2006-2009 time period, and greater than net revenue from operations, partly because of non-fishing related income, mostly in the form of payouts from BP (i.e., transfer payments) due to the Deepwater Horizon MC252 event in 2010. Thus, although the average profit margin from 2011 through 2013 was nearly 15 percent of gross revenue, the average margin from operations was only about 2.6 percent. Though relatively small, this margin from operations is still greater than what these businesses earned between 2006 and 2009 when net revenue from operations was generally negative, on average.

SBA has established size standards for all major

industries, including commercial shellfish harvesting businesses (NAICS code 114112). A business primarily involved in shellfish harvesting 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 \$5.5 million. Based on the information above, all businesses directly regulated by this proposed rule are determined to be small businesses for the purpose of this analysis. Therefore, it is determined that this proposed rule will affect a substantial number of small businesses.

The number of businesses with Gulf shrimp moratorium permits that had shrimp landings from offshore waters in the Gulf, and, in turn, the level of fishing effort in offshore waters, significantly decreased from 2002 through 2009. As used in this section and Amendment 17A, offshore waters are waters that are seaward of the demarcation lines established under the 1972 Convention on the International Regulations for Preventing Collisions at Sea, which define boundaries across inland waters, such as harbor mouths and inlets, for navigation purposes. Also, businesses had negative net revenue from their operations and generally earned economic losses on average from 2006 through 2009. However, the number of active vessels and, in turn, effort

in the offshore Gulf shrimp fishery generally stabilized after 2010.

Although transfer payments from BP as a result of the Deepwater Horizon MC252 event helped to increase economic profits from 2011 through 2013, the increases in net revenue from operations during that time are thought to have been caused primarily by lower fuel prices, higher demand for and thus higher prices for shrimp, and higher catch rates. These higher catch rates are directly attributable to the reductions in effort. To maintain those higher catch rates, effort must at least remain stable. Because net revenue from operations and economic profit have been positive in recent years, if the permit moratorium was not extended and the fishery became subject to open access Gulf shrimp permits, it is possible that the number of active vessels and effort in the offshore fishery would increase, which would be expected to reduce catch rates and, in turn, net revenue from operations and economic profits. Thus, the proposed extension of the moratorium on Gulf shrimp permits for an additional 10 years is expected to result in greater net revenue from operations and economic profit than if the shrimp moratorium permit program was allowed to expire.

Based on the information above, a reduction in profits for

a substantial number of small entities is not expected as a result of this rule. Thus, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf, Permits, Shrimp.

Dated: April 11, 2016.

Eileen Sobeck,

Assistant Administrator for Fisheries,

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 OF MEXICO, 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 § 622.50, revise the introductory text of paragraph (b) to read as follows:

§ 622.50 Permits, permit moratorium, and endorsements.

* * * * *

(b) *Moratorium on commercial vessel permits for Gulf shrimp.* The provisions of this paragraph (b) are applicable through October 26, 2026.

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