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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170823802-7999-02]

RIN 0648-BG82

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Shrimp Fishery of the Gulf of Mexico; Amendment 17B**

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 17B to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico U.S. Waters, (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule allows for the creation of a Federal Gulf shrimp reserve pool permit when certain conditions are met, and allows non-federally permitted Gulf shrimp vessels to transit through the Gulf exclusive economic zone (EEZ). Amendment 17B also defines the aggregate maximum sustainable yield (MSY) and aggregate optimum yield (OY), and determines a minimum number of

commercial vessel moratorium permits in the fishery. This final rule also makes technical corrections to the regulations that revise the coordinates for the Tortugas shrimp sanctuary in the Gulf, and corrects the provisions regarding the harvest and possession of wild live rock in Gulf Federal waters. The purpose of this final rule and Amendment 17B is to protect federally managed Gulf shrimp stocks while maintaining catch efficiency, economic efficiency, and stability in the fishery.

DATES: This final rule is effective [*insert date 30 days after date of publication in the* **FEDERAL REGISTER**].

ADDRESSES: Electronic copies of Amendment 17B, which includes an environmental assessment, a Regulatory Flexibility Act (RFA) 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/2017/am17b/index.html.

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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).

This document also designates the unidentified tables in § 622.55 to bring the section into compliance with the requirements of 1 CFR 8.1 and 8.2 and with the Office of the Federal Register's Document Drafting Handbook (<https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf>) section 7.4.

On August 22, 2017, NMFS published a notice of availability for Amendment 17B and requested public comment (82 FR 39733). On October 4, 2017, NMFS published a proposed rule for Amendment 17B and requested public comment (82 FR 46205). The proposed rule and Amendment 17B outline the rationale for the action contained in this final rule. A summary of the management measures described in Amendment 17B and implemented by this final rule is provided below.

From 2003 to 2006, the Gulf shrimp fishery experienced significant economic losses, primarily as a result of high fuel costs and reduced prices caused by competition with imports. These economic losses contributed to a reduction in the number of vessels in the fishery, and consequently, a reduction of commercial effort. During that time, commercial vessels in the Gulf shrimp fishery were required to have an open-access permit.

In 2006, to prevent overcapitalizing the fishery when it became profitable again, the Council established a 10-year freeze on the issuance of new shrimp permits and created a limited access Federal Gulf shrimp moratorium permit (moratorium permit) (71 FR 56039, September 26, 2006). In 2016, the Council extended the duration of the Gulf shrimp moratorium permit program for another 10 years through Amendment 17A to the FMP (81 FR 47733, July 22, 2016).

During the development of Amendment 17A, the Council identified several other issues with the Gulf shrimp fishery that it wanted addressed. First, MSY and OY are defined individually for the three penaeid shrimp species and for royal red shrimp. Second, the number of moratorium permits has continued to decline, and the Council is concerned that the decline in total permits will continue indefinitely. Finally, transit through Federal waters (Gulf EEZ) with shrimp on board currently requires a Federal moratorium permit, which limits the ability of a state-registered vessel to navigate in certain areas of the Gulf while engaged in shrimping. Amendment 17B was developed to address these issues through revisions to management reference points and the Gulf shrimp permit program, while maintaining catch efficiency, economic efficiency, and

stability in the fishery.

Management Measures Codified in this Final Rule

This final rule allows for the creation of a Federal Gulf shrimp reserve pool permit when certain conditions are met, and allows non-federally permitted Gulf shrimp vessels to transit through the Gulf EEZ.

Federal Gulf shrimp reserve pool permit

Currently, moratorium permits are valid for 1 year and are required to be renewed annually. If the permit is not renewed within 1 year of its expiration date, the permit is no longer renewable and is terminated. A terminated permit cannot be reissued by NMFS and is lost to the fishery.

As of December 31, 2016, 1,441 moratorium permits were valid or renewable. Since the start of the permit moratorium, a total of 493 moratorium permits have been terminated. As described in Amendment 17B, when the number of valid or renewable moratorium permits reaches 1,072, then any moratorium permits that are not renewed within 1 year of expiration would be converted to Gulf shrimp reserve pool permits. This number is based on the predicted number of active permitted vessels needed to attain aggregate OY in the offshore fishery. As explained further below, the aggregate OY accounts for relatively high

catch per unit effort (CPUE) and landings, while reducing the risk of exceeding sea turtle and juvenile red snapper bycatch. Any Gulf shrimp reserve pool permit that is created would not be issued until eligibility requirements are developed by the Council and implemented through subsequent rulemaking.

Transit Provisions for Shrimp Vessels without a Federal Permit

Currently, to possess Gulf shrimp in the Gulf EEZ, a vessel must have been issued a moratorium permit. In the Gulf, there are some areas where state-only licensed shrimpers would like to transit with shrimp on board from state waters through Federal waters to return to state waters and port. However, because these state-licensed shrimping vessels do not possess a Federal moratorium permit, they cannot legally transit through the Gulf EEZ while possessing shrimp. This results in some of these vessels spending increased time at sea and incurring additional fuel costs because of longer transit times.

This final rule allows a vessel possessing Gulf shrimp to transit the Gulf EEZ without a valid moratorium permit if fishing gear is appropriately stowed. Transit is defined as non-stop progression through the area; fishing gear appropriately stowed means trawl doors and nets must be out of the water and the bag straps must be removed from the net. This transit

exemption is expected to reduce the time at sea required for some shrimpers, while allowing enforcement to easily determine that the gear is not being used for fishing.

Measures Contained in Amendment 17B but not Codified Through this Final Rule

Amendment 17B specifies the aggregate MSY and aggregate OY for the Federal Gulf shrimp fishery, and determines a minimum number of moratorium permits in the fishery.

Aggregate MSY and OY

After extending the duration of the Gulf shrimp moratorium permit program for another 10 years, and recognizing that the moratorium results in a passive loss of permits from the fishery, the Council decided to determine an appropriate minimum number of moratorium permits. Although the Council previously specified species specific MSYs and OYs for penaeid shrimp, the shrimp permit is not species specific. Therefore, the Council established an aggregate MSY and OY for the Federal Gulf shrimp fishery to facilitate the decision on the minimum number of moratorium permits.

Amendment 17B establishes aggregate MSY for the Federal Gulf shrimp fishery at 112,531,374 lb (51,043,373 kg), tail weight. Amendment 17B also establishes aggregate OY for the Gulf

shrimp fishery equal to 85,761,596 lb (38,900,806 kg), tail weight, which is the aggregate MSY reduced for the ecological, social, and economic factors described above.

Minimum Threshold Number of Gulf Shrimp Moratorium Permits

As noted above, as of December 31, 2016, 1,441 moratorium permits were valid or renewable, and, at the current rate of termination, the minimum threshold number of permits selected by the Council, 1,072 permits, will be reached in 24 years. This minimum threshold number of valid or renewable moratorium permits is based on the predicted number of active permitted vessels needed to achieve aggregate OY in the offshore fishery. Neither this final rule nor Amendment 17B actively removes any moratorium permits. The minimum threshold is only for purposes of monitoring changes in fishery participation and determining whether additional management measures should be established.

As specified in Amendment 17B, when the number of moratorium permits declines to 1,175, the Council will form a panel to review details of the reserve permit pool and other options for management. The panel will consist of the Council's Shrimp Advisory Panel (AP) members, Science and Statistical Committee (SSC) members, NMFS, and Council staff. This panel could make recommendations about how to utilize a Gulf shrimp

vessel permit reserve pool. The development of additional details for the pool permits will occur through a plan amendment or framework action, as appropriate, at a later date, when additional available information about the status of the Gulf shrimp fishery may be available.

Measures in this Final Rule Not Contained in Amendment 17B

In addition to the measures described in Amendment 17B, this final rule revises the coordinates for the Tortugas shrimp sanctuary in the Gulf that were established in the original Shrimp FMP; and clarifies the regulations for the harvest and possession of wild live rock in Gulf Federal waters, as established in the FMP for Coral and Coral Reefs of the Gulf of Mexico (Coral FMP).

The original FMP established the Tortugas shrimp sanctuary on May 20, 1981, which was implemented with cooperation from of the state of Florida (46 FR 27489, May 20, 1981), and which is currently defined at 50 CFR 622.55(c)(1). Since that time, there have been numerous advances in geographical positioning systems that describe the physical locations (such as lights) used to define the boundary of the Tortugas shrimp sanctuary. NMFS and the state of Florida have determined that several positions for the points defining the boundary of the sanctuary are no longer

consistent with the most recent published coordinates in Federal navigation references and current positioning systems, such as Global Positioning Systems. For example, Point N (Coon Key Light) is currently described as being located at 25°52'9" North Latitude and 81°37'9" West Longitude. However, using current technology that is reflected in recent U.S. navigational publications, NMFS and the state of Florida have noted that this point is actually located at 25°52'54" North Latitude and 81°37'56" West Longitude. Therefore, this final rule revises the positions for Points N, F, G, H, and P to reflect current technology, for consistency with the current U.S. Coast Guard Light List, the U.S. Coast Pilot, and the state of Florida regulations, and for consistency in units of position. For consistency, Florida is also updating these positions. Only these technical corrections for the coordinates are being made to the language of the regulations; this final rule does not make any substantive changes in the regulations specific to the management measures for the Tortugas shrimp sanctuary.

This final rule also revises the prohibited species regulations for wild live rock, as established in the Coral FMP. In 1994, the final rule implementing Amendment 2 to the Coral FMP established a prohibition on the harvest and possession of

wild live rock in the Gulf EEZ to begin on January 1, 1997 (59 FR 66776, December 28, 1994). The following year, the final rule implementing Amendment 3 to the Coral FMP established an annual quota for wild live rock from the Gulf EEZ to apply before the prohibition would take effect (60 FR 56533, November 9, 1995). The prohibition on harvest beginning in 1997 and the quota were originally codified at 50 CFR § 638.26(c) and (d), and the quota provision included prohibitions on harvest and possession and on sale and purchase when a quota closure occurs. When NMFS reorganized the 50 CFR part 622 regulations in 1996, the prohibition on harvest and possession and the quota provisions were moved to 50 CFR § 622.42(b)(2) and § 622.43(a)(2)(ii) (61 FR 34930, July 3, 1996). In 1999, NMFS issued a final rule for a Technical Amendment to its regulations in 50 CFR Part 622 in order to revise a variety of regulations for clarity, consistency in terms, and the removal of outdated regulations (64 FR 59125, November 2, 1999). Because the harvest of wild live rock in the Gulf was discontinued at the end of 1996, the final rule for the Technical Amendment removed several provisions related to harvest, including the quota and the associated prohibitions on harvest and possession and on sale and purchase, when a quota closure occurs. That final rule also

added a general restriction on sale and purchase of wild live rock from the Gulf EEZ, which remains in effect today. However, NMFS recently became aware that the rule inadvertently failed to also add the general restriction on the harvest and possession of wild live rock in or from the Gulf EEZ. In this final rule, NMFS corrects this error by adding the Gulf EEZ wild live rock prohibition at § 622.73(c).

Changes to Codified Text in this Final Rule

This final rule revises several table designations that are revised through Amendatory instruction 3 in the codified text. These table designations have been updated in this final rule based on updated formatting guidance provided by the Office of the Federal Register. No changes to the content in the referenced tables themselves was made in this final rule different from that in the proposed rule. In § 622.55, the table designations for paragraphs (d) and (e) use different numbers than those that were included in the proposed rule; specifically, this final rule uses numbers 1, 2 and 3 instead of numbers 3, 4 and 5, respectively, in the paragraph (d) table names, and the number 4 instead of the number 6 in the paragraph (e) table name.

Comments and Responses

NMFS received seven comments on the notice of availability and proposed rule for Amendment 17B from the public and a Federal agency. Several commenters supported the transit provision for shrimp vessels not possessing a Federal moratorium permit. A Federal agency submitted a comment stating it had no comment on Amendment 17B or the proposed rule. NMFS' responses to comments that specifically relate to the actions contained in Amendment 17B and the proposed rule are summarized below.

Comment 1: A minimum threshold number of moratorium permits should not be established because there is no need to keep unused permits available to the fishery.

Response: NMFS disagrees. The Council established the minimum threshold to provide a clear benchmark for monitoring changes in fishery participation. Since the implementation of the Federal Gulf shrimp permit moratorium in Amendment 13 to the FMP in 2006, (71 FR 56039, September 26, 2006), the fishery has experienced a passive decline in valid and renewable moratorium permits. While the permit moratorium has been successful in reducing overcapitalization and increasing CPUE in the fishery, the Council is concerned the decline in permits could continue indefinitely.

National Standard 1 of the Magnuson-Stevens Act requires that fishery management plans prevent overfishing while achieving, on a continuing basis, the OY from each fishery. In March 2016, the Council convened a working group to recommend an appropriate aggregate MSY and aggregate OY for the Gulf shrimp fishery in Federal waters. The working group recommended an aggregate MSY and also determined that there were four important factors to consider when establishing aggregate OY: landings, CPUE, sea turtle bycatch threshold, and juvenile red snapper bycatch. The working group concluded that the predicted effort and associated landings in 2009 balanced all of these criteria relative to observed levels in other years. The minimum threshold is based on the predicted number of active permitted vessels needed to attain this aggregate OY. Evaluating changes in fishery participation using this threshold will help the Council determine whether additional management measures are necessary in the future to continue to achieve OY on a continuing basis, consistent with National Standard 1.

Comment 2: If the Council and NMFS have determined that the Gulf shrimp fishery needs more effort to achieve OY, and therefore more available moratorium vessel permits, NMFS should

distribute any reserve pool permits through an auction or drawing, or sell them at the current market price.

Response: The Council and NMFS have not decided that additional moratorium vessels permits are necessary. Amendment 17B requires only that the Council form a review panel when the number of valid or renewable shrimp moratorium permits reaches 1,175, and that when the number of valid or renewable moratorium permits reaches 1,072, any moratorium permits that are not renewed within 1 year of expiration be converted to Gulf shrimp reserve pool permits. The panel would consist of the Council's Shrimp AP members, SSC members, NMFS, and Council staff. The panel would review the details of a permit pool and other management options, and provide recommendations to the Council on issuance of any reserve pool permits or how else to utilize reserve pool permits. The Council would then decide the specific details of any future actions with respect to reserve pool permits, after the opportunity for public comment consistent with both the Magnuson-Stevens Act and Administrative Procedure Act.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is consistent with Amendment

17B, the FMP, the Magnuson-Stevens Act, and other applicable law.

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

The Magnuson-Stevens Act provides the legal basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this rule. Accordingly, the Paperwork Reduction Act does not apply to this rule. A description of this rule, why it is being implemented, and the purposes of this rule are contained in the preamble and in the **SUMMARY** section of the preamble. The objectives of this rule are to establish the appropriate metrics to manage the shrimp fishery, maintain increases in catch efficiency, maintain landings at or near aggregate OY, promote economic efficiency and stability in the fishery, provide flexibility for state registered shrimp vessels, protect federally managed Gulf shrimp stocks, correct coordinates for the Tortugas sanctuary in the Federal regulations so they are consistent with published coordinates in Federal navigation references and current positioning systems, and correct the regulations to clarify that harvest and possession of wild live rock in or from the Gulf EEZ

is prohibited.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy or the public regarding the economic analysis of Amendment 17B or the certification in the proposed rule. No changes to this rule were made in response to public comments. The factual basis for the certification was published in the proposed rule and is not repeated here. Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

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

Dated: December 15, 2017.

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 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 § 622.50, revise paragraph (b)(3)(ii) and add paragraphs (b)(3)(iii) and (e) to read as follows:

§ 622.50 Permits, permit moratorium, and endorsements.

* * * * *

(b) * * *

(3) * * *

(ii) Except as provided for in paragraph (b)(3)(iii) of this section, a commercial vessel moratorium permit for Gulf shrimp that is not renewed will be terminated and will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(iii) When NMFS has determined that the number of commercial vessel moratorium permits for Gulf shrimp has reached the threshold number of permits as described in the FMP, then a commercial vessel moratorium permit for Gulf shrimp that is not renewed will be converted to a Gulf shrimp reserve pool permit and held by NMFS for possible reissuance. Gulf shrimp reserve pool permits will not be issued until eligibility requirements are developed and implemented through subsequent rulemaking.

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(e) *Gulf shrimp transit provision.* A vessel that does not have a valid Gulf shrimp moratorium permit, as described in paragraphs (a) and (b) of this section, may possess Gulf shrimp when in transit in the Gulf EEZ provided that the shrimp fishing gear is appropriately stowed. For the purposes of this paragraph, transit means non-stop progression through the Gulf EEZ. Fishing gear appropriately stowed means trawl doors and nets must be out of the water and the bag straps must be removed from the net.

3. Amend § 622.55 by:

a. Designating the table in paragraph (b) as Table 1 to paragraph (b);

b. Revising paragraph (c) (1);

c. Designating the table after paragraph (d)(2) as Table 1 to paragraph (d), the table after paragraph (d)(3) as Table 2 to paragraph (d), and the table after paragraph (d)(4) as Table 3 to paragraph (d); and

d. In paragraph (e) designating the table as Table 1 to paragraph (e).

The revision reads as follows:

§ 622.55 Closed area.

* * * * *

(c) * * *

(1) The Tortugas shrimp sanctuary is closed to trawling.

The Tortugas shrimp sanctuary is that part of the EEZ off Florida shoreward of rhumb lines connecting, in order, the following points:

Table 1 to paragraph (c)(1)

Point	North lat.	West long.
N ¹	25°52'54"	81°37'56"
F	24°50'42"	81°51'18"
G ²	24°40'00"	82°26'39"
H ³	24°34'44"	82°35'27"

P ⁴	24°35'00"	82°08'00"
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¹Coon Key Light.

²New Ground Shoals Light.

³Rebecca Shoals Light.

⁴Marquesas Keys.

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4. In § 622.73, add paragraph (c) to read as follows:

§ 622.73 Prohibited species.

* * * * *

(c) Wild live rock may not be harvested or possessed in or from the Gulf EEZ.

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