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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190823-0017]

RIN 0648-BI96

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 18

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 18 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters (Amendment 18), as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This proposed rule would modify the target reduction goal for juvenile red snapper mortality in the Federal Gulf penaeid shrimp trawl fishery, and would modify the FMP framework procedures. The purposes of Amendment 18 are to promote economic stability, to achieve optimum yield in the Federal Gulf shrimp fishery by reducing effort constraints, and to equitably distribute

the benefits from red snapper rebuilding, while continuing to protect, the Gulf red snapper stock.

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-2019-0045," 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-2019-0045, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, 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), 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 18, which includes a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <https://www.fisheries.noaa.gov/action/amendment-18-modifying-shrimp-effort-threshold>.

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727-824-5305, or email: Frank.Helies@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).

Background

The 2005 Southeast Data, Assessment, and Review (SEDAR) 7 stock assessment for Gulf red snapper identified

bycatch of red snapper by the Gulf shrimp fishery as a primary factor affecting the recovery of the stock (SEDAR 7 2005). The assessment indicated a need to reduce the red snapper bycatch mortality attributed to shrimp trawls by 74 percent, compared to levels of effort and mortality experienced during the baseline 2001-2003 period.

To end overfishing of red snapper and rebuild the stock by 2032 in compliance with the rebuilding plan, the Council developed Amendment 14 to the FMP to cap shrimp fishing effort in statistical zones 10-21 in 10-30 fathom (18.29 m - 54.86 m) depth zone of the western Gulf (*i.e.*, the area monitored for juvenile red snapper bycatch). The reduction goal for juvenile red snapper mortality was linked to a reduction in shrimp fishing effort of 74 percent below fishing effort during the baseline 2001-2003 period. The final rule implementing this reduction published on January 29, 2008 (73 FR 5117). Consistent with Amendment 14, NMFS reduced the threshold level to 67 percent of the baseline in 2011. Amendment 14 also stated that the target reduction goal should decrease to 60 percent (*i.e.*, shrimp effort could increase) by 2032 (the final year of the red snapper rebuilding plan). However,

the framework procedure to implement this reduction was never established by the Council.

The Gulf shrimp fishery has not exceeded the allowable threshold effort levels established in Amendment 14. Since the early 2000s, the Gulf shrimp fishery has experienced economic losses, primarily as a result of high fuel costs and reduced sales prices caused by competition with imported shrimp. These economic losses have resulted in the reduction in the number of vessels within the fishery, and consequently, a reduction in commercial effort, when compared to historical levels.

Through Amendment 13 to the FMP, the Council took additional steps in 2006 to cap shrimp fishing effort in response to increased levels of bycatch of species including red snapper through establishment of the Federal commercial Gulf shrimp moratorium permit (71 FR 56039; September 26, 2006). The permit moratorium was later extended until October 26, 2026, by the final rule for Amendment 17A to the FMP (81 FR 47733; July 22, 2016) (50 CFR 622.50(b)).

Gulf red snapper is no longer overfished or undergoing overfishing, and continues to rebuild, consistent with the

rebuilding plan (SEDAR 52 2018). Also, as described in Amendment 18, recent research indicates that the effect of the shrimp fishery on red snapper mortality is less than previously determined. In response to a request by the Council, the NMFS Southeast Fisheries Science Center (SEFSC) conducted an analysis to determine if effort in the shrimp fishery could increase without affecting red snapper rebuilding. The SEFSC analyzed how increases in Gulf-wide shrimp effort may affect the red snapper rebuilding plan and catch level projections from the SEDAR 52 stock assessment. This analysis of Gulf-wide effort increases was used as a proxy for changes in effort in the specific area monitored for purposes of the threshold because the results from SEDAR 52 could not be broken out into specific depth areas in particular statistical zones. The analysis indicated that increasing shrimp effort to the level considered in Amendment 14 (60 percent below the baseline years of 2001-2003) is unlikely to affect the rebuilding timeline of red snapper and would have little impact on red snapper annual catch limits.

Management Measures Contained in this Proposed Rule to Implement Amendment 18

This proposed rule would implement measures to modify the target reduction goal for juvenile red snapper mortality in the Federal Gulf shrimp trawl fishery, and would modify the FMP framework procedures.

Target Reduction Goal

Although the Gulf red snapper stock is in a rebuilding plan until 2032, it is no longer overfished or undergoing overfishing (SEDAR 52 2018). While the red snapper stock acceptable biological catch (ABC) has consistently increased under the rebuilding plan, the target reduction goal of shrimp trawl bycatch mortality on red snapper has remained the same since 2011. The higher the target reduction of shrimp trawl bycatch mortality on red snapper, the more likely that the effort threshold would be exceeded, triggering a seasonal closure for the Gulf shrimp fishery. Although a shrimp closure has not been implemented to date as a result of effort reaching the threshold, shrimp effort has come within 2 percent of the 67-percent threshold in 2014, 2016, and 2017, indicating that a future commercial shrimp closure could occur.

This proposed rule would implement a reduction for trawl bycatch mortality on red snapper to 60 percent below

the baseline effort of the years 2001-2003. As noted previously, the analysis done by the SEFSC indicates that allowing shrimp effort to increase consistent with the lower threshold would not impact the red snapper rebuilding plan and would have only a small impact on red snapper catch levels. The projected reduction in the red snapper ABC in the short term (over the next 3 years) is no more than 100,000 lb (45,359 kg) per year and, in the long term, no more than 200,000 lb (90,719 kg) per year.

FMP Framework Procedures

Amendment 18 and this proposed rule would revise the FMP framework procedure to allow changes to the target reduction goal for juvenile red snapper mortality through the standard open framework documentation process. Amendment 18 and this proposed rule would also modify the FMP abbreviated documentation process to allow specification of an ABC recommended by the Council's Scientific and Statistical Committee based on results of a new stock assessment and using the Council's ABC control rule. The changes to the framework procedure in Amendment 18 would provide for consistency across all abbreviated framework procedures under the Council's jurisdiction and

could facilitate faster management action, if necessary, for the Council by providing a more streamlined approach to modify any future effort reduction goals.

Action in this Proposed Rule Not in Amendment 18

This proposed rule would also replace the term "Letter of Authorization (LOA)" with "Gear Test Authorization (GTA)" in 50 CFR 622.53, *Bycatch Reduction Device Requirements*, paragraphs (a)(2)(i)(B) and (ii). This change was made in the Bycatch Reduction Device Testing Manual when it was revised in 2016 in order to avoid confusion because the acronym LOA is also used to refer to a Letter of Acknowledgment issued under 50 CFR 600.745(a) (81 FR 95056; December 27, 2016). The GTA is required when a person wants to test a new bycatch reduction device, and this change would make the terminology in the regulations consistent with the terminology in the manual.

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 18, 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. This rule is expected to be an Executive Order 13771 deregulatory action. The potential cost savings from this rule is estimated to be \$3.51 million in 2016 dollars, discounted at 7 percent in perpetuity.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The objectives of this proposed rule are to promote economic stability in the Federal Gulf shrimp fishery by reducing effort constraints and to equitably distribute the benefits from rebuilding, while continuing to protect the Gulf red snapper stock.

The Chief Counsel for Regulation of the Department of

Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows. Estimates in the factual basis are based on 2011-2014 data, which is the best data currently available, and all monetary estimates are in 2017 dollars, consistent with the estimates in Amendment 18.

This proposed rule, if implemented, would reduce the target reduction goal for juvenile red snapper mortality in the Gulf shrimp fishery from 67 percent to 60 percent, which would allow vessels with Gulf shrimp moratorium permits to increase their annual effort (days fished) by a maximum of 5,797 days in the 10-30 fathom (18.29 m - 54.86 m) depth zone of statistical areas 10 through 21. This proposed rule would also revise the FMP management measures framework procedure to allow changes to the target reduction goal for juvenile red snapper mortality through the abbreviated framework documentation process.

This proposed rule is expected to directly regulate businesses that possess Federal Gulf shrimp moratorium

permits and actively fish in the commercial Gulf shrimp fishing industry. From 2011 through 2014, the average number of vessels with valid Gulf shrimp moratorium permits per year was 1,572, though the number of vessels with permits declined each year during this time. As of February 11, 2019, the number of vessels with a valid or renewable Gulf shrimp moratorium permit was 1,417. From 2011 through 2014, the average number of vessels with valid permits that actively fished (*i.e.*, had landings) in the Gulf shrimp fishery was 1,140.

Because it is not currently feasible to accurately determine affiliations between businesses that possess Gulf shrimp moratorium permits, for purposes of this analysis, it is assumed each of these vessels is independently owned by a single business, which is likely an overestimate of the actual number of businesses directly regulated by this proposed rule. Thus, this proposed rule is estimated to directly regulate 1,140 businesses in the commercial Gulf shrimp fishing industry, or about 80 percent of the vessels currently possessing valid or renewable Gulf shrimp moratorium permits.

For vessels with Gulf shrimp moratorium permits,

annual gross revenue was about \$396,800 on average from 2011 through 2014, of which approximately \$357,000 came from commercial fishing operations. Net revenue for these vessels was about \$45,600, while net revenue from commercial fishing operations was approximately \$8,600. From 2011 through 2014, the greatest average annual gross revenue earned by a single vessel (business) was approximately \$1.93 million.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (80 FR 81194; December 29, 2015). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in its field of operations (including its affiliates).

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.

Reducing the target reduction goal for juvenile red snapper mortality in the Gulf shrimp fishery from 67 percent to 60 percent would allow vessels with Gulf shrimp moratorium permits to increase their annual effort by, on average, a maximum of about 5.1 days per vessel in the 10-30 fathom (18.29 m - 54.86 m) depth zone of statistical areas 10 through 21. Catch per unit of effort (CPUE) is estimated to be approximately 1,150 lb (522 kg) (tails). Thus, each vessel could increase its landings by about 5,840 lb (2,649 kg) per year on average. Average ex-vessel price per pound is estimated to be approximately \$4.36. Thus, the maximum increase in average annual gross revenue per vessel would be about \$25,470.

Net operating revenue is the best available estimate of economic profit in this industry. Net operating revenue per vessel is estimated to be about \$8,600 per year, or approximately 2.4 percent of their gross revenue from commercial fishing operations. Thus, annual net operating revenue per vessel could increase by about \$610 on average, which would represent an increase of 7 percent in annual net operating revenue per vessel. Whether vessels actually

increase their effort and thus increase landings, gross revenue, and net operating revenue by the maximum allowable amount will depend on future levels of abundance, CPUE, shrimp prices, and fuel prices, which cannot be predicted with a high level of certainty using current data and models.

Modifying the FMP framework procedure to allow changes to the target reduction goal for juvenile red snapper mortality through the standard open framework documentation process and to allow specification of an ABC through the abbreviated process are administrative actions that do not alter any requirements that directly regulate federally permitted vessels in the commercial Gulf shrimp fishing industry. Therefore, this action is not expected to affect the profitability of any businesses that possess these permits.

Based on the information above, a reduction in profits for the affected small entities is not expected as a result of this proposed rule. Thus, because there would not be a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Bycatch, Commercial, Fisheries, Fishing, Gear, Gulf, Red snapper, Shrimp.

Dated: August 23, 2019.

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 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 § 622.53, revise paragraphs (a)(2)(i)(B) and (a)(2)(ii) to read as follows:

§ 622.53 Bycatch reduction device (BRD) requirements.

(a) * * *

(2) * * *

(i) * * *

(B) After reviewing the application, the RA will determine whether to issue a Gear Test Authorization (GTA) to conduct pre-certification trials upon the vessel specified in the application. If the RA authorizes pre-certification, the RA's GTA must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification.* A person who proposes a BRD for certification for use in the Gulf EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the "Bycatch Reduction Device Testing Manual." The RA will issue a GTA to conduct certification trials upon the vessel specified in the application if the RA finds that: The operation plan submitted with the application meets the requirements of the "Bycatch Reduction Device Testing Manual"; the observer identified in the application is qualified; and the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. 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. To be certified for use in the fishery, the BRD candidate must successfully demonstrate a 30-percent reduction in total weight of finfish bycatch. In addition, the BRD candidate must satisfy the following conditions: There is at least a 50-percent probability the true reduction rate of the BRD candidate meets the bycatch reduction criterion and there is no more than a 10-percent probability the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion. If a BRD meets both conditions, consistent with the "Bycatch Reduction Device Testing Manual," NMFS, through appropriate rulemaking procedures, will add the BRD to the list of certified BRDs in paragraph (a)(3) of this section; and provide the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

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3. In § 622.55, revise paragraph (d)(1) to read as follows:

§ 622.55 Closed areas.

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(d) * * *

(1) *Procedure for determining need for and extent of closures.* Each year, in accordance with the applicable framework procedure established by the Gulf Shrimp FMP, the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (d) (2) through (d) (4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10-30 fathom area of statistical zones 10-21, compared to the 60-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001-2003 established in the FMP (which corresponds in terms of annual shrimp effort to 27,328 days fished). The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via

appropriate rulemaking. The assessment will use shrimp effort data for the most recent 12-month period available and will include a recommendation regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the Gulf Shrimp FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the **Federal Register**. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (1) will begin on the same date and time as the Texas closure, as described in paragraph (a) of this section, unless circumstances dictate otherwise.

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4. In § 622.60, revise paragraphs (a) and (b) to read as follows:

§ 622.60 Adjustment of management measures.

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(a) *Gulf penaeid shrimp*. For a species or species group: Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, quotas (including a quota of zero), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, acceptable biological catch (ABC) and ABC control rules, rebuilding plans, restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol and certified BRD specifications, and target effort reduction for juvenile red snapper mortality.

(b) *Gulf royal red shrimp*. Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs),

MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, ABC and ABC control rules, rebuilding plans, and restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), and target effort reduction for juvenile red snapper mortality.

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