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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200723-0200]

RIN 0648-BJ76

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery off the South Atlantic States; Amendment 11

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 11 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would modify the transit provisions for shrimp trawl vessels with penaeid shrimp, *i.e.*, brown, pink, and white shrimp, on board in Federal waters of the South Atlantic that have been closed to shrimp trawling to protect white shrimp as a result of cold weather events. The purpose of this proposed rule is to update the regulations to more closely align with current fishing practices, reduce the socio-economic

impacts for fishermen who transit these closed areas, and improve safety at sea while maintaining protection for overwintering white shrimp.

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-2020-0066," 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-2020-0066, 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 11, 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-11-shrimp-trawl-transit-provisions/>.

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

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic 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

Amendment 9 to the Shrimp FMP revised the criteria and procedures by which a South Atlantic state may request that NMFS implement a concurrent closure to the harvest of penaeid shrimp (brown, pink, and white shrimp) in the

exclusive economic zone (EEZ) when state waters close as a result of severe winter weather (78 FR 35571; June 13, 2013). The Shrimp FMP provides that if a state has determined there is at least an 80-percent reduction in the population of overwintering white shrimp, or that state water temperatures were 9° C (48° F) or less for at least 7 consecutive days, the state can request NMFS to close the EEZ adjacent to that state's closed waters to the harvest of penaeid shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather.

The Shrimp FMP procedures allow a state, after determining that the concurrent closure criteria have been met, to submit a letter directly to the NMFS Regional Administrator (RA) with the request and supporting data for a concurrent closure of penaeid shrimp harvest in the EEZ adjacent to the closed state waters. After a review of the request and supporting information, if the RA determines the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS would implement the closure through a notification in the **Federal Register**. The closure will usually remain effective until the ending date of the state's closure, but may be ended earlier based upon a request from the state.

Currently, shrimp trawl vessels transiting these EEZ cold weather closed areas with penaeid shrimp on board are required to stow a trawl net with a mesh size of less than 4 inches (10.2 cm) below deck. Since the most recent cold weather EEZ closures off South Carolina (83 FR 2931; January 22, 2018) and Georgia (83 FR 3404; January 25, 2018), fishermen requested that the Council update these transit provisions. Fishermen requested this change to increase their ability to transit the closed areas, as more recent vessel design changes have limited access to below deck storage. Also, requirements for a larger turtle excluder device (TED) in the trawl net to protect leatherback sea turtles have increased the size of a net that would need to be folded and stored below deck. Fishermen also stated that having to disassemble trawl gear for below deck stowage in rough sea conditions is a safety-at-sea concern. Additionally, some fishermen stated that they avoid the closed areas entirely as they were not able to meet the transit requirements.

Amendment 11 and the proposed rule are expected to update the regulations to better match the current design of the vessels in the fishery, reduce the socio-economic impact for fishermen who have difficulty transiting the cold weather closed areas under the current regulations,

and improve safety at sea for fishermen through reduced travel time around the closed areas and by not having to disassemble fishing gear in rough weather for stowage below deck, while maintaining protection for overwintering white shrimp and enforceability of the regulations for the cold weather closed areas.

Management Measures Contained in this Proposed Rule

This proposed rule would revise the transit provisions for shrimp trawl vessels with penaeid shrimp on board transiting through cold weather closed areas in Federal waters of the South Atlantic. The proposed rule would allow a vessel to transit South Atlantic cold weather closed areas while possessing penaeid shrimp provided the vessel is in transit and fishing gear is appropriately stowed. Transit would be defined as non-stop progression through the area with fishing gear appropriately stowed. Fishing gear appropriately stowed would be defined as trawl doors are in the rack (cradle) on deck, nets would be in the rigging and tied down, and the try net would be on the deck. Doors in the rack means the trawl doors are stowed in their storage racks out of the water on the vessel's deck. Nets in the rigging means the trawl nets are out of the water and are tied to the trawl vessel's rigging.

The proposed transit provision was developed and

recommended to the Council by the Council's Law Enforcement, Shrimp, and Deep-water Shrimp Advisory Panels. Doors in the rack (cradle), nets in the rigging and tied down, and try net on the deck would enable law enforcement on the water or in the air to see from a distance if fishermen are complying with the transit provisions without having to actually board the vessel, thereby saving time and reducing the safety risks associated with a vessel boarding.

The proposed rule would reduce the time needed to stow gear because fishermen would no longer need to disassemble the trawl gear (remove nets from the rigging and the doors) prior to stowing nets with mesh sizes less than 4 inches (10.2 cm) below deck. The proposed rule is expected to reduce adverse socio-economic and safety at sea impacts associated with the current transit provisions through reduced travel time around the closed areas and reduced time on the water for fishermen by not requiring gear stowage below deck.

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 11, the Shrimp 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 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 ensure transit regulations are consistent with current fishing vessel designs, reduce the adverse social and economic effects on commercial shrimp fishing businesses that have not been able to transit closed areas due to an inability to comply with the current transit regulations, improve safety at sea and the enforceability of transit regulations, and maintain protection for over-wintering white shrimp.

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. All monetary estimates in the following analysis are in 2018 dollars. This proposed rule, if implemented, would allow vessels possessing penaeid shrimp, *i.e.*, brown, white, or pink shrimp, to transit through cold weather closed areas in affected portions of the South Atlantic EEZ provided that the vessel remains in transit, gear is stowed with trawl doors in the rack, and nets in the rigging are tied down with the try net on the deck. Thus, this proposed rule is expected to directly regulate federally permitted vessels in the commercial South Atlantic shrimp fishing industry that harvest penaeid shrimp and transit through cold weather closed areas in affected portions of the South Atlantic EEZ.

Only permitted vessels that harvest penaeid shrimp would be directly regulated by this proposed rule. From 2014 through 2018, the average number of vessels with valid South Atlantic penaeid or rock shrimp permits was 594. From 2014 through 2018, the average number of vessels with valid

permits that actively fished (*i.e.*, had landings) in the South Atlantic penaeid shrimp fishery was 262. Because it is not currently feasible to accurately determine affiliations between businesses that possess South Atlantic shrimp permits, for purposes of this analysis it is assumed each of these vessels is independently owned by a single business; however, this assumption likely leads to an overestimate of the actual number of businesses directly regulated by this proposed rule. Thus, this proposed rule is estimated to directly regulate 262 businesses in the commercial South Atlantic shrimp fishing industry, or about 44 percent of the average number of businesses that held valid South Atlantic penaeid or rock shrimp permits from 2014 through 2018.

For vessels with South Atlantic penaeid or rock shrimp permits, annual gross revenue was about \$404,810 on average from 2014 through 2018, of which approximately \$169,240 (about 42 percent) came from South Atlantic shrimp landings on average. Almost all trips that harvest rock shrimp also harvest penaeid shrimp. Many vessels are also relatively dependent on revenue from other Atlantic fisheries (*e.g.*, scallops and flounder) as well revenue from the Gulf of Mexico shrimp fishery. Based on average economic return estimates from 2011 through 2014, which are the most recent

available, net cash flow for these vessels is estimated to be about \$61,770 per year on average, and net revenue from commercial fishing operations is estimated to be approximately \$35,030 per year on average from 2014 to 2018. The maximum annual gross revenue earned by a single vessel (business) was approximately \$2.6 million from 2014 to 2018.

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 (50 CFR 200.1 and 200.2). 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 262 businesses directly regulated by this proposed rule are determined to be small entities for the purpose of this analysis. Therefore, it is determined that this proposed rule will affect a substantial number of small entities.

Under the current regulations, shrimp trawl vessels transiting cold weather closed areas in the EEZ with

penaeid shrimp on board are required to stow trawl nets with a mesh size of less than 4 inches (10.2 cm) below deck. Because many vessels are now required to use larger TEDS, they also use larger nets compared to when the current transit regulations were implemented. Shrimp fishermen also typically stow their spare nets on the wheelhouse roof because there is little room below deck to stow their gear.

In addition, cold weather closures are implemented more quickly now than when the transit regulations were initially established. While the reduced time to implement closures has enhanced protection of over-wintering white shrimp, shrimp vessel captains with homeports in states north of Florida can be caught unaware if they are operating off Florida when a closure is implemented. Furthermore, shoals extending into the EEZ off Georgia and South Carolina cause transiting through state waters to be dangerous and increase the risk to the vessel and crew. Thus, traveling back to a vessel's homeport can be risky for shrimp vessels that cannot comply with the current stowage requirements.

Shrimp vessels that have been unable to store fishing gear according to the current transit regulations have been forced to land their shrimp in Florida rather than at their

homeport. Based on landings data during the most recent cold weather closures (*i.e.*, January through June of 2018), 33 vessels with homeports in states north of Florida offloaded shrimp in Florida during that time. This proposed rule would make it easier for these vessels to comply with the gear stowage requirements and, as a result, more easily return to their homeport with penaeid shrimp on board.

Although the economic effects of the proposed rule on commercial shrimp vessels cannot be quantified given available data and models, they are expected to be positive. Specifically, if vessels are able to land shrimp at their homeport with their homeport dealer, their profits would potentially increase as a result of expected cost reductions. Shrimp vessels would not incur additional offloading costs if they could offload their shrimp at their homeport dealer, and they would no longer have to absorb the costs of shipping shrimp back to their homeport dealer. Finally, shrimp vessels' fuel costs are expected to decrease as they would no longer need to take longer routes back to their homeports to avoid transiting through the cold water closed areas in the EEZ.

Based on the information above, although a substantial number of small entities would be affected by this proposed rule, this rule would not have a significant economic

impact on those entities. Because this proposed rule, if implemented, would not have 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

Commercial, Fisheries, Fishing, Shrimp, South Atlantic.

Dated: July 24, 2020.

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 § 622.206, revise paragraph (a)(2)(iii) to read as follows:

§ 622.206 Area and seasonal closures.

(a) * * *

(2) * * *

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and that the shrimp fishing gear with trawl nets having a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, is appropriately stowed. For the purposes of this paragraph (a), transit means a non-stop progression through a closed area and appropriately stowed means trawl doors out of the water and in the rack/cradle on deck, the nets must be out of the

water and in the rigging and tied down, and any try net
must be on deck.

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