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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 201002-0265]

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: Final rule.

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

ADDRESSES: 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 website 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).

On July 10, 2020, NMFS published a notice of availability for Amendment 11 and requested public comment (85 FR 41513). On August 13, 2020, NMFS published a proposed rule for Amendment 11 and requested public comment (85 FR 49355). NMFS approved Amendment 11 on September 28, 2020. The proposed rule and Amendment 11 outline the

rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 11 and implemented by this final rule is described below.

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, since 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

concern. Additionally, some fishermen stated that they avoid the closed areas entirely as they were not able to meet the transit requirements.

NMFS expects that Amendment 11 and this final rule will update the regulations to better match the current design of the vessels in the fishery, reduce the socio-economic impact for fishermen who had difficulty transiting the cold weather closed areas under the 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 Final Rule

This final rule revises 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 final rule allows a vessel to possess penaeid shrimp (brown, pink, and white shrimp) in South Atlantic cold weather closed areas provided the vessel is in transit and fishing gear is appropriately stowed. Transit will be defined as non-stop progression through the area with fishing gear

appropriately stowed. Fishing gear appropriately stowed will 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 transit provision in this final rule 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 will 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.

This final rule will reduce the time needed to stow gear because fishermen will 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. This final rule is expected to reduce adverse socio-economic and safety at sea impacts associated

with the 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.

Comments and Responses

NMFS received two comments from individuals during the public comment periods on the notice of availability and proposed rule for Amendment 11. One comment was in support of the vessel transit action. NMFS acknowledges the comment and agrees with it. The other comment was outside the scope of the action and is not responded to in this final rule. No changes were made to this final rule in response to public comment.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 11, the Shrimp 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. This final rule is considered an Executive Order 13771 deregulatory action.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A

description of this final rule, why it is being implemented, and the purposes of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble. The objectives of this final 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 overwintering white shrimp.

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 final 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 11 or the certification in the proposed rule. No changes to this final 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.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Shrimp, South Atlantic.

Dated: October 5, 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 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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