

§ 300.222 Prohibitions.

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(v) Use a fishing vessel equipped with purse seine gear to fish in the ELAPS while the fishery is closed under § 300.223(a).

(w) Set a purse seine around, near or in association with a FAD or deploy or service a FAD in contravention of § 300.223(b).

(x) Use a fishing vessel equipped with purse seine gear to fish in an area closed under § 300.223(c).

(y) Discard fish at sea in the ELAPS in contravention of § 300.223(d).

(z) Fail to carry an observer as required in § 300.223(e).

(aa) Fail to comply with the sea turtle mitigation gear and handling requirements of § 300.223(f).

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

RIN 0648-AW19

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery off the Southern Atlantic States; Amendment 7

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

ACTION: Notice of Availability of Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 7 proposes actions to rename the commercial vessel permit and the limited access endorsement; remove the requirement for a minimum level of landings for the renewal of a limited access endorsement; allow the reissue of a limited access endorsement that had been terminated because of failure to meet that minimum level; allow the reissue of an endorsement that had been terminated because of failure to renew it in a timely manner; and require the submission of economic data by participants in the fishery. The measures contained in the subject

amendment are intended to maintain a viable rock shrimp fishery in the South Atlantic region.

DATES: Comments must be received no later than 5 p.m., eastern time, on July 31, 2009.

ADDRESSES: You may submit comments on the proposed rule, identified by “0648-AW19”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Fax: 727-824-5308, Attn: Kate Michie.
- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA-NMFS-2008-0319” in the keyword search, then check the box labeled “Select to find documents accepting comments or submissions”, then select “Send a Comment or Submission.” NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 7 may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843-571-4366 or 866-SAFMC-10 (toll free); fax: 843-769-4520; e-mail: safmc@safmc.net. Amendment 7 includes an Environmental Assessment, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305; fax: 727-824-5308; e-mail: Kate.Michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The South Atlantic shrimp fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Amendment 5 to the FMP established a limited access program for the rock shrimp fishery in federal waters south of the South Carolina/Georgia state line. In 2003, endorsements were issued to vessels with at least 15,000 pounds of rock shrimp landings in any one year during 1997-2000. A vessel must land at least 15,000 pounds of rock shrimp in at least one year during any four consecutive years or the endorsement cannot be renewed. The Rock Shrimp Advisory Panel (AP) suggested these landings requirements because they were concerned about the high number of latent permit holders and vessels that fished infrequently. The limited access program criteria were set so the core group of participants would remain in the fishery while overall effort was reduced. Of the 155 vessels issued limited access endorsements, 105 are currently active, 20 are renewable, and 30 are non-renewable. Therefore, a maximum of 125 endorsements are or may become active in the rock shrimp fishery under the current permit requirements.

The need for action through Amendment 7 to the FMP is based on the desire to maintain a viable rock shrimp fishery in the South Atlantic region. The AP suggested the fishery could support no more than 150 vessels. However, fewer vessels may not fully utilize the resource. The Council has determined that actions implemented through Amendment 5 have resulted in the desired reduction in capacity and may no longer be necessary in light of changes in the rock shrimp fishery over the past six years.

The Council is primarily concerned about the 15,000-pound landing requirement because 43 vessels have not met the requirement after the first four years of the program. The AP suggested the Council consider whether this provision should be retained, revoked, revised, or possibly extended (i.e. allow vessels a longer time period to meet the requirement). In addition, the AP suggested reinstatement of endorsements lost as a result of not meeting the landings requirement.

Another issue involves the requirement for vessel owners to renew their vessel's endorsement within one year after the endorsement's expiration date to retain their eligibility. The Council is concerned about confusion over the rock shrimp limited access endorsement as implemented in the final rule for Amendment 5 versus the

limited access permit as specified in Amendment 5. In this case, some fishermen did not realize they needed both the open access permit and the limited access endorsement.

In total, 73 vessels will or have been eliminated from the rock shrimp fishery under current regulations due to not meeting the 15,000-pound requirement, the renewal period, or both. Thus 47 percent of the 155 endorsements originally issued may be eliminated if no changes are made to the current requirements and even more could be eliminated in the future for the same reasons.

In the Gulf of Mexico shrimp fishery, participants are selected each year to provide economic data to NMFS. Similar data for the South Atlantic shrimp fishery would allow NMFS to conduct analyses required by the Magnuson-Stevens Act and other applicable law. These data would also allow the Council to fully understand how proposed management measures would impact shrimp fishermen and dealers.

Amendment 7 proposes to rename the commercial vessel permit and the limited access endorsement; remove the requirement for a minimum level of landings for the renewal of a limited access endorsement; allow the reissue of a limited access endorsement that had been terminated because of failure to meet that minimum level; allow the reissue of an endorsement that had been terminated because of failure to renew it in a timely manner; and require the submission of economic data by participants in the fishery if selected.

The Council has submitted Amendment 7 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 7 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistency with the Magnuson-Stevens Act and other applicable laws, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendment 7, and the associated rationale.

Consideration of Public Comments

Public comments received by 5 p.m. eastern time, on July 31, 2009, will be considered by NMFS in the approval/disapproval decision regarding Amendment 7.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 26, 2009

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-XN22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Bottom Longline Petition

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

ACTION: Denial of a petition for emergency rulemaking.

SUMMARY: NMFS announces its decision to deny a petition for emergency or interim rulemaking under the Administrative Procedure Act (APA) and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Several non-governmental organizations (NGOs) petitioned the U.S. Department of Commerce to immediately promulgate an emergency or interim rule under the Magnuson-Stevens Act to address loggerhead sea turtle interactions in the bottom longline component of the commercial reef fish fishery in the Gulf of Mexico (Gulf). NMFS finds the emergency rulemaking is not warranted because of an emergency rule promulgated independently at the request of Gulf of Mexico Fishery Management Council (Council), which satisfies the legal mandates of the Magnuson-Stevens Act and Endangered Species Act (ESA) for protecting hardshell sea turtles.

FOR FURTHER INFORMATION CONTACT:

Peter Hood, telephone 727-824-5305, fax 727-824-5308, e-mail Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published a notice of receipt of petition for rulemaking on February 25, 2009 (74 FR 8494), and invited public comments for 30 days ending March 27, 2009. Summaries of and responses to comments are provided in the Response to Public Comments section below.

The Petitions

Oceana has petitioned the Council and NMFS to implement emergency

regulations for the bottom longline component of the Gulf reef fish fishery to reduce the high levels of loggerhead sea turtle bycatch in the fishery and to implement appropriate long-term actions, through an amendment to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), to ensure adequate protection for the loggerhead sea turtle populations. The Oceana petition specifically requests NMFS prohibit the use of reef fish bottom longline gear in waters shallower than 55 fathoms (100m) in the Gulf to protect loggerhead sea turtles within the depths where all observed takes have occurred, and that NMFS prohibit the use of squid as bait when fishing with reef fish bottom longlines in waters deeper than 55 fathoms (100m) to further reduce the possibility of takes.

Another petition from the Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Caribbean Conservation Corporation, Gulf Restoration Network, and Turtle Island Restoration Network alleges NMFS has violated the ESA by allowing the bottom longline component of the reef fish fishery to continue to operate, given evidence it has exceeded its take based on the incidental take statement (ITS) from a 2005 biological opinion (opinion). This petition requests that NMFS close the bottom longline component of the Gulf reef fish fishery immediately until NMFS has put in place sufficient measures to protect loggerhead sea turtles consistent with the guidelines of the ESA.

According to the petitions filed by the NGOs, the reasons sea turtle bycatch by reef fish bottom longlines requires emergency action are: (1) A NMFS report released in 2008 suggests hardshell sea turtle take has exceeded that allowed by the ITS from a 2005 opinion. The opinion concluded continued authorization of the Gulf reef fish fishery managed under the FMP was not likely to jeopardize the continued existence of sea turtles and smalltooth sawfish. An ITS was issued with the opinion specifying anticipated sea turtle and smalltooth sawfish take on a 3-year basis. For hardshell sea turtles, the anticipated 3-year incidental take for the bottom longline component of the Gulf reef fish fishery was 113 takes, of which 56 would be lethal. The 2008 NMFS report using observer data estimated the level of take during an 18-month period was between 411 and 1,983 hardshell sea turtles, primarily comprised of loggerhead sea turtles. This number has been revised in a 2009 NMFS report using 2008 observer data to between 463 and 2,020 hardshell sea