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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 635

RIN 0648-BI61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Atlantic Highly Migratory Species; Coral and Coral Reefs of the Gulf of Mexico; Amendment 9

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

ACTION: Notification of availability (NOA); request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan (FMP) for the Coral and Coral Reefs of the Gulf of Mexico (Amendment 9) to the FMP for review, approval, and implementation by NMFS. Amendment 9, if approved by the Secretary of Commerce, and an associated framework action to the FMP would establish new habitat areas of particular concern (HAPCs), some of which include a prohibition of the deployment of bottom-tending gear, and modify current fishing regulations in the Gulf of Mexico

(Gulf). The purpose of Amendment 9 and the framework action is to protect coral essential fish habitat in the Gulf.

DATES: Written comments on Amendment 9 must be received by [insert date 60 days after date of publication in the *FEDERAL REGISTER*].

ADDRESSES: You may submit comments on Amendment 9 identified by "NOAA-NMFS-2017-0146" 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-2017-0146, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Lauren Waters, NMFS Southeast Regional Office, 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, etc.), 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 9 and the framework action may be obtained from www.regulations.gov or the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-9-coral-habitat-areas-considered-management-gulf-mexico>. Amendment 9 includes an environmental impact statement, fishery impact statement, regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Lauren Waters, NMFS Southeast Regional Office, telephone: 727-824-5305; email: lauren.waters@noaa.gov. Karyl Brewster-Geisz, NMFS Highly Migratory Species Division, telephone: 301-427-8503; email: karyl.brewster-geisz@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit

any FMP or FMP amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP being revised by Amendment 9, and if approved, Amendment 9 would be implemented by NMFS through regulations at 50 CFR parts 622 and 635 under the authority of the Magnuson-Stevens Act.

Background

The Magnuson-Stevens Act requires that each fishery management plan identify and describe essential fish habitat (EFH) and minimize, to the extent practicable, adverse effects on these habitats caused by fishing. The FMP describes coral EFH as those areas where managed corals exist. HAPCs are a subset of EFH that meet specified criteria identified at 50 CFR 600.818(a)(8). An area in which corals exist in sufficient numbers or diversity could be designated as an HAPC if it is significantly ecologically important, habitat that is sensitive to human-induced degradation, located in an environmentally stressed

area, or considered rare in abundance. Corals and coral habitat are especially sensitive to human-induced degradation by fishing and non-fishing activities because of their unique life history. An HAPC designation by NMFS does not confer any additional specific protections to such designated areas, but can be used to focus management attention on those areas when considering measures to minimize adverse impacts from fishing.

In December 2014, the Council convened a Coral Working Group to discuss which areas in the Gulf may warrant specific protection for corals. The group identified numerous areas and existing HAPCs that may be in need of new or revised protection. In May 2015, the Council's Special Coral Scientific and Statistical Committee (SSC) and Coral Advisory Panel (AP) reviewed these areas along with members of the shrimp fishing community and recommended that the boundaries of some of the areas be refined based on available fishing information. In August 2016, the Council's Coral SSC, Coral AP, Shrimp AP, as well as Council invitees, which included royal red shrimp fishermen and bottom longline fishermen, provided input to the Council. These groups recommended that 15 areas be

designated as HAPCs in which fishing with bottom-tending gear be prohibited and 8 areas be designated without any prohibitions on. Based on this input, the Council began developing Amendment 9.

In April 2018, based on a recommendation by the Council's SSC, the Council modified the alternatives in Amendment 9 to combine three previously proposed HAPCs in the southeastern Gulf that were separate but geographically close to one another into a single slightly smaller proposed HAPC. As a result, Amendment 9 recommends 13 new HAPCs that prohibit fishing with bottom-tending gear.

During subsequent discussions associated with Amendment 9, the Council decided to refine the fishing prohibition in the proposed and existing HAPCs. The Council determined that the broad definition of "fishing" in the Magnuson-Stevens Act might unnecessarily restrict activities that would have no impact on these HAPCs. Therefore, in August 2018, the Council approved a framework action that would modify the specific prohibitions on "fishing with bottom-tending gear" to "deployment of bottom-tending gear" for existing HAPCs listed in 50 CFR 622.74, except the Tortugas marine reserves HAPC, and those

recommended in Amendment 9. Further, the Council recommended that “deploy” in this context be defined to mean that fishing gear is in contact with the water. In November 2018, the Council also requested that NMFS develop complimentary gear deployment prohibitions for Atlantic highly migratory species (HMS) fisheries in the Gulf (see 50 CFR part 635).

To provide a complete description of the proposed changes associated with Amendment 9, the discussion below includes the management actions in Amendment 9, as modified by the framework action. For ease of discussion, “Amendment 9” is used to refer to the combined actions.

Actions Contained in Amendment 9

Amendment 9 would establish 13 new HAPCs in the Gulf in which the deployment of certain bottom-tending gear would be prohibited, and establish 8 new HAPCs without fishing regulations. Amendment 9 would also prohibit the deployment of dredge fishing gear in existing Gulf HAPCs that are managed with fishing. NMFS and the Council are proposing these areas and fishing regulations to protect coral EFH in the Gulf.

HAPCs with Fishing Regulations

Amendment 9 would establish 13 HAPCs in which the deployment of specified bottom-tending gear would be prohibited. For purpose of the prohibition, fishing gear is "deployed" if any part of the gear is in contact with the water. The 13 proposed HAPCs are called West Florida Wall, Alabama Alps Reef, L & W Pinnacles and Scamp Reef (combined), Mississippi Canyon 118, Roughtongue Reef, Viosca Knoll 826, Viosca Knoll 862/906, AT 047, AT 357, Green Canyon 852, Southern Bank, Harte Bank, and within the existing Pulley Ridge boundary, and Pulley Ridge South Portion A. Pulley Ridge South Portion A is within the current Pulley Ridge South HAPC.

For these areas, excluding Pulley Ridge South Portion A, prohibitions on the following activities would apply year-round: deployment of bottom longline, bottom trawl, buoy gear as defined in 50 CFR 622.2, dredge, pot, or trap, and bottom anchoring by fishing vessels. The buoy gear defined in 50 CFR 622.2 is not the same as HMS buoy gear defined in 50 CFR 635.2. HMS buoy gear is not a bottom-tending gear.

Within the proposed Viosca Knoll 862/906 area, the proposed gear deployment prohibitions would not apply to a

fishing vessel issued a Gulf royal red shrimp endorsement, as specified in 50 CFR 622.50(c) while fishing for royal red shrimp. The areas around this proposed HAPC are used to fish for royal red shrimp. Fishing for royal red shrimp occurs in deep waters and requires a few miles of continuous forward movement to lift the nets up in the water column to the vessel. Therefore, requiring that these nets be out of the water would effectively prevent the use of an area much larger than the proposed HAPC. The exemption would allow royal red shrimp fishermen to continue the historic practice of lifting the nets off the bottom but keeping them in the water as they travel through this area.

Within the proposed Pulley Ridge South Portion A area, the following prohibitions would apply year-round: deployment of a bottom trawl, buoy gear as defined in 50 CFR 622.2, dredge, pot, or trap, and bottom anchoring by fishing vessels. Pulley Ridge South Portion A would not include a restriction on the deployment of bottom longline gear to allow fishing that has historically occurred in this area to continue. Amendment 9 would not change any other boundaries or regulations within the existing Pulley

Ridge HAPC.

The Council concluded that the exception for royal red shrimp fishing in the proposed Viosca Knoll 862/906 area and for bottom longline fishing in the proposed Pulley Ridge South Portion A area was unlikely to adversely affect the habitat. Both types of fishing have occurred in the respective areas for over a decade without causing significant harm.

Dredge Fishing Prohibition

Currently, only some existing HAPCs in the Gulf have fishing regulations that prohibit dredge fishing within the designated areas. Amendment 9 would prohibit the deployment of dredge fishing gear in all existing HAPCs in the Gulf in which other bottom-tending gear are already prohibited. Dredge fishing is most commonly used to harvest shellfish and is not known to occur in the Gulf. Therefore, this proposed management measure would not restrict any known fishing activity in the Gulf, but increase consistency of management measures across HAPCs with fishing regulations.

HAPCs without Fishing Regulations

Amendment 9 would also establish eight HAPCs with no associated fishing regulations. The Council determined that

fishing regulations in these eight proposed HAPCs are unnecessary because they have no known fishing activity that occurs within them, partly because the areas are located in very deep water (greater than 300 meters). The proposed HAPCs without fishing regulations in Amendment 9 are South John Reed, Garden Banks 299, Garden Banks 535, Green Canyon 140 and 272 (combined), Green Canyon 234, Green Canyon 354, Mississippi Canyon 751, and Mississippi Canyon 885. Although fishing impacts were not identified as a concern in these eight areas, establishing these HAPCs would inform the public that the Council considers these areas to be of particular importance and could help guide NMFS' review of non-fishing impacts during EFH consultations.

Proposed Rule for Amendment 9

A proposed rule to implement Amendment 9, as modified by the framework action, has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 9, the FMP for the Coral and Coral Reefs of the Gulf of Mexico, the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, and other

applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 9 for Secretarial review, approval, and implementation. Comments on Amendment 9 must be received by [*insert date 60 days after date of publication in the FEDERAL REGISTER*]. Comments received during the respective comment periods, whether specifically directed to Amendment 9 or to the proposed rule will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 9. Comments received after the comment periods will not be considered by NMFS in this decision.

All comments received by NMFS on Amendment 9 or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 18, 2019.

Jennifer M. Wallace,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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