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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200123-0027]

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: Final rule.

SUMMARY: NMFS issues 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 final rule will modify the target reduction goal for juvenile red snapper mortality in the Federal Gulf penaeid shrimp trawl fishery, and will 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: This final rule is effective [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

ADDRESSES: Electronic copies of Amendment 18, which includes a fishery impact statement, a Regulatory Flexibility Act 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).

On August 1, 2019, NMFS published a notice of availability for Amendment 18 and requested public comment (84 FR 37611). NMFS approved Amendment 18 on October 25,

2019. On August 29, 2019, NMFS published a proposed rule for Amendment 18 and requested public comment (84 FR 45459). The proposed rule and Amendment 18 outline the rationale for the action contained in this final rule. A summary of the management measures described in Amendment 18 and implemented by this final rule is provided below.

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 the 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. 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).

The Gulf red snapper stock 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 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 Codified in This Final Rule

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

Target Reduction Goal

This final rule implements a reduction for trawl bycatch mortality on red snapper to 60 percent below the baseline effort in the years 2001-2003. As discussed in Amendment 18 and the proposed rule, 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 established in Amendment 22 to the Reef Fish FMP (70 FR 32266; June 2, 2005), and would have only a small impact on red snapper catch levels. The projected reduction in the red snapper acceptable biological catch (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

This final rule revises the FMP framework procedure to

allow changes to the target reduction goal for juvenile red snapper mortality through the standard open framework documentation process. This final rule also modifies the FMP abbreviated documentation process to allow specification of an ABC recommended by the Council's Scientific and Statistical Committee (SSC) 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 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.

Measures in This Final Rule Not Contained in Amendment 18

This final rule replaces 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 *Bycatch Reduction Device Testing Manual* when it was revised in 2016 (81 FR 95056; December 27, 2016), and this change makes the terminology in the regulations consistent with the terminology in the manual.

Changes from the Proposed Rule

In the proposed rule, paragraph (d) (1) of § 622.55 did not specify the correct number of annual days fished associated with the 60-percent target reduction. Therefore, NMFS replaces "27,328 days fished" with the correct number of "33,124 days fished" in the regulatory text of this final rule. The entirety of the affected sentence reads as follows: "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 33,124 days fished)."

Comments and Responses

NMFS received 593 comments on Amendment 18 and the proposed rule from recreational fishers, the general public, commercial fishing organizations, and non-governmental organizations. Two comments supported the

actions in Amendment 18. The majority of comments opposed modifying the shrimp fishing effort threshold. Some comments suggested management measures to address bycatch in the shrimp trawl fishery including implementing fishing seasons, adding more gear restrictions, adjusting catch limits, and transferring management of the Gulf shrimp fishery to the Gulf states. However, as stated earlier, one of the purposes of this action is to achieve optimum yield in the Federal Gulf shrimp fishery (as required by National Standard 1) by reducing effort constraints, as well as to equitably distribute the benefits from red snapper rebuilding, while continuing to protect the Gulf red snapper stock. Thus, these comments regarding additional measures to address bycatch in the shrimp trawl fishery are beyond the scope of Amendment 18 and the proposed rule, and are not addressed further. Comments specific to Amendment 18 and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: NMFS should not modify the target reduction goal for juvenile red snapper mortality in the Federal Gulf shrimp trawl fishery because there is no scientific

information to support the conclusion that this change will not result in unacceptable levels of bycatch of fish, sea turtles, and other species.

Response: The best scientific information available indicates that this action will not have substantial impacts to levels of bycatch for fish, sea turtles, or other species. The reduction in the effort threshold in this final rule may allow more shrimp fishing effort to occur in the statistical zones 10-21 in the 10-30 fathom (18.29 m - 54.86 m) depth zone of the western Gulf. However, effort in this area has not met the current threshold and NMFS does not expect a substantial increase in Gulf-wide effort to result from reducing the threshold. As explained in Amendment 18, Gulf-wide effort in the shrimp fishery has been constrained by a permit moratorium that has been in place since 2007, as well as economic factors, such as high fuel costs and reduced prices caused by competition with imports.

In addition, the Council and NMFS have reduced finfish bycatch by requiring the use of bycatch reduction devices and, as explained in more detail in the response to Comment 2, an SEFSC analysis concluded that the maximum possible

increase in shrimp effort permitted under this rule would not impact red snapper rebuilding. Potential impacts to sea turtles have been addressed in an Endangered Species Act (ESA) formal consultation. The reduction in the effort threshold implemented through this final rule will not change the amount of sea turtle take authorized under the ESA. The fishery's impact on sea turtles is monitored by turtle excluder device (TED) compliance levels and through an effort metric separate from that addressed in this final rule.

Comment 2: Allowing an increase in shrimp trawl effort will delay recovery of the Gulf red snapper stock and result in future lower recreational catch limits.

Response: NMFS disagrees that the moderate increase in shrimp trawl effort possible through this final rule will alter the Gulf red snapper rebuilding plan time period. The SEFSC analysis contained in Amendment 18 concluded that the maximum possible increase in shrimp effort permitted under this rule would not impact red snapper rebuilding. This analysis noted that red snapper mortality due to discards during the closed red snapper recreational season is much greater than was predicted at the time the initial shrimp

effort reduction threshold was put in place in 2008. In addition, recent research shows that natural mortality of juvenile red snapper is greater than previously indicated, which means that mortality due to shrimp trawl bycatch has a smaller influence on the red snapper population than previously thought.

With respect to red snapper catch limits, NMFS agrees that a reduction in total red snapper allowable catch is predicted over the remainder of the rebuilding time period if the maximum possible increase in shrimp effort occurs. However, shrimp effort has not exceeded the current allowable level in more than 10 years. Further, the reduction of the total allowable catch is predicted to be only 100,000 lb (45,359 kg), annually over the next 3 years, or 0.66 percent of the overall quota. For the recreational private angling component, the greatest possible reduction in the catch level would be approximately 28,273 lb (12,824 kg), annually, or less than 1 percent of the Gulf-wide private-angling component quota. For the recreational for-hire component, the greatest possible reduction in the catch level would be approximately 20,727 lb (9,402 kg), annually, or less than

one percent of the for-hire component quota. However, any change in red snapper catch levels would not occur until the completion of a new stock assessment, which is scheduled to begin in 2021.

Comment 3: The proposed target reduction goal should be phased in over several fishing seasons.

Response: The Council initially considered an alternative that would have phased-in the implementation of the target reduction. However, the Council removed this alternative from further consideration because Amendment 18 also modifies the framework procedure to allow a more streamlined approach to modify any future effort reduction goals. This will allow the Council to more timely address any new information that indicates the threshold should be changed. The Council also considered an alternative that would have reduced the threshold to 63 percent rather than to 60 percent, but the SEFSC analysis concluded that there would be negligible changes in red snapper catch levels under any of the reduction targets alternatives (63, 60, and 56 percent) considered in Amendment 18. Therefore, the Council determined, and NMFS agrees, that is appropriate to reduce the threshold directly to 60 percent through this

final rule.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is consistent with Amendment 18, the 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 potential cost savings from this final rule are 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 rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this rule. Accordingly, the Paperwork Reduction Act does not apply to this rule. A description of this final rule, why it is being implemented, and the purposes of this rule are contained in the preamble and in the **SUMMARY** section of the preamble. The objectives of this rule are to promote economic stability 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.

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 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 18 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.

List of Subjects in 50 CFR Part 622

Bycatch, Commercial, Fisheries, Fishing, Framework, Gulf, Red snapper, Shrimp, Target reduction goal.

Dated: January 24, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator
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 § 622.53, 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 (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 33,124 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 (d)(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, revised 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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