

regulated or restricted, and take of Big Cypress fox squirrels is prohibited.

Substantial areas of Big Cypress fox squirrel habitat are on conservation lands or on private lands not currently threatened by development. Regulatory mechanisms exist that prevent direct take, and ERP rules provide some protection to the species' habitat. Therefore, the available information does not lead us to conclude that the species is threatened or endangered due to inadequacy of existing regulatory mechanisms.

5. *Other natural or manmade factors affecting its continued existence.* Fox squirrel reproduction varies greatly from year to year in response to food supplies. There are few data on how Big Cypress fox squirrels utilize their native habitats and on how many squirrels exist in these habitats. Based on the best available information, we do not believe that food availability is currently a threat that could lead the fox squirrel toward extinction.

Based on current information and recorded sightings, we believe Big Cypress fox squirrels cross roads and are found near them. Road mortality is documented for the Big Cypress fox squirrel, but a very large portion of this subspecies' habitat has few, if any roads, so road mortality in these areas is likely to be minimal. While road mortality may cause declines in numbers of squirrels in certain urban areas or other areas with roads, in the absence of demographic data, we have no evidence that the subspecies is threatened by road mortality.

No studies have documented the effects of pesticides on Big Cypress fox squirrels, and we have no evidence that poisoning is a major cause of mortality for big Cypress fox squirrels on golf courses. Poisoning has not been documented sufficiently for us to consider it a threat to the continued existence of the species.

Hurricanes in 1935 (Labor Day), 1960 (Donna), and 1992 (Andrew) extensively damaged squirrel habitat (Moore 1956, Brown 1971). The 1960 hurricane toppled nearly all the suitable nesting trees in Everglades City and virtually eliminated a Big Cypress fox squirrel population that inhabited a public park (Brown 1971, Humphrey and Jodice 1992). None of the three catastrophic hurricanes since 1930 impacted more than a fraction of the squirrel's range. The range of the subspecies is large enough to ensure that catastrophic hurricane damage is unlikely throughout the range in any 1 year. The Big Cypress fox squirrel and other southeastern fox squirrel subspecies have evolved under conditions of

periodic hurricane disturbances, the most important of which for fox squirrels is probably large-scale destruction of trees. Therefore, we do not believe that hurricanes are a threat to the continued existence of the Big Cypress fox squirrel.

#### Finding

We have reviewed the petition, the literature cited in the petition, other available literature and information, and consulted with species experts and other individuals familiar with the Big Cypress fox squirrel. On the basis of the best available scientific and commercial information, we find that the petitioned action is not warranted at this time. The status review revealed a lack of reliable data and information on the current status and any trend in density and abundance of Big Cypress fox squirrels in natural or seminatural habitats over time. In particular, we have no reliable information on the sizes of Big Cypress fox squirrel populations on conservation lands or private lands in southwest Florida, and the most recent information on Big Cypress fox squirrels on privately owned ranches in Lee and Hendry Counties is from a very brief survey conducted in 1989 (Wooding 1997). Studies as described in this finding and in our available literature indicate the Big Cypress fox squirrel has lost habitat in some areas to urbanization, agriculture, and mining. Nevertheless, conservation lands cover 58 percent of this subspecies' historic range, and areas of habitat exist on private ranches and other urban areas.

Based on the best available information, potential Big Cypress fox squirrel habitat appears to be more than twice what was previously estimated. In addition, the Big Cypress fox squirrel still occupies most of its historic range in southwest Florida and has shown itself to be adaptable, by residing in altered habitats such as golf courses and residential areas where native habitat is preserved, and mobile in its native habitat. Furthermore, quantitative or substantial information on the Big Cypress fox squirrel, its status, and its habitat use and requirements is lacking. Therefore, based on uncertainties about how this fox squirrel uses its native habitat and on the actual status of the Big Cypress fox squirrel population, and due to the amount of available potential habitat to this fox squirrel, we cannot conclude that the Big Cypress fox squirrel is threatened or endangered due to the destruction or curtailment of its habitat or range.

We found no evidence that the species is threatened by overutilization for commercial, recreational, or

educational purposes (i.e., poaching), nor by disease or predation. We also have no data to show that inadequacies in the existing regulatory mechanisms may threaten the survival of the Big Cypress fox squirrel. Thus, we cannot conclude that the Big Cypress fox squirrel qualifies for listing as an endangered or threatened species due to any of the five factors as defined in the Act. Because the available information does not demonstrate that the Big Cypress fox squirrel meets the definition of threatened or endangered, we find that listing the Big Cypress fox squirrel (*Sciurus niger avicennia*) as threatened is not warranted at the present time.

#### References Cited

A complete list of all references cited in this document, as well as others, is available upon request from the South Florida Ecological Services Office (see **ADDRESSES** section).

#### Author

The primary author of this document is David L. Martin (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 15, 2002.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02-4336 Filed 2-22-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 011018255-1255-01; I.D. 071001F]

RIN 0648-AO51

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 11 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 11), as prepared and submitted by the Gulf of Mexico Fishery Management Council. This proposed

rule would require owners or operators of all vessels harvesting shrimp in the exclusive economic zone of the Gulf of Mexico (Gulf EEZ) to obtain a commercial vessel permit for Gulf shrimp; prohibit the use of traps to harvest royal red shrimp in the Gulf EEZ; and prohibit the transfer of royal red shrimp at sea. The permit requirement would provide an accurate and efficient method of identifying and quantifying the number of vessels in the Gulf EEZ shrimp fishery. The prohibition of the use of traps for royal red shrimp is intended to prevent gear conflict and potential overfishing. The prohibition on transfer of royal red shrimp at sea is intended to enhance enforceability of the prohibition on use of traps in the fishery.

**DATES:** Comments must be received no later than 4:30 p.m., eastern standard time, on April 11, 2002.

**ADDRESSES:** Written comments on the proposed rule should be sent to Dr. Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of Amendment 11, which includes an environmental assessment and regulatory impact review (RIR), should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; telephone: 813-228-2815; fax: 813-225-7015; e-mail: gulfcouncil@gulfcouncil.org. Copies of the Gulf of Mexico Fishery Management Council's Minority Report on Amendment 11 may also be obtained from the same address.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Steve.Branstetter@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The fishery for shrimp in the Gulf EEZ is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council), approved by NMFS, and implemented under the authority of the

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

### **Need for a Federal Commercial Vessel Permit for Gulf Shrimp**

The shrimp fishery is the largest fishery in terms of numbers of fishing vessels and participants in the Gulf of Mexico, but is one of the few federally managed fisheries with no fishing permit requirement. Some data collection and vessel identification systems exist through either state or Federal programs, but none is comprehensive or specifically identifies shrimp fishing vessels that fish in the EEZ. NMFS maintains two record systems, each with a limited purpose. The Shrimp Landing File (SLF) contains landings by individual shrimp vessels over the course of a year. The Vessel Operating Units File (VOUF) is similar, but the purpose of this file is to maintain a record of vessel characteristics (i.e., length, age, horsepower, etc.) for all active shrimp fishing vessels during a particular year. Neither the SLF nor VOUF contains contact information for the owner, and neither indicates whether the vessel fishes in the Gulf of Mexico EEZ. Similarly, state licensing files list active fishing vessels, but these files do not provide information on whether vessels fish in state or Federal waters, or both. In some instances, these vessel licenses are not specific to a fishery; thus, they do not readily identify shrimp fishing vessels as opposed to vessels operating in other fisheries. Trip ticket systems are not used by all the states, nor is the data collection uniform among those states that do have a trip ticket system. Although the GulfFIN program, as administered by the Gulf States Marine Fisheries Commission, will standardize this information, this program is still under development. NMFS has supported the development of a national Vessel Identification System under the auspices of the US Coast Guard (USCG). However, the USCG is still reviewing options to implement this system, and its implementation is not anticipated in the near future.

Because existing vessel identification systems are not comprehensive nor do they specifically identify shrimp fishing vessels that fish in the EEZ, the Council concluded that a Federal vessel permit requirement for the shrimp fishery of the Gulf of Mexico was necessary to identify accurately the universe of vessels that fish for shrimp in the Gulf of Mexico EEZ and, thereby, to facilitate scientific assessments of annual fishing effort. The database would provide an

enumeration of the vessels that would be authorized to fish for shrimp in the EEZ on an annual basis. A Federal permit system is a prerequisite tool for designing a statistically robust data collection program to canvass or randomly sample the activities of the shrimp fishery in the EEZ. Previous data collection programs were hampered by the inability to specifically identify the universe of vessels fishing for shrimp in the Gulf EEZ. The results of NMFS' 1992-1996 incidental harvest research program, as well as the Council's subsequent actions implemented in Amendment 9, which were based on the results of that program, have been questioned because the sampling was not conducted through a stratified random sampling effort. Similarly, during the summer 1998 Red Snapper/Shrimp Research Program, the Southeast Fisheries Science Center (SEFSC) attempted to implement a trial logbook program. That attempt was only partially successful because it failed to reach many of the intended participants in a timely manner. Without information to identify readily the participants in the fishery, sampling programs have depended on non-random sampling. A more robust analysis of the shrimp fishery is only possible through stratified random sampling of the existing fleet, and that kind of sampling is only possible where the specific vessels are readily identifiable. The permit system will serve as a source to identify a representative stratified random sample of shrimp vessels. Once the Agency has more accurately determined the number of fishery participants through the permit system, sample groups will be used to conduct research to collect biological, fishery, social, and economic data on the fishery, through use of observers, vessel monitoring systems, or other data collection methods. Anticipated improvements from the permitting and subsequent sampling procedures would include more precise red snapper bycatch estimation and more accurate determinations of economic and community impacts. Information collected under such future programs would aid in the formulation of sound management measures for the shrimp fishery and those finfish fisheries that are affected by bycatch and bycatch mortality arising from the shrimp fishery. Therefore, the Council concluded that a requirement for a Federal commercial vessel permit for the shrimp fishery in the Gulf EEZ should enhance the capability to achieve and maintain sustainable fisheries in the Gulf of Mexico.

Two Council members submitted a minority report expressing opposition to the implementation of Amendment 11. Their opposition was based on their belief that the permit requirements in Amendment 11 are inconsistent with national standards 5, 6, 7, and 8 of the Magnuson-Stevens Act, are devoid of adequate rationale, and will result in additional bureaucracy and costs. Copies of the minority report are available from the Council (see **ADDRESSES**).

### **Commercial Vessel Permit Requirement**

This proposed rule would require an owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or possesses shrimp in or from the Gulf EEZ to have a valid commercial vessel permit for Gulf shrimp on board. If Amendment 11 is approved, the permit requirement would become effective 90 days after the effective date of the final rule implementing the amendment. No qualifying criteria (e.g., documentation of landings, earned income from fishing, or other participation requirements) are proposed for the Gulf shrimp permit. If the permit requirement is approved, it would provide an accurate identification of the universe of vessels authorized to fish for shrimp in the Gulf EEZ. Establishing this known universe of vessels would provide the basis for future development of additional data collection programs to evaluate, more comprehensively, the biological, economic, and social characteristics of the fishery. When this information becomes available, the Council would be in a better position to evaluate whether any restrictive criteria for participation in the shrimp fishery should be considered in the future.

### **Permit Procedures**

Required permitting procedures that apply to all Magnuson-Stevens Act permits issued by the Administrator, Southeast Region, NMFS, (RA) and that would apply to a Gulf shrimp permit are specified in 50 CFR 622.4. These procedures include requirements related to the following: application, fees, initial issuance, transferability, permit renewal, permit display, and other permit-related provisions. Basic requirements and procedures are summarized here for the convenience of the reader.

#### *Permit Application*

Permit application forms would be available from the RA. Completed application forms would have to be submitted to the RA at least 30 days prior to the date on which the applicant requests to have the permit made

effective. However, given the large volume of permit applications anticipated for the Gulf shrimp fishery, NMFS would strongly encourage applicants to submit completed applications as soon as possible after publication of the final rule implementing Amendment 11. Any delay in submitting a completed application could result in an inability to issue a permit prior to the deadline for the permit requirement and, thus, preclude legal fishing for Gulf shrimp until the permit is issued.

The application for a commercial vessel permit would have to be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) or operator of the vessel. All vessel permits would be mailed to owners, whether the applicant is an owner or an operator. An applicant would have to provide the following:

- (1) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.
- (2) Vessel name and official number.
- (3) Name, address, telephone number, and other identifying information of the vessel owner and of the applicant, if other than the owner.
- (4) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.
- (5) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

#### *Permit Fees*

A fee would be charged for each application for a permit and for each request for replacement of such permit. The amount of each fee would be calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and would be specified with each application form. The appropriate fee would have to accompany each permit application or request for permit replacement.

#### *Initial Permit Issuance*

The RA would issue an initial permit at any time to an applicant if the application was complete. An application would be complete when all requested forms, information, and documentation had been received. Upon receipt of an incomplete application, the RA would notify the applicant of the deficiency. If the applicant failed to correct the deficiency within 30 days of

the date of the RA's letter of notification, the application would be considered abandoned.

#### *Duration*

A permit would remain valid for the period specified on it unless it was revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or unless the vessel was sold.

#### *Transfer*

A vessel permit for Gulf shrimp would not be transferable or assignable. A person who acquired a vessel and desired to conduct activities for which a Gulf shrimp vessel permit would be required would need to apply for a permit. If the acquired vessel was already permitted, the application would need to be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

#### *Renewal*

Although a permit would be issued on an annual basis, an application for its renewal would be required only every 2 years. In the interim years, renewal would be automatic (without application) for a vessel owner who had met the specific requirements for the permit, had submitted all reports required under the Magnuson-Stevens Act, and was not subject to a permit sanction or denial of a permit application in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904. An owner whose permit was expiring would be mailed a notification by the RA approximately 2 months prior to its expiration. That notification would advise the status of the renewal. That is, the notification would advise that the renewal would be issued without further action by the owner (automatic renewal); that the permit was ineligible for automatic renewal; or that a new application would be required.

If the RA's notification indicates that the owner's permit would be eligible for automatic renewal, the RA would mail the automatically renewed permit approximately 1 month prior to expiration of the old permit.

If the RA's notification indicates that the owner's permit would be ineligible for automatic renewal, the notification would specify the reasons and would provide an opportunity for correction of any deficiencies. If the owner or dealer did not correct such deficiencies within 60 days after the date of the RA's notification, the renewal would be considered abandoned.

If the RA's notification indicates that a new application would be required, the notification would include a preprinted renewal application. If the RA receives an incomplete application, the RA would notify the applicant of the deficiency. If the applicant failed to correct the deficiency within 30 days of the date of the RA's letter of notification, the application would be considered abandoned.

A vessel owner or dealer who did not receive a notification from the RA regarding status of renewal of a permit by 45 days prior to expiration of the current permit would have to contact the RA.

#### *Display*

The vessel permit would have to be carried on board the vessel. The operator of a vessel would have to present the permit for inspection upon the request of an authorized officer.

#### **Prohibition on the Use of Traps in the Royal Red Shrimp Fishery and on Transfer of Royal Red Shrimp At Sea**

Royal red shrimp have been a small component of the Gulf of Mexico shrimp fishery since the early 1960s, and are traditionally harvested using modified shrimp trawls at depths exceeding 100 fathoms (183 meters). The Council concluded that allowing trap gear in this fishery would likely lead to gear conflicts and could lead to overfishing. An emergency interim rule prohibiting the use of trap gear in the royal red shrimp fishery within the EEZ of the Gulf of Mexico was promulgated on September 19, 2000, (65 FR 56500), and extended until September 14, 2001 (66 FR 14862, March 14, 2001). The Council requested that NMFS take that emergency action until regulations could be implemented through the proposed amendment to the FMP.

The intended effect of the proposed rule to prohibit the use of traps in this fishery is to prevent gear conflict that could compromise vessel safety and to prevent overfishing in the royal red shrimp fishery. Gear conflicts would otherwise be likely to occur between the traditional trawl fishery and the proposed trap line fishery on the royal red shrimp fishing grounds. This could result in substantial damage and loss of fishing gears and an increase in cost for participants in the fishery. Gear conflicts also would introduce vessel safety issues because of the depth of the fishing effort, the weight of the deployed gears (especially if they become tangled), and the fact that the fishing grounds are far offshore. Additionally, the introduction of new fishing effort could lead to overfishing

of the resource. Since 1993, landings from the traditional trawl fishery have ranged from 200,000 to 335,000 lb (90,719 to 151,953 kg), which is approaching the maximum sustainable yield of 392,000 lb (177,808 kg) for the fishery. The prohibition of the transfer of royal red shrimp in the Gulf EEZ and of royal red shrimp taken in the Gulf EEZ regardless of where the transfer takes place is necessary to enhance the enforceability of the prohibition of the use of traps in the fishery.

#### **Additional Information**

Additional background and rationale for the measures discussed here are contained in Amendment 11, the availability of which was announced in the **Federal Register** (66 FR 37634; July 19, 2001). The public comment period on Amendment 11 expired on September 17, 2001. All comments received on Amendment 11 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

#### **Classification**

On October 17, 2001, NMFS approved Amendment 11 based on a determination that it was consistent with the national standards of the Magnuson-Stevens Act and other applicable law. In making that determination, NMFS took into account the data, views, and comments received during the comment period on Amendment 11.

This proposed rule has been determined to be significant for purposes of Executive Order 12866 because of its controversial nature. Copies of the RIR are available (see **ADDRESSES**).

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 proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The Magnuson-Stevens Act provides the statutory basis for the rule. The proposed rule would: require all vessels (including boats) harvesting shrimp in the Gulf EEZ to obtain a commercial vessel permit for Gulf shrimp; prohibit the use of traps to harvest royal red shrimp in the Gulf EEZ; and prohibit the transfer of royal red shrimp at sea.

This permit requirement is needed to identify and quantify the number of vessels in the shrimp fishery of the Gulf EEZ. Under the existing FMP, shrimp vessels in the Gulf EEZ are not required to have federal permits. Consequently, the only means of determining the numbers of vessels operating in the Gulf EEZ are through NMFS' shrimp landings file (SLF), NMFS' vessel operating units file (VOUF), and state license files. Some states

require licenses for shrimp vessels while others only license the activity (commercial landings). These data sources do not provide an accurate and direct means of determining the numbers of vessels participating in the shrimp fishery in the Gulf EEZ.

Mandatory vessel permitting proved to be an effective way of obtaining information on the number of potentially active vessels and participants in other commercial and for-hire fisheries operating in the Gulf EEZ, including the reef fish and coastal migratory pelagics fisheries. These data combined with logbook reporting, observer reports, and other surveys provided managers with essential information on effort, catch, bycatch, and other important parameters regarding these fisheries. Having a known universe of vessels operating in the Gulf EEZ shrimp fishery will help provide the same opportunities for scientists and managers to collect data on effort, catch, bycatch, and other important parameters of both targeted shrimp stocks, as well as bycatch species that may or may not be under separate management regimes. Presently, without permits, the numbers of vessels that operate in the Gulf EEZ shrimp fishery can only be estimated using the SLF, VOUF, and/or state license files.

The royal red shrimp fishery in the Gulf traditionally operated as a trawl fishery. Traps are not included on the list of allowable gear for the royal red shrimp fishery, or the penaeid shrimp fishery in general. However, a recent request to allow trap gear was considered and denied due to potential gear conflicts and the increased possibility of exceeding maximum sustainable yield as a result of this new effort. The prohibition on the use of traps was implemented through an emergency interim rule which expired on September 14, 2001. Consequently, unless a more permanent prohibition through a plan amendment is implemented, future use of trap gear could occur legally under 50 CFR, Part 600.747. The prohibition on the transfer of royal red shrimp at sea is intended to enhance enforceability of the prohibition of the use of traps in the fishery. The transfer prohibition is not expected to impact fishery participants using authorized gear, i.e. trawls, since transfer at sea has not been and is not a customary practice in the royal red shrimp fishery.

Generally, a fish-harvesting business is considered a small business if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of \$3.0 million. Although there are several fleet operations in the Gulf shrimp fishery, their actual number is not known, in part due to the lack of permit data. Considering the low likelihood that these operations are dominant in the harvesting sector of the shrimp fishery, the gross receipts criterion may be used to define a small business in the shrimp fishery.

Based on SLF and VOUF, the number of shrimp vessels in the Gulf ranges from approximately 3,500 to 5,000. State license files indicate that there are 13,163 shrimp boats in the Gulf. The proposed Gulf shrimp vessel permit would be required on all shrimp vessels fishing in the EEZ. This would affect practically all shrimp vessels

and at least some shrimp boats. The number of affected shrimp boats is unknown, but will ultimately depend on the number of boats that prosecute the EEZ component of the fishery.

Ward et al. (1995) reported that the average gross revenues for shrimp vessels are approximately \$82,000 (converted to 1999 prices, based on the producer price index (PPI) for all commodities). One standard deviation from this average provides a range of \$16,000 to \$425,000. Considering that even the upper limit of the revenue range is well below the \$3.0 million threshold, all shrimp vessel operations, and thus undoubtedly all shrimp boat operations as well, are small business entities. Thus, the substantial number criterion would be met. Within these small entities, significant variations of revenues occur by size of vessels and by home port state. Ward et al. (1995) estimated that average annual revenues of shrimp vessels in the Gulf (as adjusted by the PPI in 1999) by length of vessel are: \$4,000 for vessels less than 25 ft (7.6 m), \$23,000 for vessels between 25 and 50 ft (7.6 and 15.2 m) and, \$198,000 for vessels greater than 50 ft (15.2 m). Broken down by homeport state, the average annual revenues of shrimp vessels are: \$112,000 for Alabama, \$106,000 for Florida, \$9,000 for Louisiana, \$45,000 for Mississippi, and \$192,000 for Texas.

For purposes of NMFS' rules, the determination whether a "significant economic impact" results is determined by examining two issues: disproportionality and profitability. To determine disproportionate impacts, the pertinent question is whether the regulations place a substantial number of small entities at a significant competitive disadvantage compared to large entities. All the commercial entities potentially affected by the proposed rule are considered small entities so that the issue of disproportionality does not arise in the present case. The pertinent question in determining profitability is whether the regulations significantly reduce profit for a substantial number of small entities. Ward et al. (1995) estimated the profits (total revenues less total costs) of shrimp vessels in the Gulf. The average net revenues (profits) for a shrimp vessel in the Gulf are approximately \$12,000 (converted to 1999 prices, based on the producer price index (PPI) for all commodities). Average profit for vessels by vessel length are: \$1,598 for vessels less than 25 ft (7.6 m), \$7,949 for vessels between 25 and 50 ft (7.6 and 15.2 m), and \$8,457 for vessels greater than 50 ft (15.2 m). Broken down by homeport state, average profits are: \$4,769 for Alabama, \$29,832 for Florida, \$3,286 for Louisiana, \$13,876 for Mississippi, and \$11,452 for Texas. The cost of a vessel permit is \$50. Thus, the permit costs as a percent of profit would be approximately 0.4 percent per vessel on average. By vessel size category, permit costs as a percentage of profits would be 3.1 percent for vessels less than 25 ft (7.6 m), 0.6 percent for vessels between 25 and 50 ft (7.6 and 15.2 m), and 0.6 percent for vessels greater than 50 ft (15.2 m). By homeport state, permit costs as a percentage of profits would be 1.0 percent for Alabama vessels, 0.2 percent for Florida vessels, 1.5 percent for Louisiana vessels, 0.4

percent for Mississippi vessels, and 0.4 percent for Texas vessels.

Traps have not been an allowable gear in the royal red shrimp fishery prior to this rule, due to, first, their exclusion from the allowable gear list for this fishery and, second, an emergency interim rule prohibiting their use that expired on September 14, 2001. Although only one fisherman has petitioned to use trap gear in the royal red shrimp fishery, designation of the gear as allowable for this fishery, which will occur automatically without promulgation of this rule, would make it available to all fishermen. It is indeterminate, however, how many fishermen might elect to utilize the gear or how said use would affect the economic performance of the fishing operations. Although it can probably be presumed that the petitioning fisherman may have intended to test the gear, extension of same to any portion of other fishermen is without empirical basis. Further, in the absence of economic data on the use of trap gear in this fishery, it is not possible to precisely characterize potential foregone opportunity. The historical lack of interest in the use of trap gear in the royal red shrimp fishery, as evidenced by the single petition for allowance, suggests that the economic rationale for its use is not strong, leading to a conclusion that continued prohibition would not generate significant adverse economic impacts in terms of foregone opportunity. Further, although it is not known whether the petitioning fisherman made investments in the gear prior to either its approval or testing, significant investment prior to such would not have been financially sound and is unlikely to have occurred. With regard to transfer at sea, since this practice does not occur in the royal red shrimp fishery, this prohibition will not generate any adverse impacts. The permit costs, \$50.00 per vessel, and burden time, \$4.00 per vessel, (estimated at 20 minutes per permit application) are the only costs imposed by the permitting requirement. The estimated vessel cost is \$54.00 per vessel and \$378,000 for the industry for the first year. As such, the proposed rule would not effect a significant reduction in vessel profits. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis was not required.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA--namely, a requirement to submit an application for a Gulf shrimp commercial vessel permit and a vessel identification requirement. In addition, NMFS intends to revise the

Multiple Fishery Vessel Application (Application) that will be used for the Gulf shrimp permit and is used for other fishery permits issued by the NMFS Southeast Regional Office. NMFS intends to add data fields for the applicant's birth date, street address, and county; vessel net tonnage; vessel gross tonnage, and vessel hull identification number. The permit application requirement and the new application data field requirements have been submitted to OMB for approval. The public reporting burden for the collection of information related to the Gulf shrimp permit application and the additional data elements on the Application is estimated to average 20 minutes per response. This estimate of the public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The vessel identification requirement was previously approved by OMB under control number 0648-0358, with an estimated response time of 45 minutes total per vessel.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 19, 2002.

**Rebecca Lent,**

*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, 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 § 622.2, the definition of “Shrimp” is revised to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Shrimp* means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus*.

(2) White shrimp, *Litopenaeus setiferus*.

(3) Pink shrimp, *Farfantepenaeus duorarum*.

(4) Royal red shrimp, *Hymenopenaeus robustus*.

(5) Rock shrimp, *Sicyonia brevirostris*.

(6) Seabob shrimp, *Xiphopenaeus kroyeri*.

\* \* \* \* \*

3. In § 622.4, paragraph (a)(2)(xi) is added to read as follows:

**§ 622.4 Permits and fees.**

(a) \* \* \*

(2) \* \* \*

(xi) *Gulf shrimp*. For a person aboard a vessel to fish for shrimp in the Gulf EEZ or possess shrimp in or from the Gulf EEZ, a valid commercial vessel permit for Gulf shrimp must have been issued to the vessel and must be on board.

\* \* \* \* \*

4. In § 622.6, paragraph (a)(1)(i) introductory text is revised to read as follows:

**§ 622.6 Vessel and gear identification.**

(a) \* \* \*

(1) \* \* \*

(i) *Official number*. A vessel for which a permit has been issued under § 622.4 must display its official number--

\* \* \* \* \*

5. In § 622.31, paragraph (k) is added to read as follows:

**§ 622.31 Prohibited gear and methods.**

\* \* \* \* \*

(k) *Traps for royal red shrimp in the Gulf EEZ and transfer at sea*. A trap may not be used to fish for royal red shrimp in the Gulf EEZ. Possession of a trap and royal red shrimp on board a vessel is prohibited. A trap used to fish for royal red shrimp in the Gulf EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. In addition, royal red shrimp cannot be transferred in the Gulf EEZ, and royal red shrimp taken in the Gulf EEZ cannot be transferred at sea regardless of where the transfer takes place.

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