DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 020325070–2070–01; I.D. 031202B]

RIN 0648–AP82

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Suspension of the 2002 Texas Closure

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure contained in the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS proposes to suspend, for the 2002 fishing year, the seasonal prohibition of shrimp trawling in the exclusive economic zone (EEZ) off Texas (the Texas closure). This action would enable fishermen to harvest marketable-sized shrimp from an area that would otherwise be closed. The intended effect of this action is to increase revenues to the shrimping industry and to mitigate short-term adverse impacts associated with additional closures of state waters off Texas.

DATES: Comments must be received no later than 4:30 p.m., eastern standard time, on April 22, 2002.

ADDRESSES: Written comments on the proposed rule should be sent to Dr. Steven 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 the environmental assessment, regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA) should be sent to the same address.

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 of Mexico EEZ is managed under the 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.

Background

Under the FMP, the Texas closure was established as part of a cooperative closure with the State of Texas that also involves the seasonal closure of Texas' state waters to trawling. The Texas closure is established by regulations at 50 CFR 622.34(h) to be from 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, each year. During that time frame, trawling (except for trawling for royal red shrimp beyond the 100–fathom (183–m) contour) is prohibited in the EEZ off Texas. In accordance with the FMP, the NMFS Southeast Regional Administrator (RA) may adjust the closing and/or opening date of the Texas closure, but the closure may not exceed 90 days nor be less than 45 days. Additionally, the framework procedures established in the FMP, and modified in Amendment 5 in 1991, provide the RA with the opportunity, after determining that benefits may be increased or adverse impacts decreased, to either: (1) modify the geographical scope of the extent of the Texas closure, or (2) eliminate the Texas closure for one season.

The intent behind the cooperative closures off Texas, in both state and Federal waters, has been to enhance yield in the fishery by deferring the harvest of shrimp until they reach a larger, more valuable size. In all years that cooperative seasonal closures have been implemented off Texas, simulation analyses have demonstrated a resulting increase in yield per recruit, thus meeting the Council's objectives of enhancing economic value to the shrimp fishery. However, over time, several other regulations have been implemented that, according to the shrimp industry, have reduced the benefits (and need for) the Texas closure.

The State of Texas recently prohibited shrimping at certain times, within a large area of its territorial waters. The Northern Shrimp Zone, extending from Corpus Christi Pass (27°40′34″ N. lat.) to the Louisiana state boundary, is closed year-round to night-time shrimping within 5 nautical miles of the coastline, and it is also closed during the day from December 1 through February 15 within 5 nautical miles of the coastline. The Southern Shrimp Zone, extending south from Corpus Christi Pass (27°40′34″ N. lat.) to the Mexican border and within 5 nautical miles of the coastline, is closed year-round to all night-time shrimp trawling, and from December 1 through May 15, the area is entirely closed to shrimp trawling. Brown and pink shrimp are fished by trawling at night; thus, the year-round nighttime closures preclude brown shrimp fishing in the nearshore Texas waters. Pink shrimp are only found off southern Texas, and more commonly occur in nearshore waters; thus, the nighttime closure entirely eliminates the pink shrimp fishery from Texas waters. The daytime closure of the Northern Shrimp Zone from December 1 through February 15 and the Southern Shrimp Zone closure from December 1 through May 15 also restrict the fishery from harvesting white shrimp that are found in nearshore waters during that time frame. Texas implemented these closures to protect shrimp stocks, with an ancillary benefit of reducing shrimp trawler interactions with endangered sea turtles, especially Kemp's Ridley sea turtles, which are known to frequent this area. These closures, in combination with the complete closure of Texas territorial waters from May 15 through July 15, result in much of Texas' state waters being closed to shrimping from December 1 through July 15. Should the Federal 200-nautical mile Texas closure be imposed from May 15 through July 15, shrimp vessels would be effectively excluded from fishing in an even greater portion of the western Gulf of Mexico between May 15 and July 15.

Analysis and Justification

At its January meeting each year, the Council reviews the results (e.g., benefits and impacts) of the Texas closure for the preceding year. At its January 2002 meeting, the Council received public testimony identifying several issues regarding the Texas closure. The Council heard testimony that there is now a surplus of large-sized shrimp (26–30 and 31–35 count-per-pound tails) in cold storage and that imports of shrimp into Texas had increased substantially in 2001 to 775 million lb (352 million kg) compared to 620 million lb (281 million kg) in 2000. Thus, there is a lesser demand and price for larger shrimp, and a greater opportunity for the industry to market their catch if the shrimp are a smaller size. Participants in the shrimp fishery indicated that the economic impacts imposed by other state-mandated closures off Texas would be exacerbated by an additional closure of the EEZ off Texas, which would result in the capture of even more large shrimp. Therefore, the industry would prefer to suspend the Texas closure for 2002, and

have the opportunity to harvest smaller shrimp.

Biological and Fishery Impacts

The distribution of shrimp catch from Texas offshore waters to various ports throughout the Gulf of Mexico has not significantly changed since 1977. For Texas, lower Texas ports land approximately 35 percent of the shrimp, followed by middle Texas ports at 30 percent, and upper Texas ports land about 20 percent of the shrimp; the remainder of Texas-caught shrimp are landed in other states. This relationship has held true during full 200–nautical mile closures (1981–1985 and 1989–2001) and during 15-nautical mile closures (1986–1988). During 2001, about 86 percent of the shrimp taken from Texas waters (statistical zones 18–21) were landed at Texas ports. Similarly, for the May through August period, the landings in both Texas and Louisiana have remained constant, with an average of about 33 percent of all shrimp landings occurring in Texas and 47 percent of all landings occurring in Louisiana.

Penaeid shrimp resources in the Gulf of Mexico are not overfished nor is overfishing occurring. Brown shrimp are, in general, an annual crop. The size of the stock and recruitment are more likely influenced by natural environmental factors (temperature, salinity, rainfall) than by fishing mortality. Previous NMFS' studies concluded that seasonal and area closures do not diminish overall effort; such closures defer or redirect effort where target and bycatch species are still vulnerable to the gear. These studies documented that shrimp effort reduction due to the 200–nautical mile closure versus the 15–nautical mile closures implemented in the late 1980s was less than 3 percent.

In evaluating the differences between a full 200–nautical mile closure and the 15–nautical mile closures of 1986-1988, NMFS concluded that any increases in catch-per-unit effort that were shown during the initial full closure years (1981–1985) were lost during the limited closure years. Thus, the potential increase in harvest of larger shrimp was exchanged for access to offshore waters in May and June during those 3 years.

Thus, the RA has determined that the proposed action would not impact the stocks of target and non-target species. The species that are vulnerable to the fishery have distributional ranges that encompass areas much broader than the EEZ off Texas, and, thus, fishing mortality on the various stocks would remain relatively constant.

Economic and Social Impacts

Assuming 1996–2000 conditions persist in the fishery for the 2002 fishing season, the suspension of the Texas closure in the EEZ is forecast to result in a net increase of approximately $15–$19 million in discounted total producer surplus, defined as total revenues minus total variable costs, for the 2002 fishing season of the Gulf of Mexico shrimp fishery. Total harvest and revenues are forecast to decline, consistent with the intent of the original closure, i.e., that the closure would allow larger shrimp to be harvested, producing greater revenues. The reverse, therefore, would be expected upon forgoing the closure. However, producer surplus increases even though revenues decline because of a redistribution of benefits within the fishery. Over the course of the entire year and over the entire Gulf of Mexico, catches shift toward mid-depth waters (0–10 fathoms)(0–18.3 m) and away from deeper waters (>10 fathoms)(>18.3 m), resulting from increased participation by smaller boats and decreased participation by larger boats. Since fishing effort by smaller boats is less costly than that of larger boats, variable costs decline. The reduction in variable costs is more than sufficient to compensate for the lost revenues; hence, the increase in industry producer surplus.

The suspension of the 2002 Texas closure is projected to increase full-time equivalent (FTE) vessels by approximately 2,800. This number, however, does not represent actual individual vessels and instead represent a standardized unit of effort necessary to run the projection model. The increase indicates that core participating vessels in the fishery will have the opportunity to increase their level of participation (become less part time).

The effects of suspending the closure in the EEZ on consumer prices is unknown due to the absence of suitable price models. The action is projected to affect dockside (ex-vessel) prices by 1–3 percent.

The increased participation opportunities by small boats will enhance employment opportunities for this sector and associated industries. From a crew-day perspective (days fished times the average number of crew per vessel), the small vessel fleet will gain approximately 119,000 crew-day opportunities (57,000 fishing days times 2.1 crew/day) as a result of not implementing the closure (under the 100–percent large shrimp price scenario). The converse, of course, will be true for the large boats. Although the shrimp fishery overall is dominated by small boats, since the large boats carry more crew per vessel, total crew-day opportunities in the large vessel fleet have exceeded those in the small vessel fleet under the closure. Allowing the EEZ off Texas to remain open would be expected to reduce large vessel crew-day opportunities by approximately 219,000 days (62,500 days times 3.5 crew/day). Significant income may accrue to these large vessel participants since they are typically paid as a percentage of gross revenues. The net outcome of the small vessel gains and large vessel losses on employment opportunities is unknown, though the preponderance of small vessels would suggest that the small vessel fishery employs more individuals, and the net effect of allowing the EEZ off Texas to remain open would be fewer individuals seeking other employment when not shrimping. Potential enhanced employment opportunities and increased producer surplus should enhance community structures associated with the shrimp fishery. Regional variances are likely to occur.

Effects on Endangered and Threatened Species and Marine Mammals

The expected change in fishing patterns by allowing the EEZ off Texas to remain open are unlikely to alter significantly the impact of the fishery on endangered species. Five species of sea turtle species are known to occur in the area (Kemp's ridley, loggerhead, green, hawksbill, and leatherback). Previous NMFS studies indicate turtle interactions are low in the offshore waters of the western Gulf of Mexico, and because state waters off Texas will continue to be closed, protection would still be afforded to turtles where they are more commonly encountered in nearshore areas. Amendment 9 to the FMP contains detailed summaries of the section 7 consultations and biological opinions that have been issued for the shrimp fishery in the Gulf of Mexico since 1980. These consultations and opinions generally concluded that the management actions that have affected the shrimp fishery were not likely to jeopardize the continued existence of any endangered species. An informal section 7 consultation on this proposed rule concluded that the proposed 1–year suspension of the Texas closure in the EEZ is not likely to change the level of interaction of the shrimp fishery with listed species and, therefore, does not change the basis for the no-jeopardy conclusion of the existing biological opinion prepared on March 24, 1998. NMFS will prepare a biological opinion on a final turtle excluder device (TED)

rule considering the likely effects of that rule and the latest information on the status of listed species. While that major consultation for the shrimp fishery is ongoing, approval of this proposed action would not constitute an irretrievable or irreversible commitment of resources that would affect the formulation of any reasonable and prudent alternative measures in that consultation.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, based on the RIR, that describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The proposed rule would suspend, for 2002, the regulations at 50 CFR 622.34(h) that establish the annual (i.e. closure to shrimp trawling in the EEZ off Texas), Texas closure. The objective of the proposed rule is to increase the opportunity of the fishery to achieve greater profits from the increased marketability of smaller shrimp.

The objective and legal basis of this proposed rule are described in the preamble of this document.

Modeling results indicate that suspension of the Texas closure for the 2002 fishing season is expected to increase producer surplus, defined as total revenues minus total variable costs, for the Gulf of Mexico shrimp fishery by $15–$19 million, consistent with industry expectations. Although days fished, pounds landed, and total revenues will decline as a result of the suspension, the suspension will redistribute benefits within the fishery. Catches shift toward mid-depth waters (0–10 fathoms, 0–18.3m) and away from deeper waters (>10 fathoms, >18.3 m), resulting from increased participation by smaller boats and decreased participation by larger boats. Since fishing effort by smaller boats is less costly than that of larger boats, variable costs decline. Fishing opportunities for small vessels increase such that total variable costs for the fishery decline sufficient to produce the net increase in producer surplus. Full-time equivalent (FTE), which is a standardized vessel unit, vessel numbers for all size classes will increase by 2,600–2,800. However, this increase is composed of a 3,600-3,900 increase in FTE vessels for the small vessel sector, and a 1,000–1,100 decrease in FTE vessels for the large vessel sector. Fishing days decline overall, but the small vessel fleet is projected to experience a 51,000–57,000 increase in fishing days, while the large vessel fleet is projected to experience a 56,000–63,000 decline in fishing days. Estimates of FTE vessels and fishing days, however, represent standardized units, as firm-level statistics cannot be estimated due to data limitations and the structural arrangements of the model employed.

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 $3.5 million. Approximately 18,000 fishing craft, over all size categories, participate in the Gulf of Mexico shrimp fishery. More direct effects as a result of the proposed action might be expected to accrue to those craft recorded in some manner as located in or fishing off Texas and Louisiana, due to the geographic proximity to the waters in question. These craft number in excess of 10,000. An additional unknown number of large vessels from other states are known to traditionally fish off Texas whenever the closure is lifted. The average gross revenues for all shrimp craft has been estimated at approximately $82,000 (1999 dollars), with a one standard deviation range of $16,000 to $425,000. Average annual revenues by vessel length were reported at $4,000 for vessels less than 25 feet (7.6 m), $23,000 for vessels between 25 and 50 feet (7.6 m and 15.2 m) and, $198,000 for vessels greater than 50 feet (15.2 m). By homeport state, the average annual revenues for Gulf of Mexico shrimp vessels were $112,000 for Alabama, $106,000 for Florida, $9,000 for Louisiana, $45,000 for Mississippi, and $192,000 for Texas. All of these operations would be considered small business entities. Thus, business operations operating in this fishery consist solely of small business entities.

Total producer surplus, defined as total revenue minus total variable costs and used as a proxy for profit, for the whole fishery is projected to increase for the 2002 fishing season as a result of the proposed action and all vessel operations in the fishery are considered small business entities. However, differential impacts occur by vessel size category, with the small vessel sector (vessels less than 60 ft (18.3 m) in length) experiencing an increase in producer surplus/profits, while the large vessel sector (vessels greater than 60 ft (18.3 m) in length) experiences a decline. While total producer surplus/profits for the small vessel fleet is expected to increase, that of the large vessel sector is projected to decline from $101 million under status quo closure to $71 million under the proposed action. On the assumption that a stable population of vessels, allowing for a natural flow of vessels to enter and exit the fishery each year, constitutes the core of the fleet and that this core equals 3,500 vessels, average producer surplus/profits for the large vessel fleet would decline from approximately $28,900 to approximately $20,300, a decrease of $8,600 per vessel, or 30 percent. Although the precise number in this core is unknown, the use of an alternative number would preserve this rate of reduction since the number of vessels is not intrinsic to the determination of producer surplus.

Two alternatives to the proposed rule have been considered. One alternative would allow status quo operation of the fishery. The second alternative would decrease the geographic extent of the closure. Maintenance of the status quo would forego the impacts the proposed action would impose on the large vessel fleet, but would preserve the foregone producer surplus and FTE vessel opportunities for small business entities and the projected net benefit the fishery as a whole is projected to receive. The second alternative would substantially mitigate, but not eliminate, the negative impacts the proposed action would impose on the large vessel fleet. The decline in producer surplus for the large vessel sector would be reduced from $31 million relative to the status quo to approximately $2 million, or approximately 2 percent per core vessel. Similar to the status quo, however, this alternative would substantially forego the potential increased benefits to the small vessel fleet and the fishery as a whole associated with the proposed rule.

This proposed rule would not duplicate, overlap or conflict with any other Federal Rule.

Copies of the IRFA and RIR are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: March 29, 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.*

§ 622.34 [Amended]

2. Effective May 15, 2002, through July 15, 2002, in § 622.34, paragraph (h) is suspended.

[FR Doc. 02–8189 Filed 4–4–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648

[I.D. 031502A]

Fisheries of the Northeastern United States; Petition for Rulemaking for Management of the Atlantic Hagfish Fishery

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

ACTION: Notice of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces receipt of, and requests public comment on, a petition for emergency rulemaking to implement measures to limit the entry of vessels into the unregulated Atlantic hagfish fishery. Mr. William R. Palombo, Nippert Fishing Corporation (Petitioner) has petitioned NMFS, on behalf of the Secretary of Commerce, to implement these measures as soon as possible.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on May 6, 2002.

ADDRESSES: Copies of the letter constituting the petition are available upon request from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

Written comments on the petition should be sent to the Regional Administrator at the above address. Mark on the outside of the envelope: ''Comments on Petition for Management of the Hagfish Fishery.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at myles.a.raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In November 2001, the Petitioner wrote to the Secretary of Commerce (Secretary) and the New England Fishery Management Council (Council) on behalf of himself, his partner, Steve Nippert, and other members of the Atlantic hagfish industry to request that action be taken to initiate management of Atlantic hagfish (*Myxine glutinosa*). He requested that the Council establish a control date for the fishery and start to develop a fishery management plan. He asked the Secretary to take emergency action under the Magnuson-Stevens Fishery Conservation and Management Act to establish a control date for the fishery and implement a moratorium on new entrants into the fishery. The Assistant Administrator for Fisheries, NOAA, responding on behalf of the Secretary, declined to take emergency action at that time because he felt that the Council arena was the appropriate forum for consideration of the request.

The Council considered the request at its January 17, 2002, meeting. The Council tabled a motion that would have established a control date for the fishery, and instead adopted a motion to request that state fishery agencies develop regulations to manage the fishery. The Council requested that state agencies report back to the Council on the issue in 6 months.

Petition for Rulemaking

On January 18, 2002, the Petitioner submitted a Petition for Rulemaking requesting NMFS to implement immediately emergency measures to limit entry into the Atlantic hagfish fishery. The Petitioner believes that the Council acted irresponsibly, illegally, and contrary to U.S. and international standards when it declined to take action to conserve and manage Atlantic hagfish. He explains that all opponents of the action indicated that they had either added larger vessels to the fishery in the recent past, or are planning on adding larger vessels to the fishery in the future. He notes that the need for larger boats is a result of localized depletion of hagfish and the need to go farther offshore, outside of the range of smaller vessels to find fishable concentrations of hagfish.

The Petitioner notes that opponents' testimony in support of larger vessels in the fishery indicates that large hagfish are taken when hagfish barrels are set on new bottom; this suggests that hagfish traps are extremely efficient and will catch the standing stock of mature eels very quickly. The Petitioner believes that, before this fishery is allowed to expand, the appropriate rate at which eels can be removed without severely depleting the adult population should be calculated.

The Petitioner believes that there is a misunderstanding regarding the nature of the hagfish market. He states that many believe that the eel skin market drives the demand for hagfish. However, the primary market for hagfish is for meat. He adds that, prior to 1995, it was illegal to import hagfish into Korea for meat. Therefore, the market is relatively new and developing.

The Petitioner notes that the New England catch has risen steadily from zero in 1993 to 6.8 million lb (3,085 mt) in 2000. He explains that hagfish are a long-lived species and have a low reproductive potential compared to most fish species. He states that the surplus production from the hagfish fishery is likely to be limited compared to the absolute abundance fishermen find when setting on virgin grounds. He believes that an unregulated fishery will be more of a mining operation than a fishery. The Petitioner notes that the hagfish fishery in the Sea of Japan has collapsed and has never recovered.

The Petitioner believes that the Council's Red Crab Fishery Management Plan should have considered impacts on the Atlantic hagfish fishery that could result from limited entry measures in the red crab fishery. He has testified before the Council that at least five large vessels are preparing to enter the Atlantic hagfish fishery.

The Petitioner cites NMFS guidelines that advise a precautionary approach to managing new fisheries, where initially fishing should be exploratory in nature and focus on gathering data to estimate life history parameters. He also cites United Nations Food and Agriculture Organization (FAO) advice that managers control access to a fishery early, before problems appear. He further states that FAO recommends putting a cap on both fishing capacity and the total fishing mortality rate, and that caps should remain in place until analyses of data justify an increase in fishing effort.

The Petitioner states that testimony before the Council indicated that there are at least five vessels that have either already entered or are planning to enter the Atlantic hagfish fishery in the near future, and each of these is larger than any of the existing vessels in the fishery. He claims that the total harvesting capacity of the potential entrants alone