

laboratory reports and final comprehensive report on this test.

(w) *Approval after Tier 3 testing.* If we determine that the Tier 3 test data show that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will notify you and request payment of a \$20,000 final review and publication fee (payable to the U.S. Fish and Wildlife Service).

(1) After receipt of payment, we will publish a proposed rule in the **Federal Register** stating that we intend to approve this shot or shot coating and provide the public with the opportunity to comment. The proposed rule will include a description of the chemical composition of the shot or shot coating and a synopsis of findings under the standards required by Tier 3.

(2) If, at the end of the comment period, we conclude that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will approve the shot or coating as nontoxic with publication of a final rule in the **Federal Register** and subsequent addition of the shot or coating to the list in § 20.21(j).

(x) *Additional testing after Tier 3.* If we conclude that the Tier 3 data are inconclusive, or if we conclude that the shot or shot coating may pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we may ask you to repeat tests we deem inconclusive. If you choose not to repeat the tests, we will deny approval of the candidate alloy or shot coating.

(y) *Denial after Tier 3 testing.* If we conclude that the shot or shot coating may pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will notify you that we deny approval of the candidate alloy or shot coating.

(z) *Withdrawal of the approval of an alloy or shot coating.* If we find that an approved alloy or shot coating is not readily detectable in the field or has environmental effects or direct toxicological effects on biota, we may withdraw our approval of the alloy or shot coating. This includes any previously approved alloy or shot coating.

(1) We may consult the Service Law Enforcement Laboratory to determine whether any particular alloy or shot coating is readily detectable in the field by law enforcement officers.

(2) We may consider new evidence that meets the standards of the Information Quality Act (Pub. L. 106–554, 2001) under Office of Management and Budget Guidance (67 FR 8452–8460, February 22, 2002) that shows that

an approved alloy or shot coating has significant environmental effects or direct toxicological effects that were not known when we approved the alloy or shot coating.

(3) In either case, we will publish a notice in the **Federal Register** informing manufacturers and the public of our pending withdrawal of the approval of the alloy or shot coating. We will revise the table of approved alloys at § 20.21(j) to reflect the withdrawal of the approval, to be effective on January 1st, after allowing manufacturers 1 full calendar year to prepare for the change.

Dated: February 21, 2013

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

**RIN 0648–BC58**

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 9

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) has submitted Amendment 9 (Amendment 9) to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 9 would revise the criteria and procedures by which South Atlantic states may request a concurrent closure of the penaeid shrimp (brown, pink, and white shrimp) commercial sector in the exclusive economic zone (EEZ) in order to protect overwintering white shrimp. Amendment 9 would also update the current overfished and overfishing status determination criteria for pink shrimp.

**DATES:** Written comments must be received on or before May 3, 2013.

**ADDRESSES:** You may submit comments on the amendment identified by “NOAA–NMFS–2012–0227” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA–NMFS–2012–0227” in the search field and click on “search”. After you located the notice of availability, click on “Submit a Comment” link in that row. This will display the comment Web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the Web form. You can also attach additional files (up to 10 MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the “Commenting” section at <http://www.regulations.gov/#/faqs> or the Help section at <http://www.regulations.gov>.

Electronic copies of Amendment 9 may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>. Amendment 9 includes a Regulatory Impact Review and a Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727–824–5305, or email: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The penaeid shrimp fishery of the South Atlantic is managed under the

FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

### Background

Currently, a South Atlantic state may close its state waters to trawling by the penaeid shrimp commercial sector following severe winter weather to protect the spawning stock of white shrimp that has been depleted by cold weather conditions. The existing process to concurrently close the adjacent EEZ can be lengthy because it requires a review of a state's request and accompanying shrimp abundance data by both the Council and the Council's Shrimp Review Panel before the NMFS Regional Administrator (RA) can make a determination as to whether or not a concurrent closure of Federal waters is warranted.

Amendment 9 would revise the criteria and procedures by which a South Atlantic state may request a concurrent closure of the penaeid shrimp commercial sector in the EEZ in order to protect overwintering white shrimp. Amendment 9 would also update the current overfished status determination criteria for pink shrimp.

#### *Criteria Used To Trigger a State's Ability To Request a Concurrent Closure of the EEZ to Penaeid Shrimp Commercial Harvest*

Amendment 9 would revise the criteria that must be met for a state to request NMFS to close the commercial penaeid shrimp harvest in the EEZ, following severe winter weather and a closure of state waters. Amendment 9 would require that a state must demonstrate either at least an 80-percent reduction in the population of overwintering white shrimp or that water temperatures were 9 °C (48 °F) or less, for at least one week (7 days). Additional details regarding the sampling methods a state may use for these determinations may be found in Amendment 9 and the FMP.

#### *Process for a State To Request a Concurrent Closure of the EEZ to Penaeid Shrimp Commercial Harvest*

Amendment 9 would also revise and streamline the procedures for a state to request a closure of the penaeid shrimp commercial sector in the EEZ concurrent with a closure in state waters. Under the current procedures, a state may request a concurrent closure of penaeid shrimp harvest in the EEZ once a state has determined that specific conditions have been met. Following that determination, the state sends a request to the Council, then the Council convenes its Shrimp Review Panel to review the state's request. If the review panel's recommendation is affirmative, the panel forwards its recommendation to the Council. If the Council approves the state's request, they send a letter to NMFS to request a concurrent closure of penaeid shrimp harvest in the EEZ waters adjacent to the requesting state. Once NMFS has determined the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS implements the closure through a notification (temporary rule) in the **Federal Register**.

The revised procedures would allow a state to send its request with its supporting documentation for a concurrent closure of the EEZ to penaeid shrimp commercial harvest directly to NMFS. The RA would review the available information and confirm that the criteria and procedures are in accordance with the FMP and the Magnuson-Stevens Act before implementing a concurrent closure.

#### *Overfished and Overfishing Status Determination Criteria for Pink Shrimp*

Amendment 9 would update the overfished and overfishing status determination criteria (biomass at maximum sustainable yield ( $B_{MSY}$ ) proxy for pink shrimp based on recent catch per unit effort (CPUE) data for the stock. Specifically, Amendment 9 would revise the  $B_{MSY}$  proxy for pink shrimp using the lowest CPUE value from the Southeast Area Monitoring and Assessment Program during the period

1990–2011 (0.089 individuals per hectare).

The Council has submitted Amendment 9 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 9 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistent with the Magnuson-Stevens Act and other applicable law, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendment 9, and the associated rationale.

### Proposed Rule for Amendment 9

A proposed rule that would implement Amendment 9 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

### Consideration of Public Comments

Comments received by May 3, 2013, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision.

All comments received by NMFS on the amendment 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: February 27, 2013.

**Kara Meckley,**

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

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