§ 72.8 Liability for violations.

(a) Criminal liability—(1) Offense. (i) A sex offender who knowingly fails to register or update a registration as required by SORNA may be liable to criminal penalties under 18 U.S.C. 2250(a).

(ii) A sex offender who knowingly fails to provide information required by SORNA relating to intended travel outside the United States may be liable to criminal penalties under 18 U.S.C. 2250(b).

(iii) As a condition of liability under 18 U.S.C. 2250(a)–(b) for failing to comply with a requirement of SORNA, a sex offender must have been aware of the requirement he is charged with violating, but need not have been aware that the requirement is imposed by SORNA.

(2) Defense. A sex offender may have an affirmative defense to liability, as provided in 18 U.S.C. 2250(c), if uncontrollable circumstances prevented the sex offender from complying with SORNA, where the sex offender did not contribute to the creation of those circumstances in reckless disregard of the requirement to comply and complied as soon as the circumstances preventing compliance ceased to exist.

Example 1. A sex offender changes residence from one jurisdiction to another, bringing into play SORNA’s requirement to register in each jurisdiction where the sex offender resides and SORNA’s requirement to appear in person and report changes of residence within three business days. See 34 U.S.C. 20913(a), (c). The sex offender attempts to comply with these requirements by contacting the local sheriff’s office, which is responsible for sex offender registration in the destination jurisdiction. The sheriff’s office advises that it cannot schedule an appointment for him to register within three business days but that he should come by in a week. The sex offender would have a defense to liability if he appeared at the sheriff’s office at the appointed time and registered as required. The sex offender’s temporary inability to register and inability to report the change of residence within three business days in the new residence jurisdiction was due to a circumstance beyond his control—the sheriff office’s refusal to meet with him until a week had passed—and he complied with the requirement to register as soon as the circumstance preventing compliance ceased to exist.

Example 2. A sex offender cannot register in a state in which he resides because its registration authorities will not register offenders on the basis of the offense for which the sex offender was convicted. The sex offender would have a defense to liability because the state’s unwillingness to register sex offenders like him is a circumstance beyond his control. However, if the sex offender failed to register after becoming aware of a change in state policy or practice allowing his registration, the 18 U.S.C. 2250(c) defense would no longer apply, because in such a case the circumstance preventing compliance with the registration requirement would no longer exist.

Example 3. A sex offender needs to travel to a foreign country on short notice—less than 21 days—because of an unforeseeable family or work emergency. The sex offender would have a defense to liability for failing to report the intended travel 21 days in advance, as required by § 72.7(f), because it is impossible to report an intention to travel outside the United States before the intention exists. However, if the sex offender failed to inform the registration jurisdiction (albeit on short notice) once he intended to travel, 18 U.S.C. 2250(c) would not excuse that failure, because the preventing circumstance—absence of an intent to travel abroad—would no longer exist.

(b) Supervision condition. For a sex offender convicted of a Federal offense, compliance with SORNA is a mandatory condition of probation, supervised release, and parole. The release of such an offender who does not comply with SORNA may be revoked.


William P. Barr,
Attorney General.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200723–0200]

RIN 0648–BJ76

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 11 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would modify the transit provisions for shrimp trawl vessels with brown shrimp, i.e., brown, pink, and white shrimp, on board in Federal waters of the South Atlantic that have been closed to shrimp trawling to protect white shrimp as a result of cold weather events. The purpose of this proposed rule is to update the regulations to more closely align with current fishing practices, reduce the socio-economic impacts for fishermen who transit these closed areas, and improve safety at sea while maintaining protection for overwintering white shrimp.

DATES: Written comments must be received on or before September 14, 2020.

ADDRESSES: You may submit comments on the proposed rule, identified by “NOAA–NMFS–2020–0066,” by either of the following methods:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0066, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

• Mail: Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 11, which includes a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a Regulatory Impact Analysis, may be obtained from the Southeast Regional Office website at
fishermen requested that the Council update these transit provisions.

Fishermen requested this change to increase their ability to transit the closed areas, as more recent vessel design changes have limited access to below deck storage. Also, requirements for a larger turtle excluder device (TED) in the trawl net to protect leatherback sea turtles have increased the size of a net that would need to be folded and stored below deck. Fishermen also stated that having to disassemble trawl gear for below deck stowage in rough sea conditions is a safety-at-sea concern. Additionally, some fishermen stated that they avoid the closed areas entirely as they were not able to meet the transit requirements.

Amendment 11 and the proposed rule are expected to update the regulations to better match the current design of the vessels in the fishery, reduce the socio-economic impact for fishermen who have difficulty transiting the cold weather closed areas under the current regulations, and improve safety at sea for fishermen through reduced travel time around the closed areas and by not having to disassemble fishing gear in rough weather for stowage below deck, while maintaining protection for overwintering white shrimp and enforceability of the regulations for the cold weather closed areas.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the transit provisions for shrimp trawl vessels with penaeid shrimp on board transiting through cold weather closed areas in Federal waters of the South Atlantic. The proposed rule would allow a vessel to transit South Atlantic cold weather closed areas while possessing penaeid shrimp provided the vessel is in transit and fishing gear is appropriately stowed. Transit would be defined as non-stop progression through the area with fishing gear appropriately stowed. Fishing gear appropriately stowed would be defined as trawl doors in the rack (cradle) on deck, nets would be in the rigging and tied down, and the try net would be on the deck. Doors in the rack means the trawl doors are stowed in their storage racks out of the water on the vessel’s deck. Nets in the rigging means the trawl nets are out of the water and are tied to the trawl vessel’s rigging.

The proposed transit provision was developed and recommended to the Council by the Council’s Law Enforcement, Shrimp, and Deep-water Shrimp advisory panels. Doors in the rack (cradle), nets in the rigging and tied down, and try net on the deck would enable law enforcement on the water or in the air to see from a distance if fishermen are complying with the transit provisions without having to actually board the vessel, thereby saving time and reducing the safety risks associated with a vessel boarding.

The proposed rule would reduce the time needed to stow gear because fishermen would no longer need to disassemble the trawl gear (remove nets from the rigging and the doors) prior to stowing nets with mesh sizes less than 4 inches (10.2 cm) below deck. The proposed rule is expected to reduce adverse socio-economic and safety at sea impacts associated with the current transit provisions through reduced travel time around the closed areas and reduced time on the water for fishermen by not requiring gear stowage below deck.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 11, the Shrimp FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the preamble and in the Summary section of the preamble. The objectives of this proposed rule are to ensure transit regulations are consistent with current fishing vessel designs, reduce the adverse social and economic effects on commercial shrimp fishing businesses that have not been able to transit closed areas due to an inability to comply with the current transit regulations, improve safety at sea and the enforceability of transit regulations, and maintain protection for overwintering white shrimp.

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 rule, if
adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows. All monetary estimates in the following analysis are in 2018 dollars. This proposed rule, if implemented, would allow vessels possessing penaeid shrimp, i.e., brown, white, or pink shrimp, to transit through cold weather closed areas in affected portions of the South Atlantic EEZ provided that the vessel remains in transit, gear is stowed with trawl doors in the rack, and nets in the rigging are tied down with the try net on the deck. Thus, this proposed rule is expected to directly regulate federally permitted vessels in the commercial South Atlantic shrimp fishing industry that harvest penaeid shrimp and transit through cold weather closed areas in affected portions of the South Atlantic EEZ.

Only permitted vessels that harvest penaeid shrimp would be directly regulated by this proposed rule. From 2014 through 2018, the average number of vessels with valid South Atlantic penaeid or rock shrimp permits was 594. From 2014 through 2018, the average number of vessels with valid permits that actually fished (i.e., had landings) in the South Atlantic penaeid shrimp fishery was 262. Because it is not currently feasible to accurately determine affiliations between businesses that possess South Atlantic shrimp permits, for purposes of this analysis it is assumed each of these vessels is independently owned by a single business; however, this assumption likely leads to an overestimate of the actual number of businesses directly regulated by this proposed rule. Thus, this proposed rule is estimated to directly regulate 262 businesses in the commercial South Atlantic shrimp fishing industry, or about 44 percent of the average number of businesses that held valid South Atlantic penaeid or rock shrimp permits from 2014 through 2018.

For vessels with South Atlantic penaeid or rock shrimp permits, annual gross revenue was about $404,810 on average from 2014 through 2018, of which approximately $169,240 (about 42 percent) came from South Atlantic shrimp landings on average. Almost all trips that harvest rock shrimp also harvest penaeid shrimp. Many vessels are also relatively dependent on revenue from other Atlantic fisheries (e.g., scallops and flounder) as well revenue from other Atlantic fisheries (e.g.,

...
(2) * * *

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and that the shrimp fishing gear with trawl nets having a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, is appropriately stowed. For the purposes of this paragraph (a), transit means a non-stop progression through a closed area and appropriately stowed means trawl doors out of the water and in the rack/cradle on deck, the nets must be out of the water and in the rigging and tied down, and any try net must be on deck.

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