

Amendment 5 is provided in the preamble to the proposed rule and is not repeated here.

### Comments and Responses

NMFS received seven comments, from three individuals and the Council, on the proposed rule (67 FR 56516, September 4, 2002). A summary of the comments received and NMFS' responses follows.

*Comment 1:* A vessel owner reported that she had fished for rock shrimp in the 1980's and helped to build the market for rock shrimp. She believes that she should be eligible for a permit even though she did not meet the eligibility requirements.

*Response:* The public was notified on April 4, 1994, that the South Atlantic Council was considering a limited access program for the rock shrimp fishery and that anyone entering the fishery after April 4, 1994, might not be assured of future participation in the fishery if a limited entry management regime were implemented. Since then, there is evidence that the fishery has become overcapitalized. For example, although the current estimate for optimum yield is 6.83 million lb (3.10 million kg), as many as 400 vessels have obtained a rock shrimp permit. The Advisory Panel of the Council believes that the fishery can support, at most, no more than 150 vessels, and it is evident that a much smaller number of vessels could take the annual harvest in most years. For these reasons, the Council limited access to the fishery to participants who could demonstrate that they had landed at least 15,000 lb (6,804 kg) of rock shrimp in any one calendar year between 1996 and 2000.

*Comment 2:* One fisherman and one vessel owner opposed the VMS requirement. They believe that the government should pay for the VMS system and that the VMS system was not needed. Also, they reported that they wanted to split trips between rock and penaeid shrimp without having to unload their rock shrimp catch before they could fish for penaeid "soft" shrimp.

*Response:* There is considerable evidence that illegal trawling by rock shrimp vessels has resulted in extensive damage to Oculina habitat. Further, national standard 9 of the Magnuson-Stevens Act requires that conservation and management measures shall, to the extent practicable, minimize bycatch. The use of an approved VMS will minimize inadvertent, as well as deliberate, trawling in protected Oculina habitat areas because vessel captains will know precisely the location of protected areas and will be

informed that trawling in such areas is prohibited. It should be noted that vessels with an approved VMS system will be able to split trips between rock and penaeid shrimp trips without having to land either type of shrimp first. The VMS will enable vessel owners to monitor vessel operations which should result in safer and more efficient fishing operations that will benefit the crew as well as the vessel owner.

*Comment 3:* One fisherman and one vessel owner opposed the limited access program for the rock shrimp fishery. They believe that fishing is a right that all Americans should be able to exercise.

*Response:* The Magnuson-Stevens Act mandates that fishery resources should be managed on a sustainable basis so that an optimal yield can be obtained. As noted earlier, there is evidence that overcapitalization has occurred in the rock shrimp fishery and, at most, no more than 150 vessels should be allowed to participate in the fishery. It is clear that the rock shrimp resource is limited and that an optimum economic yield is unlikely if open access to the fishery continues. As such, a limited access program is appropriate because it is prudent and reasonable to limit fishing pressure to the level which the resource can support without overfishing and without allowing the cost of fishing to exceed the revenues obtained by selling the catch.

*Comment 4:* One vessel owner opposed the minimum mesh size requirement.

*Response:* There is empirical evidence that the use of minimum mesh sizes less than 1 7/8 inches (4.76 cm) will result in an excessive catch of smaller, less valuable shrimp. It is believed that allowing shrimp to grow larger will result in more income to fishermen as well as a more attractive product for consumers. Also, the use of larger mesh should result in less bycatch of juvenile fish and other invertebrates. For this reason, the Council proposed and NMFS approved the 1 7/8-inch (4.76-cm) minimum mesh size.

*Comment 5:* One vessel owner did not want individuals to have to take a test to obtain a rock shrimp operator permit.

*Response:* NMFS will not require any performance or competency test to obtain an operator permit.

*Comment 6:* The Council's Habitat and Environmental Protection and Coral, Coral Reef and Live/Hard Bottom Habitat Advisory Panels endorsed the management measures in Amendment 5, especially the VMS and operator permit requirements and urged that

these measures be implemented as soon as possible.

*Response:* NMFS agrees.

*Comment 7:* The Council commented in support of the management measures proposed in Amendment 5.

*Response:* NMFS agrees.

### Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 5 is necessary for the conservation and management of the South Atlantic rock shrimp fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the impact this proposed rule, if adopted, would have on small entities. The analysis is summarized as follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objective of the final rule is to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat; and ensure the long-term economic viability of the rock shrimp fishery. The final rule will: establish a limited access program for the rock shrimp fishery in the EEZ off Georgia and off the east coast of Florida (limited access area); establish a minimum mesh size for a rock shrimp trawl net in the limited access area; require the use of an approved VMS by vessels allowed to fish for rock shrimp in the limited access program; and, require an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states to have an operator permit.

No duplicative, overlapping, or conflicting Federal rules have been identified.

No comments were received regarding the economic impact of this final rule.

The number of vessels with permits for the South Atlantic rock shrimp fishery varies from year to year but has not exceeded 431. Since permits were required in the fishery in 1996, at least 540 different vessels have been permitted in the fishery. Similarly, the number of vessels that have landed rock shrimp varies from year to year. In 1996, the number of active vessels reached an historical peak of 153. From 1996 through 2000, at least 279 different vessels have recorded landings of South Atlantic rock shrimp. All of these