

10 CFR Parts 611 and 658

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Final rule.

SUMMARY: NOAA issues final regulations for shrimp fishing in the Gulf of Mexico. These regulations implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. The intended effect of these regulations is to encourage harvest of larger and more valuable shrimp.

EFFECTIVE DATE: May 15, 1981.

ADDRESSES: A copy of the Regulatory Impact Review may be obtained from Mr. Harold Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Allen, 813-893-3141.

SUPPLEMENTARY INFORMATION: These regulations implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The Secretary of Commerce approved the FMP and published on November 7, 1980, a proposed rulemaking for a comment period ending January 1, 1981 (45 FR 74178). On January 22, 1981, the comment period was extended until January 31, 1981.

a. Background

The notice published on November 7, 1980 contained information on the shrimp fishery and its economic value, and specified loss of habitat as the chief threat to continuance of the major species of shrimp (brown, white, and pink). There is no current evidence of overfishing on any species of shrimp.

The notice also described the minimum legal sizes of shrimp which may be caught and landed under different regulations established by Gulf Coast States. Small shrimp are culled from the catch and discarded because of the States' size limits. The notice also described the categories of vessels in the Gulf shrimp fishery and the various fisheries in which shrimp are harvested.

b. Problems in the Fishery

The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and identified eight problems affecting the shrimp fishery which require both Federal regulation and State and Federal actions. Problems 1, 5, and 8 require Federal regulations to

resolve. Problems 1, 2, and 4 require State administrative and legislative actions. Problems 3 and 7 require Council coordination with governmental entities and the fishing industry. Problem 6 requires Federal action in cooperation with the Council and the assistance of the operators of shrimp fishing vessels. These problems and their proposed solutions are identified below.

1. *Differences among user groups as to areas and sizes at which shrimp are to be harvested.* The FMP establishes a permanent closure to trawl fishing of an area off the State of Florida to protect small pink shrimp and a seasonal closure off the State of Texas to protect small brown shrimp. Both require Federal regulation in the fishery conservation zone (FCZ) to implement the closures in cooperation with the respective States.

The Council recommends that the States establish State sanctuaries in shrimp nursery areas under State jurisdiction to protect small shrimp.

2. *The wasteful discard of small shrimp at sea.* The Council recommends elimination of State restrictions on landing of small shrimp taken during open seasons in open areas to increase the overall yield from the resource and the economic returns to the shrimp fishermen.

3. *Continuing decline in the quality and quantity of shrimp habitat.* The Council established a committee to review and assess the status of shrimp habitat and interact with Federal and State agencies to promote habitat protection and abatement and control of pollution.

4. *Lack of comprehensive and coordinated management of shrimp resources throughout their range.* The Council recommends the Gulf States adopt shrimp management procedures that provide for adjustment of seasonal State closures by State administrative action. The Council recommends the Gulf States adopt procedures to allow joint management with other States and the National Marine Fisheries Service to reduce disputes among users, reduce waste of shrimp, and facilitate enforcement.

5. *Conflicts with other fisheries.* The FMP includes the seasonal closure of a portion of fishing grounds off Florida to avoid conflict between the shrimp and stone crab fishermen. This closure is currently in effect under regulations implementing the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico.

6. *Incidental capture of sea turtles.*

The area closures established by the FMP provide direct and coincidental benefits for sea turtles that are caught incidentally during shrimp fishing. Also, the Council recommends that an educational program be implemented by the National Marine Fisheries Service to inform shrimp fisherman about proper methods of resuscitation and return to the sea of sea turtles.

7. *Loss of fishing gear and grounds due to manmade underwater obstructions.* The Council established a committee to reduce, where feasible, the loss of offshore fishable grounds by monitoring and reviewing the construction of offshore reefs with special attention to the needs of shrimp fishermen.

8. *Partial lack of data needed for management.* The Council recommends a mandatory reporting system for obtaining data from the harvesting and processing sectors that are needed for management of the fishery. Only a portion of shrimp fishermen, dealers, and processors are to be selected for reporting to reduce the user reporting burden. This system is being prepared and is to be implemented when the forms and procedures are completed and approved.

c. The Management Regime.

1. *Optimum Yields.* Optimum yield (OY) is a concept that depends on the biological, economic, and social characteristics of a fishery. In most fishery management plans, OY is specified as an upper limit on the quantity of fish harvested during a specified time period, or as the amount of fish in excess of a minimum size (such as carapace length for shellfish). The Council determined that specifying a fixed quota or an amount dependent on the quantity of a legal-sized catch was not appropriate for controlling the harvest in the shrimp fishery.

The growth rate, size of shrimp at harvest, and varying preferences of processors are special factors in specifying that OY. Shrimp resources in the Gulf of Mexico have a life expectancy of less than one year, and therefore provide an annual crop. The size of the annual crop is determined by early spring environmental conditions, such as temperature and salinity in the estuarine nursery waters. The level of catch in one year does not affect the size of the stock in the following year. Since shrimp are an annual crop, the yield and value depend on whether they are

caught early or late in their period of growth.

The catch is also influenced by market conditions and by State and Federal regulatory regimes. State regulations set open seasons, open areas, and minimum sizes of shrimp designed to provide the processing industry within a State its preferred size of shrimp. Louisiana processors need small shrimp for canning, while Florida and Texas processors prefer larger shrimp as fresh or frozen products. A State may use a closed season to protect small shrimp until they attain the size considered acceptable by the processing industry of that State. Thus, the State of Texas closes the waters of the Gulf of Mexico under its jurisdiction (zero to nine miles off its coast) for a period of 45 to 60 days each year while small brown shrimp are in that area. However, some small shrimp move beyond that area into the fishery conservation zone (FCZ) before the closed season is over. The State of Florida prohibited shrimp fishing in the Tortugas Shrimp Sanctuary, an area in which pink shrimp are generally less than the minimum legal size in Florida. Because of modification of the seaward boundary of Florida's fishery jurisdiction, Florida no longer has complete jurisdiction over this nursery area, part of which is now in the FCZ.

In specifying OY for shrimp, the Council wanted to supplement State closure laws to encourage the catch of larger shrimp in some areas of the FCZ. The Council did not close the entire FCZ during the fast-growth period, in recognition of the preference for smaller shrimp by Louisiana canners and the Louisiana, Alabama, and Mississippi shrimpers who supply them. The Council rejected the option of extending State minimum-size laws, because it considered the culling of undersized shrimp a wasteful and inefficient practice.

In the shrimp FMP, then, the OY is defined as the amount of shrimp that can be caught under recommended State management measures and under the regulations implementing the FMP. That amount is expected to be larger in terms of poundage and total value than in the absence of Federal regulations. It will also produce an optimal mix of large and small shrimp.

Another way of expressing the OY is the actual catch that can be taken each year during open seasons in open areas with existing fishing gear and technology. It is not a quota or minimum size limit. The amount harvested will be determined by biological conditions, and by the fishing effort of the existing shrimp fleet in response to market and

other economic conditions under the regulatory regimes established by State and Federal governments. The anticipated economic benefits of this OY on an annual basis are an increased yield of shrimp of 3.7 million pounds with a dockside value of \$11.5 million.

The OY for royal red shrimp was specified as a fixed annual quota, because it is a longer-lived species. Optimum yield is equal to maximum sustainable yield (177.8 metric tons (tails)).

2. Area Closures. The FMP establishes a permanent closure to trawl fishing for shrimp in an area off the State of Florida known as the "Tortugas Shrimp Sanctuary" to protect small pink shrimp until most have reached a size larger than 60 shrimp tails to the pound. This measure prohibits all shrimp trawling by U.S. vessels within the proposed sanctuary.

A closure to trawl fishing for shrimp in the FCZ off the State of Texas for a 45-day period (normally June 1 through July 15) to protect small brown shrimp is also established. This controversial closure, which is a "trial measure," is expected to benefit the shrimp industry.

The State of Texas traditionally closes its nine-nautical-mile State waters to shrimp fishing for a 45-day period, during which brown shrimp generally are smaller than the size of 39 whole shrimp to the pound. The purpose is to allow for further growth that will increase the weight and value of the harvest when the area is reopened.

The State measure has not been completely effective because small shrimp move beyond State jurisdiction into the FCZ and because many shrimp vessels are alleged to enter State waters at night when most brown shrimp fishing occurs. Many small shrimp are taken which, because of the Texas size limit, cannot be landed in Texas and are culled from the catch and discarded.

Six Council members filed two minority reports stating their opposition to the Texas closure. The statements cite the importance of Texas eliminating its size limitation and the possible adverse impact of the closure on Louisiana shrimp fishermen. Louisiana shrimp fishermen protested that more vessels will move to the Louisiana coast during the 45-day period of the closure.

The Council believes that the cooperative Texas closure (see 50 CFR § 658.24, Figure 3) will result in an increase in exvessel value of at least \$8.1 million (rather than the \$7.1 million published on November 7). Because this is a trial measure, the Council will study the effect of the Texas closure on fishermen from all States and consider alternatives which would prevent undue

adverse impact. A baseline study comparing the 1980 season (closure of Texas waters only) and the 1981 season (cooperative closure of both fishery conservation zone (FCZ) and Texas waters) will assist the Council in this evaluation. Provision is made for adjusting the normal closure dates of June 1 to July 15 by as much as 15 days. The Regional Director, Southeast Region, National Marine Fisheries Service (NMFS), must base the adjustment on certain biological and ecological data.

The FMP also incorporates the seasonal closure of a portion of the Tortugas shrimp grounds on the west coast of Florida to prevent damage to stone crab gear and increase the size and value of shrimp harvested outside the line.

3. Sea Turtles. The actions implemented through the FMP are not likely to jeopardize species listed on the Federal endangered species list or to adversely affect their habitat. Implementation of closure recommended by the FMP will have direct and coincidental benefits for sea turtles by reducing the level of mortality.

4. Data Reporting. Better information is needed for effective management of this valuable fishery. Because of the complex and diverse nature of the commercial and recreational shrimp fisheries, the cost of obtaining specific biological, environmental, social, and economic information from each user would be prohibitively high. Therefore, the FMP recommends that NMFS develop a system specifying which methods should be used to collect representative samples that will be comparable and reduce sampling error. The Director of the Southeast Fisheries Center, NMFS, will determine the number of shrimp fishermen, dealers, and processors who will be required to keep records and report, based on the data required for specific management needs. When only a portion of such individuals are needed to provide information, the Center Director will select those individuals through use of standard statistical sampling procedures.

Because this system has not been completely developed and forms not yet prepared, the final regulations reserve Section 658.5. It is anticipated that the mandatory reporting system will be repropounded as soon as sampling procedures and reporting forms are developed and approved. The forms will be submitted to the Office of Management and Budget for clearance under section 3507 of the Paperwork Reduction Act, Pub. L. 96-511. Until such

time, current methods of data collection based on port agent contact with dealers and fishermen will be used.

5. *Permits.* No permit is required for vessels of the United States fishing for shrimp in the FCZ.

6. *Foreign Fishing.* A surplus of royal red shrimp of 66.2 mt is identified in the FMP and is made available for foreign fishing.

7. *Jurisdiction.* The shrimp regulations apply only in the Gulf of Mexico Council's area of authority. Both the northern and eastern boundaries of this area have been subject to dispute.

The boundary line separating the geographic areas of authority of the Gulf of Mexico and the South Atlantic Fishery Management Councils has been settled only recently. NOAA had originally set the boundary as an eastward extension of the line dividing Dade and Monroe counties off the east coast of Florida. That boundary was based on a legal opinion that fishery management considerations could be taken into account in establishing the dividing line.

In a legal opinion to NOAA, the Department of Justice stated that the boundary line should be based only upon geographical factors. In response to that opinion, NOAA has proposed that the boundary line dividing the Gulf of Mexico from the Atlantic, which was accepted by the United States Supreme Court in *United States v. Florida*, separates the areas of authority of the two Councils. Proposed regulations to establish that boundary were published at 45 FR 58632.

The jurisdiction over certain waters off the States of Alabama and Mississippi is in litigation between those States and the Federal Government. These include four enclaves in Mississippi Sound between the three-mile line drawn from the mainland and the three-mile line drawn around the barrier islands, and some "wingtips" between the barrier islands. The Justice Department and the States are trying to negotiate a stipulation that the shrimp FMP will not be enforced in those disputed waters during 1981. Alabama has accepted that stipulation. Because promulgation of these regulations will not affect resolution of the jurisdictional dispute, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has denied the State of Alabama's request to postpone implementation of the FMP and Alabama's and Mississippi's requests to hold a hearing on the regulations.

None of the disputed enclaves is part of the closed areas prescribed by the FMP. Nonenforcement of the FMP in the

enclaves would not interfere with attaining the FMP's objectives.

d. Response to Comments

1. *Comments on the FMP Tortugas Shrimp Sanctuary.* One organization requested that the proposed boundaries of the Tortugas Shrimp Sanctuary be change to exclude waters landward of "Point F" (see 50 CFR 658.22, Figure 1).

This organization had proposed the "Key West Plan" in hearings on the draft FMP. In the final FMP, the Council modified the line proposed in the draft FMP to exclude deeper waters containing larger shrimp, as the commenters requested. The Council declined, however, to move the line as far landward as the organization wanted, because smaller shrimp are found in these shallower waters.

Texas closure

Many commenters supported the Texas closure. All but one of those in favor of the closure were from Texas, although some commenters from Texas opposed the closure. The primary reason for supporting the closure was to enhance harvest of brown shrimp at an optimal commercial size.

Many of the commenters opposed to the Texas closure reiterated concerns expressed during development and review of the FMP. These comments are treated in the FMP, the final Environmental Impact Statement, and in the preamble to the proposed rulemaking. Specific new points raised by opponents of the Texas closure are set out in this section.

Two commenters questioned the FMP's inclusion of data published in 1964 showing the natural mortality rate per week of brown shrimp to be 0.21 (Table 4.1-4 at 45 FR 74268). They compared that information with the analysis of the impact of the Texas closure on weight and value of brown shrimp at various rates of natural mortality (Tables 8.3-3 and 8.3-4 at 45 FR 74296). At a rate of 0.05, the weight of brown and white shrimp increases by 2.7 million pounds (tails) and the value increases by \$9.2 million. At a rate of 0.20, however, the weight decreases by 1.7 million pounds and the value decreases by \$2.3 million.

The Council implicitly rejected the 1964 data contained in Table 4.1-4 (45 FR 74268, see discussion in FMP at 45 FR 74297). The values accepted by the Council (2.1 million pounds and \$8.1 million) are based on unpublished data

¹ The FMP at 45 FR 74297 estimates the exvessel value of the increased brown shrimp landings as \$7.1 million. There was a mathematical error in using numbers from Table 8.3-4; the correct

provided by Louisiana State University, under contract with the Council, that the natural mortality rate of brown shrimp is 0.05. The Southeast Fisheries Center has verified that the rate is between 0.025 and 0.075 based on recently available information. Two new studies show that the net increase in value, even at mortality rates around 0.1, would be \$4-5 million.

One commenter disputed the rationale underlying the Texas closure, that increase in size corresponds to increase in price. He believes the closure may disrupt the current market for a variety of sizes of shrimp and lead to an oversupply of large shrimp, which are subject to greater price flexibility. The Council acknowledges that prices for large shrimp are more elastic than those for small shrimp; the Regulatory Impact Review takes account of the effect on price of the increased supply of larger shrimp. In general, however, larger shrimp command higher prices. The FMP is designed to preserve an adequate supply of smaller shrimp by keeping open the FCZ off Louisiana, Mississippi, and Alabama, and urging all States to repeal their count laws so that smaller shrimp may be landed, and not be discarded.

Other commenters complained that the Council's Scientific and Statistical Committee did not evaluate the Texas closure. The Committee met twice to consider proposed management measures, but the proposal to close the Texas FCZ had not been prepared prior to those meetings. As soon as the Texas closure material was available, it was sent with the entire FMP to Committee members for review; only one or two comments were received. The Council approved the FMP before the next meeting of the Committee, but Committee members did have an opportunity to comment prior to Council approval.

Several commenters alleged that the Texas closure violates several of the national standards in Section 301(a) of the Magnuson Act (16 U.S.C. 1801 *et seq.*) National Standard 1 is met because the Council has determined the "greatest overall benefit to the Nation" will result from an "optimum yield" that provides a mix of small shrimp preferred by canners and large shrimp preferred by freezer processors.

The measure does not violate National Standard 4. It does not discriminate among residents of different States; no one may shrimp in the FCZ off Texas during the closure.

estimate at .05 mortality is \$8.1 million (22.3 + 2.9 = 17.1).

and residents of any State may benefit from fishing there after the closure. The closure is not an allocation of fishing privileges because it is not a direct distribution of privileges among discrete classes of fishermen. It has conservation purposes as well as economic motivations, so it does not violate National Standard 5.

National Standard 7 is not violated because the closure improves the enforceability of the State closure. The enforcement and compliance costs of the measure are outweighed by the increased value to the industry of the larger shrimp. One commenter raised the possibility that royal red shrimpers allowed outside the 100-fathom curve during the closure might actually fish for brown shrimp within the 20-fathom zone. A letter from the Texas Parks and Wildlife Department refuted that possibility; the areas are at least 30 miles apart, and the State has radar-detection capabilities in the 20-fathom zone.

Two commenters were concerned about the monitoring system that NMFS will use to evaluate effects of the closure on fishermen in Louisiana, Mississippi, and Alabama. The Southeast Fisheries Center acknowledges that each segment of data alone will not establish a cause-and-effect relationship, but the entirety of the analysis should allow the Council to judge whether the closure has unexpected adverse effects on the small shrimp segment of the fishery. The Council is currently preparing an amendment to the FMP which would allow modification or removal of the closure in 1982 or subsequent years, depending on results of the monitoring. The data collection system will be expanded this year to cover fishermen from Alabama and Mississippi as well as Louisiana.

Sea Turtles

Two commenters requested that Management Measure 8 (see FMP, 45 FR 74190) be revised to provide additional protection for sea turtles by requiring mandatory excluder devices in shrimp trawls. The FMP supports research efforts to develop turtle excluder mechanisms, which would be required under the turtle recovery plan administered by NMFS. As yet, however, excluder gear has not been commercially proven in the Gulf.

Groundfish

Other commenters suggested management measures designed to reduce the incidental catch of finfish in shrimp trawls, or to encourage development of markets for this

incidental catch. The Council is now developing a groundfish plan which contains these proposed measures.

Research

One commenter requested that there be research programs addressing the destruction of seagrass beds by bottom trawls and the extent of harvest by recreational shrimpers in estuaries and enclosed areas. Data relating to shrimp fishery activities in State waters, which are obtained by the States and other sources, are utilized by NMFS in assessing the impact on habitat of users of the resource. Management Measure 4 of the FMP and the above "data reporting" section encourage this sort of research.

2. Comments on the Regulations.

General

The States of Alabama and Mississippi expressed concern over implementation of the FMP in waters that are currently disputed between those States and the United States. This problem is addressed above, in item 7 of the management regime.

The description and approximate acreage of the Flower Garden Banks closed to foreign fishing differs between the proposed and final rulemaking. Corrections were made to comply with proposed marine sanctuary descriptions (45 FR 43205).

Section 658.4

One commenter suggested that the terminology in the proposed regulations referencing depth contours be made consistent to read "100-fathom depth contour." That change was made in § 611.62(b).

In the proposed regulations, § 658.4(b), (c), and (d) required a vessel intending to fish for royal red shrimp during the Texas closure in the area otherwise closed to trawl fishing to have on board a letter of authorization signed by the Regional Director. In order to reduce the Federal paperwork burden for individuals and small business and to carry out the intent of the Paperwork Reduction Act of 1980, the requirement to have a letter of authorization before fishing for royal red shrimp seaward of the 100-fathom depth contour off Texas is not implemented as a final rule.

Section 658.5

In the proposed regulations, § 658.5 required all dealers and processors to provide certain information to NMFS. One commenter requested that implementation of this provision be delayed, pending the outcome of a lawsuit challenging similar regulations in another fishery. That suit has been

dismissed, but the plaintiff has appealed. The Assistant Administrator has determined not to delay implementation pending final resolution of the litigation, but the final regulations reserve this section (see item 4 of the management regime).

Sections 658.22 and 658.24

One commenter requested that §§ 658.22 and 658.24 be changed to apply only to those who participate in a directed fishery for shrimp, and that those who catch shrimp incidental to fishing for other species should not be prohibited from fishing. The commenter further requested that § 658.7(b) be changed to conform to this intent. In addition, he requested that those taking shrimp as an incidental catch to finfish be permitted to retain the shrimp.

The final regulations prohibit all trawling in the closed areas except for royal red shrimp seaward of the 100-fathom depth contour. A provision distinguishing between trawling for species of shrimp other than royal red shrimp and trawling for other species would be too hard to enforce. A prohibition of all trawling except for royal red shrimp in closed areas is not inconsistent with the management measures in the FMP and is not expected to have any serious effect in other trawl fisheries.

Three commenters wanted to improve enforceability of the closed-area provisions by prohibiting possession of trawl gear above deck on vessels in the closed areas. This suggestion was rejected as too harsh a measure, as it is quite difficult to dismantle the gear and store it below deck.

The Coast Guard requested that the word "approximately" be deleted from the geographic description of the Tortugas Shrimp Sanctuary line. Section 658.22 was rewritten in response to this comment.

Section 658.23

The Gulf of Mexico Council suggested that § 658.23(b) titled "Exception" in the proposed regulations be deleted, because this provision conflicted with the FMP. The final regulations do not contain this exception, and thus prohibit live bait fishing within the stone crab closed area between January 1 and May 20. The Council will amend the stone crab plan to make it consistent with this FMP.

Section 658.28

The Council also requested that the regulations provide a mechanism to allow scientific research activities by commercial fishing vessels in areas

closed to shrimp fishing. The final regulations contain a new section, § 658.26, which provides for authorization by the Regional Director of such activities.

e. Other Matters

The Assistant Administrator, after considering all comments received on the FMP and proposed regulations, has determined that the FMP and the final regulations comply with the national standards, other provisions of the Magnuson Act, and other applicable law.

The adoption and implementation of the FMP is a major Federal action that will have a significant impact on the quality of the human environment. Under the National Environmental Policy Act and NOAA Directive 02-10, a draft environmental impact statement was filed with the Environmental Protection Agency. The notice of availability was published on November 6, 1979 (44 FR 64114). The final environmental impact statement was filed and the notice of availability was published on March 13, 1981 (46 FR 18720).

The final shrimp regulations are not subject to the provisions of the Regulatory Flexibility Act. The provisions of this Act apply only to rules for which a notice of proposed rulemaking was issued on or after January 1, 1981. The proposed rules for shrimp were published on November 7, 1980.

The NOAA Acting Administrator has determined that these regulations are not a major rule under Executive Order 12291. A Regulatory Impact Review has been prepared which analyzes the expected benefits and costs of the regulatory action. The review supports the determination that the final regulations will not likely result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, the shrimp industry, government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. There are increases expected in shrimp landings and shrimp vessel productivity in the Gulf of Mexico, as well as an increase in Federal costs of management. No significant change is expected with regard to the other identified factors.

The Assistant Administrator has determined that the full 30-day period of delayed effectiveness required under the Administrative Procedures Act is

unnecessary and contrary to the public interest. The closure of the FCZ (9-200 miles) off the State of Texas is intended to occur concurrently with the closure of the State waters (0-9 miles) by the State of Texas. The State closure usually occurs from June 1 through July 15. Because of the unusually warm weather in the northern Gulf of Mexico this spring, the shrimp in the bays and estuaries are expected to reach 90 mm at an earlier date than usual. The State of Texas is expected to close its waters on May 22 and the FCZ off Texas must be closed to shrimp fishing at the same time to achieve the anticipated benefits of \$8.1 million in increased value by harvesting larger shrimp after the expiration of the closed season.

Dated: May 15, 1981.

Terry L. Leitzell,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

50 CFR Parts 611 and 658 are amended as follows:

1. The authority citation for Parts 611 and 658 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 611—FOREIGN FISHING

2. In Part 611, Subpart D is amended by revising § 611.60 including the caption and by adding new §§ 611.61 and 611.62 as follows:

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

§ 611.60 General provisions.

(a) *Purpose.* This subpart regulates:

(1) All foreign fishing conducted under a Governing International Fishery Agreement (GIFA) within the fishery conservation zone (FCZ) in the Atlantic Ocean south of 35°00' N. latitude, in the Gulf of Mexico, and in the Caribbean Sea; and

(2) All foreign longline fishing conducted under a GIFA which involves the catching of any species of billfishes, sharks, or other fish in the FCZ in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

(b) *Authorized fishery.* (1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF.* The TALFFs are set forth in Appendix 1 to § 611.20.

(3) *Permitted fishing.* Foreign fishing authorized under this subpart may be conducted only during the seasons, in the open areas, and with the gear specified in §§ 611.61 and 611.62.

(c) *Prohibited species.* (1) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no

applicable allocation are prohibited species and shall be treated in accordance with § 611.13. Fish caught in excess of an applicable national allocation are prohibited species.

(2) As a means of rebutting the presumption of § 611.13(c), a vessel may store all prohibited species caught outside the FCZ in a separate part of the hold that can be sealed, and may have its holds inspected and sealed before commencing fishing in the FCZ. Seals affixed during such inspection shall be maintained in an unbroken condition during the time the fishing vessel is in the FCZ. Such inspections may be obtained at Venice or New Orleans, La., Key West, Fla., Mayaguez, P.R., or Norfolk, Va., upon 48 hours advance notification to: Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33702 Telephone: 813-893-3141.

(3) Additional ports for hold inspection may be arranged with the Regional Director.

(4) The designation of ports for hold inspections does not modify the port entry arrangements or requirements (if any) of GIFAs or the notification requirements of any other laws or regulations of the United States.

(d) *Open area.* Except for the closed area set forth in paragraph (e) of this section, and paragraph 611.62(b), foreign fishing authorized under this subpart may be conducted in that portion of the FCZ in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea.

(e) *Closed area.* The area known as East and West Flower Garden Banks is closed to foreign fishing. The Flower Garden Banks are located in the Gulf of Mexico approximately 110 nautical miles southeast of Galveston, Texas, and 120 nautical miles south of Cameron, Louisiana. The area encloses a proposed national marine sanctuary, which consists of approximately 257 square nautical miles and comprises the waters overlaying and surrounding those banks to a distance of 4 nautical miles from the 100 meter isobath of each bank. The boundary of the closed area is described by rhumb lines connecting the following points:

Point	Latitude	Longitude
1	27°46.5'N	93°57.0'W
2	27°56.0'N	93°57.0'W
3	28°04.0'N	93°32.0'W
4	27°51.0'N	93°28.0'W
5	27°47.0'N	93°46.5'W
6	27°46.5'N	93°57.0'W

§ 611.61 Atlantic billfish and sharks fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of any species of billfish or sharks in the FCZ in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(b) *Open season and closures.* Foreign fishing under this section may be conducted throughout the year, except that any retention of sharks shall terminate when the applicable national allocation has been reached. The closure provisions of § 611.15(a) do not apply to this section.

(c) *Prohibited species.* Unless otherwise specifically instructed by a U.S. observer or Authorized Officer, all billfish and all prohibited sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(d) *Gear restrictions.* Foreign vessels participating in a directed fishery for sharks must use a minimum sized hook of 7 inches shank length and 2.5 inches gap (distance between tip and shank) when fishing inside the 100-fathom depth contour. There is no hook size restriction seaward of the 100-fathom depth contour.

(e) *Statistical reporting.* (1) In addition to the requirements of § 611.9, a vessel of a nation with an applicable allocation shall submit the following additional quarterly reports:

(i) Catch and effort data, summarized weekly by one degree squares, containing the following information:

(A) Number of hooks set.

(B) Number of sharks caught under allocation.

(C) Number of prohibited species (by species code from Appendix I to § 611.9) caught and released.

(D) Number of prohibited species (by species code) released alive.

(ii) Summary of vessel activities containing the following information:

(A) Permit number of each vessel fishing.

(B) For each successive day of the reporting period, the noon-day location (within 0.1 degree of latitude and longitude) of each vessel in the fishery.

(2) A vessel of a nation with no applicable allocation is exempt from the requirements of § 611.9 (d) and (e), but shall provide the reports required by § 611.9 (f) and (g), when applicable. In addition, a vessel of a nation with no applicable allocation shall submit the quarterly reports described in paragraph (e)(1)(i)(A), (C), and (D), only, and (e)(1)(ii) of this section.

(3) The quarterly reports required by paragraphs (e)(1) and (2) of this section shall be submitted not later than 60 days

from the end of the quarter for which the report is being made, to: Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone: 305-361-5761.

§ 611.62 Royal red shrimp fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of royal red shrimp in the FCZ of the Gulf of Mexico.

(b) *Closed areas.* Fishing by foreign vessels for royal red shrimp is prohibited in depths less than 100 fathoms.

(c) *Gear restrictions.* No foreign vessel may use gear other than trawl gear to fish for royal red shrimp, except as specifically authorized in writing by the Regional Director.

3. Appendix 1, section A to 50 CFR 611.9, is amended by adding an entry for royal red shrimp, as follows:

§ 611.9 Reports and recordkeeping.

Appendix I—Species Codes

A. Atlantic Ocean Fishes (Including the Gulf of Mexico)

Code	Common English name	Scientific name
Invertebrates		
680	Shrimp, royal red	<i>Metapenaeus</i>

4. Appendix II to 50 CFR 611.9 is amended by revising the title of

Species	Species code	Area	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
2. Atlantic and Gulf Fisheries:									
B. Royal red shrimp fishery.	630		177.8	111.8				0	68.2

7. 50 CFR is amended by adding new Part 658 to read as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

- Sec.
- 658.1 Purpose and scope.
- 658.2 Definitions.
- 658.3 Relation to other laws.
- 658.4 Vessels, permits, and fees.
- 658.5 Recordkeeping and reporting.
- [Reserved]

statistical area C and of Figure 4 as follows:

Appendix II—Area Codes

C. Gulf of Mexico, and Atlantic fisheries for billfish and sharks.

Figure 4—Gulf of Mexico, and Atlantic fisheries for billfish and sharks.

5. Appendix IV to 50 CFR 611.9, is amended by adding an entry for Royal Red Shrimp as follows:

Appendix IV—Weekly catch report

D. Submission instructions
1. . . .

Fishery	Address	Report received by
Royal red shrimp.	Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Dr., Miami, Florida 33149.	Wednesday, 1600 G.M.T. following reporting period.

6. Appendix I to 50 CFR § 611.20 is amended by adding the following entry "2.B. Royal Red Shrimp Fishery" as follows:

§ 611.20 Total allowable level of foreign fishing.

Appendix I—Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), domestic nonprocessed fish (DNP), and total allowable level of foreign fishing (TALFF), all in metric tons.

- 658.6 Vessel identification.
- 658.7 Prohibitions.
- 658.8 Enforcement.
- 658.9 Penalties.
- Subpart B—Management Measures**
- 658.20 Fishing year.
- 658.21 Allowable levels of harvest.
- 658.22 Tortugas Shrimp Sanctuary.
- 658.23 Stone crab area closure.
- 658.24 Texas closure.
- 658.25 Size restrictions.
- 658.26 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Measures

§ 658.1 Purpose and scope.

(a) The purpose of this Part is to implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, developed by the Gulf of Mexico Fishery Management Council under the Magnuson Fishery Conservation and Management Act.

(b) The regulations in this Part govern fishing for brown shrimp, white shrimp, pink shrimp, royal red shrimp, seabob shrimp, and rock shrimp by vessels of the United States within that portion of the Gulf of Mexico over which the United States exercises exclusive fishery management authority.

(c) Regulations governing foreign fishing for royal red shrimp appear in 50 CFR Part 611. Appendix I to § 611.20 contains the total allowable level of foreign fishing for royal red shrimp.

§ 658.2 Definitions.

In addition to the definitions in the Act, the terms used in this Part shall have the following meanings:

Act means the Magnuson fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone 305-361-6761.

Catch, take, or harvest includes, but is not limited to, any activity which results in bringing any shrimp on board a vessel.

Fishery conservation zone (FCZ) means that area adjacent to the territorial sea of the constituent States of the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management plan (FMP) means the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of shrimp;

(b) The attempted catching, taking, or harvesting of shrimp;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of shrimp;

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Gulf of Mexico means the geographic area of authority of the Gulf of Mexico Fishery Management Council.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of that vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, or a designee.

Shrimp means the following species: Brown shrimp, *Penaeus aztecus*; White shrimp, *P. setiferus*; Pink shrimp, *P. duorarum*

Seabob shrimp, *Xiphopeneus kroyeri*; Rock shrimp, *Sicyonia brevirostris*; Royal red shrimp, *Hymenopenaeus robustus*

United States harvested shrimp means shrimp caught, taken, or harvested by vessels of the United States in the Gulf of Mexico, whether or not such shrimp is landed in the United States.

Vessel of the United States means:

(a) A vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) Any vessel under five net tons registered under the laws of any State.

§ 658.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) The regulations found in this Part are intended to be compatible with regulations pertaining to the Everglades National Park in the State of Florida and Fort Jefferson National Monument. These regulations which prohibit commercial shrimping are found at 36 CFR 7.45 and 36 CFR 7.27, respectively.

(c) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 658.4 Vessel permits and fees.

No permit is required for vessels of the United States fishing for shrimp under this Part.

§ 658.5 Recordkeeping and reporting. [Reserved]

§ 658.6 Vessel identification.

(a) *Official number*. Each vessel of the United States engaged in the shrimp fishery in the Gulf of Mexico FCZ shall:

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number shall be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel shall:

- (1) Keep the registration number clearly legible and in good repair, and
- (2) Insure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the official number from any enforcement vessel or aircraft.

§ 658.7 Prohibitions.

It is unlawful for any person to:

- (a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shrimp taken or retained in violation of the Act, this Part, or of any other regulation promulgated under the Act;
- (b) Trawl in a closed area or during a closed season within the FCZ, except as allowed under § 658.24(a);
- (c) Transfer directly or indirectly, or attempt to so transfer, any United States harvested shrimp to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act which authorizes the receipt by such vessel of United States harvested shrimp;
- (d) Falsify or fail to affix and maintain vessel markings as required by § 658.8;
- (e) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this Part, or any other regulation issued under the Act;
- (f) Fail to comply immediately with enforcement and boarding procedures specified in § 658.8;
- (g) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;
- (h) Resist a lawful arrest for any act prohibited by this Part;
- (i) Interfere with, delay, or prevent by any means the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this Part;
- (j) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this Part;
- (k) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shrimp or the final disposition of such shrimp through the sale of the shrimp; or
- (l) Violate any other provision of this Part, the Act, or any regulation issued under the Act.

§ 658.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or any other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for communications conveying enforcement instructions. The VHF-FM radiotelephone is the normal method of communicating between vessels. Should radiotelephone communications fail, however, other methods of communicating between vessels, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

- (1) "L" meaning "You should stop your vessel instantly."
- (2) "SQ3" meaning "You should stop or heave to; I am going to board you."
- (3) "AA AA AA etc." which is the call to an unknown station, to which the signaled vessel should respond by illuminating the number required by § 658.8, and
- (4) "RYCY" meaning "You should proceed at slow speed, a boat is coming to you."

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

- (1) Guard Channel 16, VHF-FM, if so equipped;
- (2) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;
- (3) Provide a safe ladder, if required, for the Authorized Officer and his party to come aboard;
- (4) When necessary, to facilitate the boarding and/or when requested by an Authorized Officer, provide a man rope or safety line and illumination for the ladder; and
- (5) Take such other actions as necessary to ensure the safety of the Authorized Officer and his party and to facilitate the boarding.

§ 658.9 Penalties.

Any person or fishing vessel found to be in violation of this Part is subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 658.20 Fishing year.

The fishing year for all species of shrimp, except royal red shrimp, begins on May 1 and ends on April 30. The fishing year for royal red shrimp begins on January 1 and ends on December 31.

§ 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp is 111.6 metric tons. There is no domestic quota for other species of shrimp.

(b) *Territorial waters.* These regulations do not limit the harvest of shrimp resources in waters landward of the FCZ. However, harvest from these waters will be taken into account in the calculation of the maximum sustainable yield and optimum yield from the fishery.

(c) *Closure.* When the domestic quota for royal red shrimp is reached, the Regional Director shall close the fishery by publishing a notice in the Federal Register.

§ 658.22 Tortugas shrimp sanctuary.

The area commonly known as the "Tortugas Shrimp Sanctuary," off the State of Florida, is closed to all trawl fishing. The area is that part of the fishery conservation zone shoreward of a line connecting the following points (see Figure 1):

Point	Latitude	Longitude	Common name
N	28°52.9'N	81°37.95'W	Coon Key Light
P	24°50.7'N	81°51.3'W	
G	24°40.1'N	82°28.7'W	New Grounds Shoals Light
H	24°34.7'N	82°35.1'W	Rebecca Shoals Light
P	24°35'N	82°08'W	Marquesas Keys

§ 658.23 Stone crab area closure.

Between January 1 and May 20, the area described in this paragraph is closed to trawl gear, including live bait gear. The area is that part of the fishery conservation zone shoreward of a line connecting the following points (see Figure 2):

Point	Latitude	Longitude	Common name
B	26°16'N	81°58.5'W	
C	26°00'N	82°04'W	
D	25°09'N	81°47.6'W	
E	24°54.5'N	81°50.5'W	
M	24°41.9'N	81°40.5'W	Slope Point

§ 658.24 Texas closure.

(a) *Area and season restrictions.* Between June 1 and July 15, the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond

the 100-fathom depth contour. The area is that part of the fishery conservation zone off the State of Texas west of a line connecting point A (29°32.1'N. lat., 93°47.7'W. long.) to point B (28°11.4'N. lat., 92°53'W. long.) (see Figure 3).

(b) *Adjustment of dates.* The Regional Director may adjust the closing or opening date by as much as 15 days, to provide an earlier, later, or longer closure; but the duration of the closure may not exceed 60 days, nor be less than 45 days.

(1) The Regional Director must base an adjustment of the closing or opening date on the following criteria:

(i) Biological data collected by the Texas Parks and Wildlife Department (TPWD) and used to predict when brown shrimp in the central and northern bays of Texas will reach a total length of 80 to 90 mm; and

(ii) The strength of outgoing tides at the time predicted under paragraph

(b)(1)(i) of this section; and

(iii) Other ecological data relevant to the timing or duration of the closure.

(2) The Regional Director, after consulting with the TPWD, may adjust the closing or opening date by issuing a field order. The order will specify the adjusted date and the reasons for the adjustment.

(3) A field order advancing the closing date or delaying the opening date must be available to the public for 72 hours before its effective date. A field order delaying the closing date or advancing the opening date must be available to the public for 24 hours before its effective date.

(4) A field order may be made available to the public by any of the following methods:

(i) Procedures customarily used by the TPWD for posting and publicizing similar notices of opening or closure;

(ii) Publication of a notice in a

newspaper of major circulation in each of the following cities: Brownsville, TX; Aransas Pass, TX; Galveston, TX; Corpus Christi, TX; Freeport, TX; Port Arthur, TX; Cameron, LA; and Morgan City, LA;

(iii) Notification of shrimp fishery organizations in all the States bordering the Gulf of Mexico;

(iv) Broadcast of a notice at time intervals, channels, and frequencies customarily used by the TPWD to broadcast similar notices of opening or closure.

§ 658.25 Size restrictions.

There are no minimum size requirements for shrimp harvested in the fishery conservation zone.

§ 658.26 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

BILLING CODE 3510-22-M

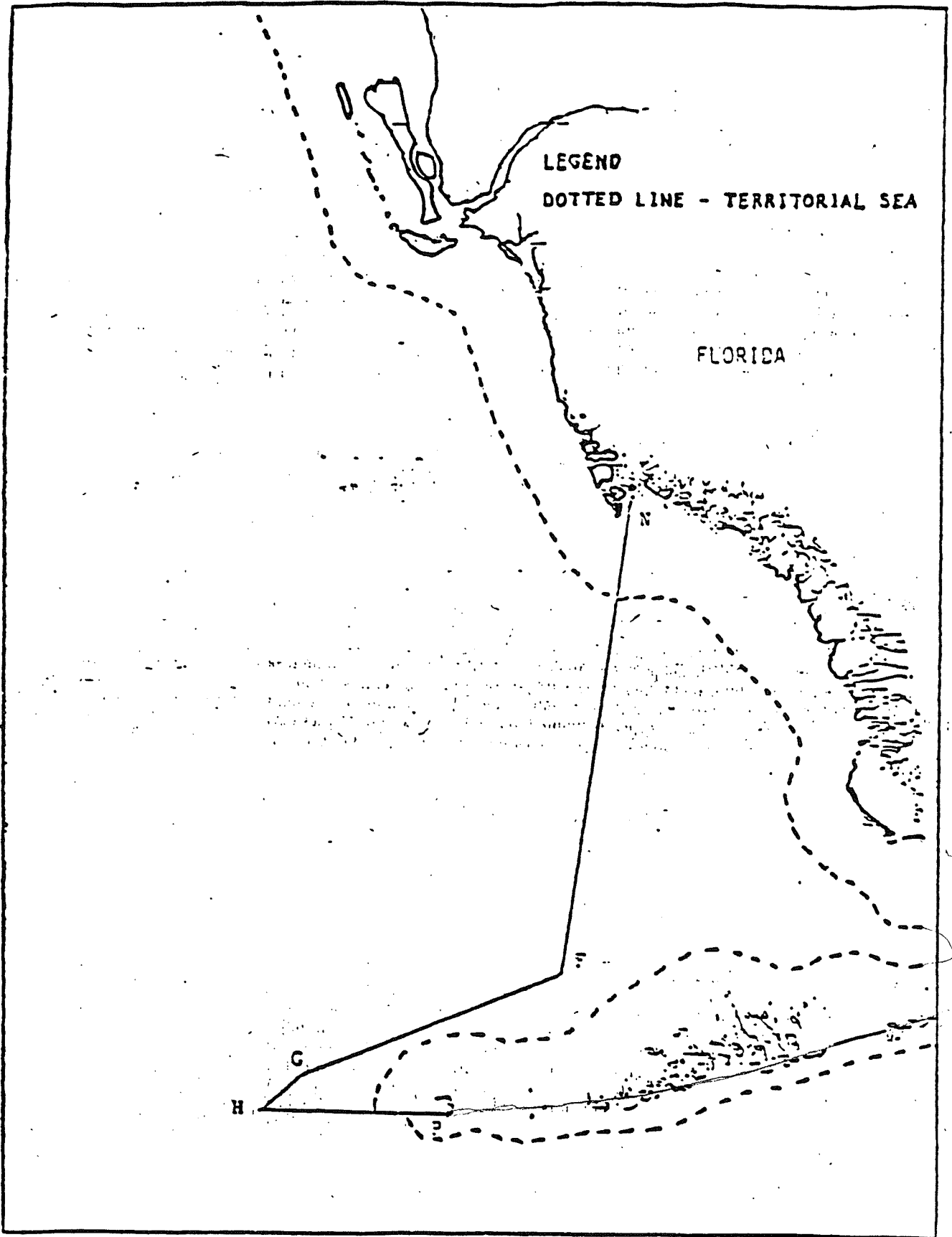


FIGURE 1. LOCATION OF TORTUGAS SHRIMP SANCTUARY.

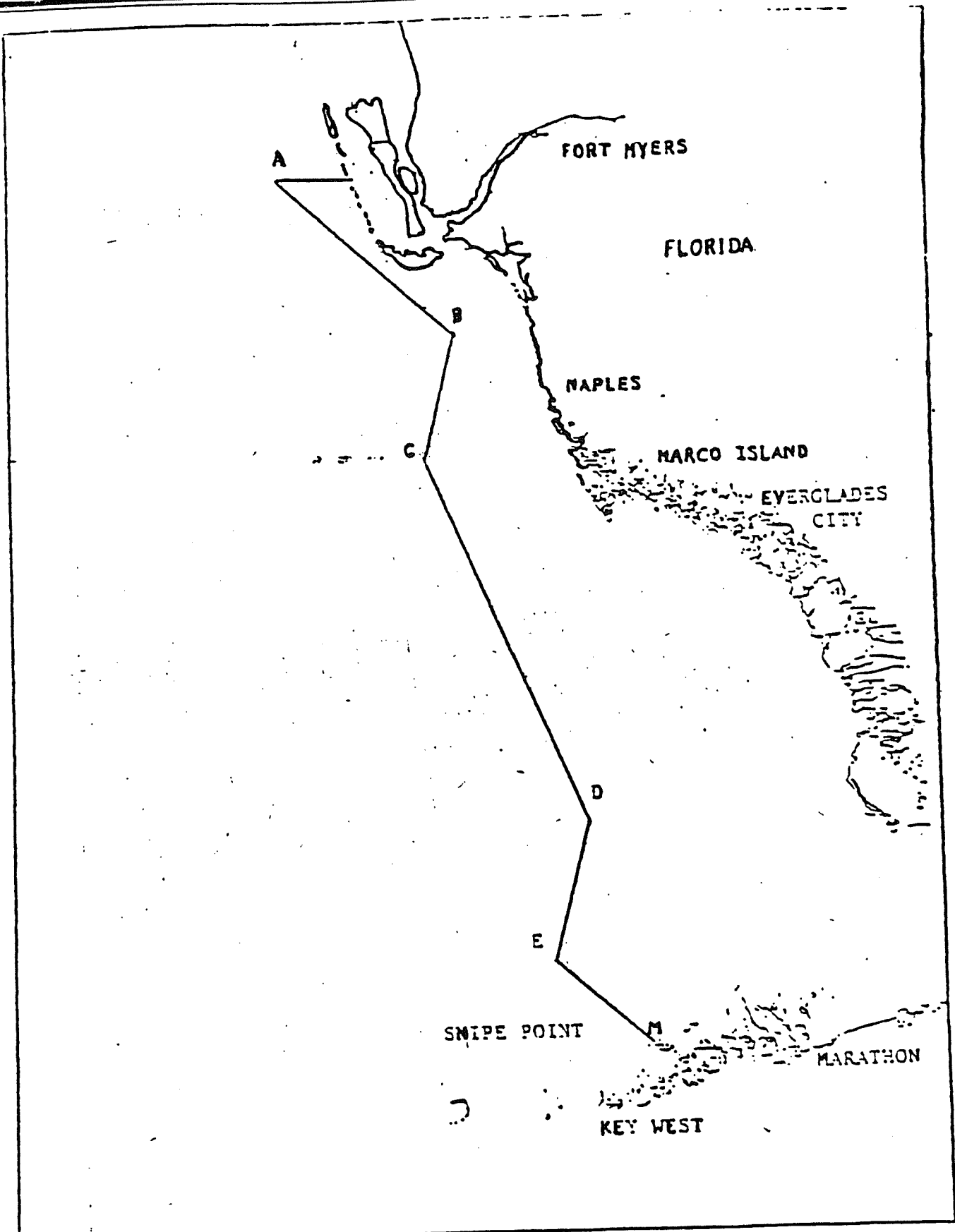


FIGURE 2. AREA CLOSED TO SHRIMPING BETWEEN JANUARY 1 AND MAY 20.

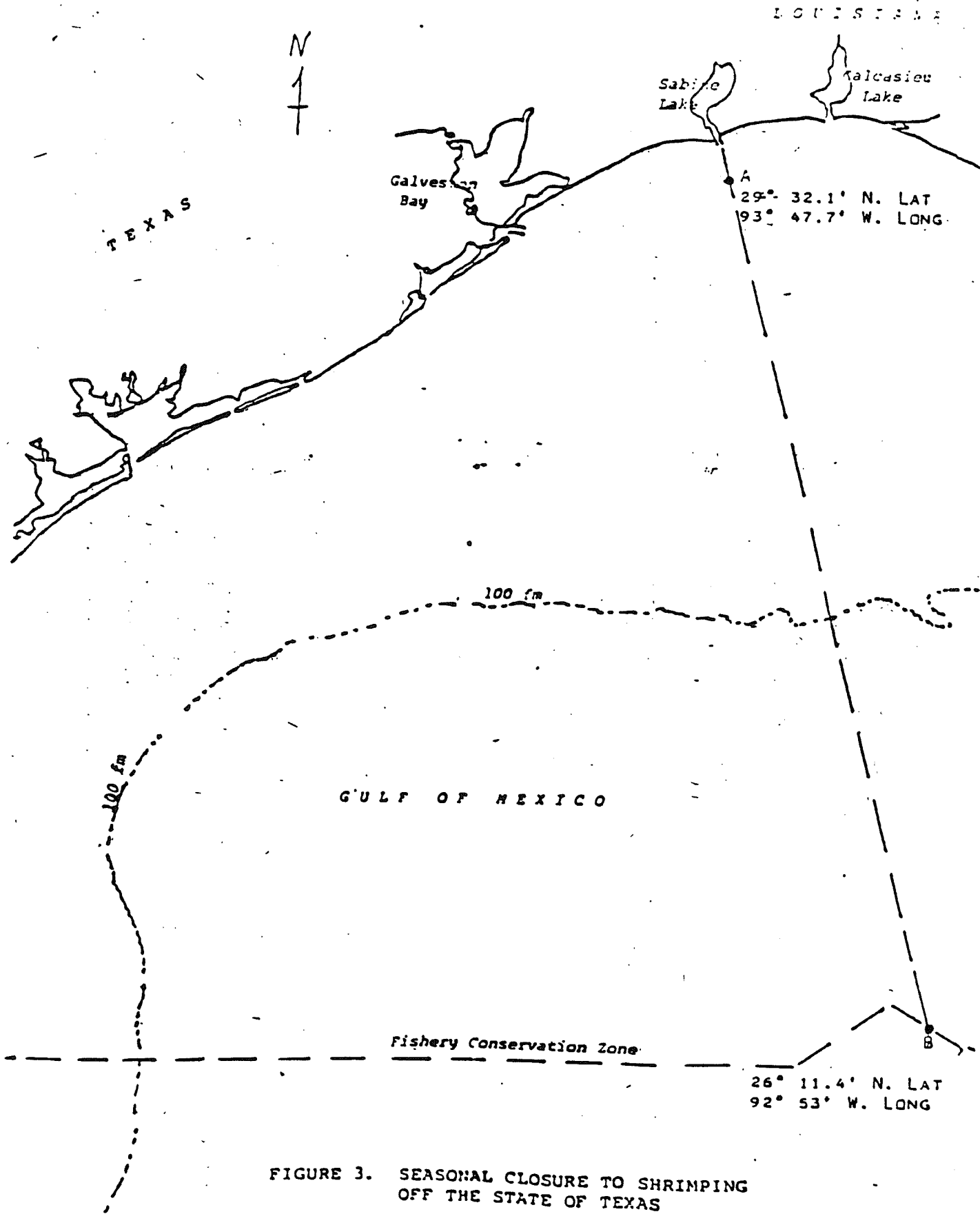


FIGURE 3. SEASONAL CLOSURE TO SHRIMPING OFF THE STATE OF TEXAS