

rejected because the projected economic losses to the shrimp industry were greater than the preferred alternative. The final rule provides certain exemptions from the BRD requirements to reduce negative economic impacts on shrimp fishermen while still meeting the bycatch reduction objectives.

This rule does not establish any new reporting or recordkeeping requirements. The BRD testing protocol is expected to include a new collection-of-information requirement subject to the PRA—namely, the BRD certification process, consisting of an application for the testing of a new BRD, the testing itself, and the submission of the test results. The estimated burden hours (i.e., response time) for this requirement has not been determined. When determined, the new collection-of-information requirement will be submitted to the Office of Management and Budget for approval. The requirement and its response time/burden hours will be contained in a proposed rule containing the BRD testing protocol to be published subsequently in the **Federal Register** with an opportunity for public comment.

List of Subjects in 50 CFR Part 622

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

Dated: April 8, 1998.

Rolland A. Schmitten,
Assistant Administrator for Fisheries,
National Marine Fisheries Services.

For the reasons set out in the preamble, 50 CFR part 622 is 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.*

2. In § 622.2, a definition for “Shrimp trawler” is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

3. In § 622.41, paragraph (h) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) *Shrimp in the Gulf*—(1) *BRD requirement.* (i) Except as exempted in paragraphs (h)(1)(ii) through (iv) of this section, on a shrimp trawler in the Gulf EEZ shoreward of the 100-fathom (183-m) depth contour west of 85°30' W. long., each net that is rigged for fishing must have a certified BRD installed. A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(ii) A shrimp trawler is exempt from the requirement to have a certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler are royal red shrimp.

(iii) A shrimp trawler is exempt from the requirement to have a BRD installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either pulled immediately in front of another net or is not connected to another net.

(iv) A shrimp trawler is exempt from the requirement to have a certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(2) *Certified BRDs.* The fisheye BRD is certified for use by shrimp trawlers in the Gulf EEZ. Specifications of the fisheye BRD are contained in Appendix D of this part.

4. In § 622.48, paragraph (i) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(i) *Gulf shrimp.* Bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specifications.

[FR Doc. 98-9767 Filed 4-9-98; 11:41 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980408088-8088-01; I.D. 040798A]

RIN 0648-AK98

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule implements changes to the availability of the recreational red snapper quota and the procedures that allow the recreational and commercial quotas to be taken. Specifically, it makes available 2.94 million-lb (1.33 million-kg) of the recreational quota to recreational fishermen beginning January 1, 1998; reserves 3.12 million lb (1.42 million kg) of the red snapper total allowable catch (TAC), which may be made available on September 1, 1998; establishes a procedure for releasing the reserved TAC on September 1, 1998, based on observed efficiency of BRDs used in shrimp trawls and apportioned between the recreational and commercial fisheries; and reduces the 5-fish red snapper bag limit to 4 fish. The 3.06 million-lb (1.39 million-kg) commercial quota was available on February 1, 1998. The intended effect is to reduce overfishing of red snapper in the Gulf of Mexico.

DATES: This rule is effective May 14, 1998 through October 13, 1998 except for the suspension of §§ 622.34(l) and 622.39(b)(1)(iii) and the addition of §§ 622.34(m) and 622.39(b)(1)(vi), which are effective April 29, 1998, through October 13, 1998 and except for the suspension of § 622.42(a)(2) and the addition of § 622.42(g)(2), which are effective April 14, 1998, through October 13, 1998. Comments must be received no later than May 14, 1998.

ADDRESSES: Comments on this interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The TAC for red snapper in the Gulf of Mexico EEZ is 9.12 million lb. The FMP divides the TAC as a commercial quota (51 percent of TAC) and a recreational quota (49 percent of TAC). This interim rule (1) makes available a 2.94 million-lb (1.33 million-kg) apportionment of the TAC to recreational fishermen beginning January 1, 1998; (2) reserves 3.12 million lb (1.42 million kg) of the TAC, which may be made available on September 1, 1998; (3) establishes the procedure for releasing the reserved TAC on September 1, 1998, based on observed efficiency of BRDs used in shrimp trawls; and (4) reduces the 5-fish bag limit to 4 fish. The 3.06 million-lb (1.39 million-kg) commercial quota was made available on February 1, 1998.

NMFS plans a major research effort beginning May 1998, to provide an estimate of BRD bycatch reduction under operational conditions prior to September 1, 1998. If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 50 percent or less, no reserve will be released. If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 60 percent or greater, the entire 3.12 million lb (1.42 million kg) reserve will be released on September 1, 1998. If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by more than 50 but less than 60 percent, a portion of the reserve will be released proportional to the efficiency of the BRDs. These measures are necessary to prevent overfishing and rebuild red snapper to a spawning potential ratio (SPR) of 20 percent by 2019, as required by the FMP.

The Council, at its January 1998 meeting, recommended that NMFS continue a status quo TAC of 9.12 million lb (4.14 million kg). The Council also voted to maintain the current 5-fish bag limit for the recreational fishery and to reduce to zero the bag limit for the captain and crew of charter vessels and headboats. The Council intended that implementation of this latter measure would be contingent upon the continuation of the 9.12 million-lb (4.14 million-kg) TAC.

The Council's recommendation for a status quo TAC was made following a review of the 1997 NMFS red snapper stock assessment and findings from a recent Congressionally mandated peer review of the science and management of red snapper. The peer review concluded that red snapper are seriously overfished, shrimp trawl bycatch of juvenile red snapper needs to be reduced, and the TAC should be reduced to no more than 6.0 million lb (2.7 million kg) if the resource is to recover to the FMP's rebuilding target of 20-percent SPR by 2019. The peer review also strongly recommended that NMFS initiate a bycatch monitoring program.

The 1997 NMFS stock assessment noted that a 20-percent SPR could be achieved with a 9.12 million lb (4.14 million kg) TAC if BRDs achieved a bycatch reduction efficiency of 60 percent or greater. Efficiencies of 60 percent or greater have been achieved under experimental conditions according to a NMFS gear specialist who testified at the Council's January meeting, although 50 percent is a more reasonable expectation of the operational BRD performance level, especially when compliance and BRD release mortalities are considered. The Council's recommendation for a status quo TAC was based primarily on an assumption that the bycatch mortality of juvenile red snapper could be reduced by 60 percent or more through the mandatory use of BRDs. The final rule implementing Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico requires the use of BRDs in most shrimp trawls.

NMFS intends to test this assumption by initiating a major research effort, beginning in May 1998, to obtain operational estimates of BRD efficiency while towing commercial shrimp trawls in areas when juvenile red snapper are present. Observers, logbooks, and vessel monitoring systems will be used on selected vessels to monitor the use of BRDs and to obtain estimates of bycatch in Federal waters of the Gulf of Mexico. In addition, this research initiative will address some of the concerns expressed in the peer review regarding improved estimates of bycatch, new information on discard mortalities from fishing vessels, and refined data on age composition of red snapper to aid in subsequent stock assessments.

Reservation of TAC

Under existing regulations, the commercial quota for red snapper in the Gulf of Mexico is split into two periods: the first commencing at noon on

February 1 with 3.06 million lb (1.39 million kg) of the annual quota available and the second commencing at noon on September 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 15th of each month, until the applicable commercial quotas are reached. The recreational fishery is open from January 1 until its quota is reached.

This interim rule (1) makes available a 2.94 million-lb (1.33 million-kg) apportionment to recreational fishermen beginning January 1, 1998; (2) reserves 3.12 million lb (1.42 million kg) of the red snapper TAC, which may be made available on September 1, 1998; and (3) establishes the procedure for releasing the reserved TAC on September 1, 1998, based on observed efficiency of BRDs used in shrimp trawls and apportioned between the recreational and commercial red snapper fisheries. The 3.06 million-lb (1.39 million-kg) commercial quota was made available on February 1, 1998. If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 60 percent or more, the entire 3.12 million-lb (1.42 million-kg) reserve will be made available on September 1, 1998, with 1.59 million lb (0.72 million kg) apportioned to commercial fishermen and 1.53 million lb (0.69 million kg) apportioned to recreational fishermen. If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 50 percent or less, no reserve will be released. If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by more than 50 percent, but by less than 60 percent, for each one percentage point increase in bycatch reduction above 50 percent, 0.159 million lb (0.715 million kg) of reserve will be released to commercial fishermen and 0.153 million lb (0.069 million kg) of reserve will be released to recreational fishermen.

Reduction of Bag Limit

The 1997 recreational red snapper fishery was closed on November 27, 1997, to prevent the fishery from exceeding its quota. However, only one of the five Gulf coastal states implemented compatible closures in state waters after the Federal closure. Most states believe that the recreational harvest should not be controlled by quotas; rather, they believe it should be controlled by bag limits and similar measures. A more restrictive bag limit would minimize the possibility of a recreational closure and maximize the compatibility of Federal regulations

with state fishery management measures, thereby helping to prevent quota overruns and overfishing. Assuming the full availability of the 9.12 million-lb (4.14 million-kg) TAC in 1998, a 4-fish bag limit should extend the recreational season throughout the year; with 6.0 million lb (2.7 million kg) available, the season should extend into October 1998. Additionally, a 4-fish bag limit should enable charter and headboat operators to continue to attract customers. As most of the recreational trips occur during the warmer summer months, the 4-fish bag limit also ensures that the recreational fishery will remain open during the peak fishing months with either 6.0 or 9.12 million lb (2.7 or 4.14 million kg) available.

NMFS prepared an evaluation of the regulatory impacts of the interim measures. For the commercial fishery, limiting harvest levels to 3.06 million lb (1.39 million kg) is expected to result in a short-term reduction in profit of about \$1.5 million in the first year, assuming no shift in effort to other species. For the recreational fishery, NMFS estimated the number of red snapper fishing trips expected to be affected by various bag limits with only 6.0 million lb (2.7 million kg) of the TAC available. With a 5-fish bag limit, about 27 percent or 126,000 red snapper trips would be affected due to an early closure of the season. A 4-fish bag limit reduces this effect to 17 percent. Some of these trips may be shifted to other species; therefore, the effect may not equate to cancellation of 17 percent of the trips. If the bag limit were reduced to three fish, only 8 percent of the trips would be affected; and with a reduction to two fish, no trips would be affected, assuming all the trips were still conducted. However, some charter boat operators expressed concerns that any reduction below a bag limit of three fish would most likely result in widespread cancellation of trips. Unfortunately, none of the charter boat operators were willing to project the effect of any of the other considered reductions, other than commenting that the full 5-fish bag limit was needed to ensure no trip cancellations.

The NMFS Southeast Fisheries Science Center has determined that this interim rule is based on the best available scientific information. Given the determination of overfishing regarding red snapper, this interim rule is consistent with section 305(c) of the Magnuson-Stevens Act.

NMFS finds that the timely regulatory action provided by this interim rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico. NMFS issues this interim rule, effective for not

more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This interim rule may be extended for an additional 180 days, provided that the public has had an opportunity to comment on the interim rule. Public comments on this interim rule will be considered in determining whether to maintain or extend this rule to address overfishing of red snapper.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS prepared economic analyses of the interim rule. Copies are available (see ADDRESSES).

A delay in action to reduce overfishing increases the likelihood of a loss of long-term productivity in the red snapper fishery of the Gulf of Mexico and increases the probable need for more severe restrictions in the future. The public is aware of the need to reduce the bag limit and to reduce the TAC and the associated recreational and commercial quotas if BRDs are not sufficiently effective in reducing shrimp trawl-induced mortality of juvenile red snapper; the public has had an initial opportunity to comment on these aspects at a Council meeting. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds for good cause that a delay in the effective date of the measure to apportion the recreational quota and make available a 2.94 million-lb (1.33 million-kg) apportionment beginning January 1, 1998, to recreational fishermen is unnecessary. This apportionment does not impose any burden on any member of the recreational fishery, rather the apportionment is for the sole purpose of closing the fishery when the quota is reached. Therefore, it is unnecessary to

delay the effective date of this measure for 30 days.

Similarly, the need to implement the bag limit reduction in a timely manner to address the overfishing of red snapper and to minimize adverse effects of a recreational closure constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. However, the reduction of the red snapper bag limit could affect the decision by charter vessel/headboat clients to book fishing trips. Such bookings are routinely made well in advance of the actual trip. To provide sufficient notification of the reduction of the red snapper bag limit, particularly to charter vessel/headboat owners, operators, and clients, the reduction in the bag limit in § 622.39(b)(1)(vi) of this rule and the corresponding addition of § 622.34(m), which establishes the correct cross reference to § 622.39(b)(1)(vi), will not be effective until April 29, 1998.

List of Subjects in 50 CFR Part 622

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

Dated: April 8, 1998.

Rolland A. Schmitt, Jr.

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is 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.*

2. In § 622.34, paragraph (l) is suspended and paragraph (m) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(m) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits,

as specified in § 622.39(b)(1)(vi) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, such possession during a closed period is zero.

3. In § 622.39, paragraph (b)(1)(iii) is suspended and paragraph (b)(1)(vi) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

- (b) * * *
(1) * * *
(vi) Red snapper—4.

* * * * *

4. In § 622.42, paragraph (a) is suspended and paragraph (g) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(g) *Gulf reef fish*—(1) *Commercial quotas*. The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(i) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned as follows:

(A) 3.06 million lb (1.39 million kg) available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(m) and 622.43(a)(1)(i).

(B) The remainder is held in reserve.

(C) The Assistant Administrator may release all or any portion of the reserve specified in paragraph (g)(1)(i)(B) of this section effective September 1 by filing for publication a notification to that effect with the Office of the Federal Register. Determination of what portion, if any, of the reserve will be released will be based on the results of NMFS research regarding the effectiveness of BRDs in reducing shrimp trawl-induced mortality of juvenile red snapper. Release of reserve amounts will be determined as follows:

(1) If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 50 percent or less, none of the reserve specified in paragraph (g)(1)(i)(B) of this section will be released.

(2) If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 60 percent or greater, the entire reserve specified in paragraph (g)(1)(i)(B) of this section will be released, subject to the closure provisions of §§ 622.34(m) and 622.43(a)(1)(i).

(3) If BRDs reduce shrimp trawl-induced mortality of juvenile red

snapper by more than 50 percent but less than 60 percent, for each one percentage point increase in bycatch mortality reduction within the 50 to 60 percent range, an additional 0.159 million lb (0.072 million kg) of the reserve specified in paragraph (g)(1)(i)(B) of this section will be released, subject to the closure provisions of §§ 622.34(m) and 622.43(a)(1)(i). Fractional percentage point increases in bycatch mortality reduction will be prorated accordingly.

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined—1.60 million lb (0.73 million kg), round weight.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined—9.80 million lb (4.45 million kg), round weight.

(2) *Recreational quota for red snapper*. The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section—4.47 million lb (2.03 million kg), round weight, apportioned as follows:

(i) 2.94 million lb (1.33 million kg) available January 1 each year, subject to the closure provisions of § 622.43(a)(1)(ii).

(ii) The remainder is held in reserve.

(iii) The Assistant Administrator may release all or any portion of the reserve specified in paragraph (g)(2)(ii) of this section effective September 1 by filing a notification for publication to that effect with the Office of the Federal Register. Determination of what portion, if any, of the reserve will be released will be based on the results of NMFS research regarding the effectiveness of BRDs in reducing shrimp trawl-induced mortality of juvenile red snapper. Release of reserve amounts will be determined as follows:

(A) If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 50 percent or less, none of the reserve specified in paragraph (g)(2)(ii) of this section will be released.

(B) If BRDs reduce shrimp trawl-induced mortality of juvenile red snapper by 60 percent or greater, the entire reserve specified in paragraph (g)(2)(ii) of this section will be released, subject to the closure provisions of § 622.43(a)(1)(ii).

(C) If BRDs reduce shrimp trawl-induced mortality of juvenile red

snapper by more than 50 percent but less than 60 percent, for each one percentage point increase in bycatch mortality reduction within the 50 to 60 percent range, an additional 0.153 million lb (0.069 million kg) of the reserve specified in paragraph (g)(2)(ii) of this section will be released, subject to the closure provisions of § 622.43(a)(1)(ii). Fractional percentage point increases in bycatch mortality reduction will be prorated accordingly.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

I.D. 040998A

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

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

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has projected that the initial portion of the annual commercial quota for red snapper will be reached on April 12, 1998. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective 12:01 a.m., local time, April 13, 1998, until noon, local time, on September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 1998. Those regulations split the red snapper commercial fishing season into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.06