

Issued: September 29, 2005.

**Jacqueline Glassman,**  
Deputy Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 092605B]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2005 Shallow-Water Grouper Commercial Fishery

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS has determined that the red grouper quota for the commercial fishery will have been reached by October 10, 2005, and therefore closes the commercial fishery for shallow-water grouper (red, black, gag, scamp, yellowfin, yellowmouth, rock hind, and red hind) in the exclusive economic zone (EEZ) of the Gulf of Mexico. The existing regulations require closure of the entire shallow-water grouper commercial fishery when either the red grouper quota or the shallow-water grouper quota is reached or is projected to be reached. This closure is necessary to protect the shallow-water grouper resource.

**DATES:** Closure is effective 12:01 a.m., local time, October 10, 2005, until 12:01 a.m., local time, on January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jason Rueter, telephone 727-824-5305, fax 727-824-5308, e-mail [Jason.Rueter@noaa.gov](mailto:Jason.Rueter@noaa.gov).

**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 (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for red grouper in the Gulf of Mexico at 5.31 million lb (2,413,636 kg) for the current fishing year, January 1 through December 31, 2005. Those regulations also require

closure of the entire shallow-water grouper commercial fishery when either the red grouper quota or the shallow-water grouper quota is reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. Based on current statistics, NMFS has determined the available commercial quota of 5.31 million lb (2,413,636 kg) for red grouper will be reached on or before October 10, 2005. Accordingly, NMFS is closing the commercial shallow-water grouper fishery in the Gulf of Mexico EEZ from 12:01 a.m., local time, on October 10, 2005, until 12:01 a.m., local time, on January 1, 2006. The operator of a vessel with a valid reef fish permit having shallow-water grouper aboard must have landed and bartered, traded, or sold such shallow-water grouper prior to 12:01 a.m., local time, October 10, 2005.

During the closure: (1) the sale or purchase of shallow-water grouper taken from the EEZ is prohibited; (2) when the recreational grouper fishery is open, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red grouper and shallow-water grouper in or from the Gulf of Mexico EEZ; and (3) when the recreational grouper fishery is closed, all harvest or possession of grouper in or from the Gulf EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of red grouper or shallow-water grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 10, 2005, and were held in cold storage by a dealer or processor.

#### Classification

This action is required under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior

notice and opportunity for public comment is contrary to the public interest because it requires time during which harvest would likely exceed the quota. Similarly, there is a need to implement this measure in a timely fashion to prevent an overage of the commercial quota of Gulf red grouper, given the capacity of the fishing fleet to exceed the quota quickly. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. For these reasons, NMFS finds good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is waived.

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

Dated: September 28, 2005.

**Alan D. Risenhoover,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 030912231; I.D. 071905B]

#### Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2005 Winter II Quota; Correction

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

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** NMFS published a temporary rule in the Federal Register on August 2, 2005, to adjust the 2005 Winter II commercial scup quota and possession limit. NMFS has since received information that a substantial amount of scup landed during the 2005 Winter I period were misreported as porgies via the Electronic Dealer Reporting System. This action corrects the adjusted 2005 Winter II commercial scup quota and possession limit.

**DATES:** This rule is effective November 1, 2005, through December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279.

**SUPPLEMENTARY INFORMATION:** NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250) implementing a process for years