

(2) EPA is determining that the 8-hour ozone nonattainment areas in New York listed below have attained the 8-hour ozone standard on the date listed. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for each of these areas as long as the area does not monitor any violations of the 8-hour ozone standard. If a violation of the ozone NAAQS is monitored this determination shall no longer apply in the area where the violation occurs.

(i) Albany-Schenectady-Troy (consisting of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie Counties) as of March 25, 2008,

(ii) Jefferson County, as of March 25, 2008, and

(iii) Rochester (consisting of Genesee, Livingston, Monroe, Ontario, Orleans and Wayne Counties) as of March 25, 2008.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 970730185-7206-02]

RIN 0648-XG40

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2008 Gulf of Mexico Recreational Fishery for Red Snapper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). NMFS has determined this action is necessary to prevent the recreational fishery from exceeding its quota for the fishing year. This closure is necessary to prevent overfishing of Gulf red snapper.

**DATES:** The closure is effective 12:01 a.m., local time, August 5, 2008, through December 31, 2008, the end of the current fishing year. The recreational

fishery will reopen on June 1, 2009, the beginning of the 2009 recreational fishing season.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, telephone 727-551-5796, fax 727-824-5308, e-mail [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The red snapper 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.

#### Background

The final rule implementing the approved actions in joint Amendment 27 to the FMP and Amendment 14 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 27/14) (73 FR 5117, January 29, 2008) is intended to end overfishing and rebuild the red snapper stock in the Gulf of Mexico. In part, the final rule reduced the 2008 recreational quota for red snapper to 2.45 million lb (1.11 million kg). To constrain the recreational fishery's harvest to the quota, the recreational daily bag limit was revised to two fish per person and the daily bag limit for captains and crews of for-hire vessels was reduced to zero. The recreational minimum size limit remained at 16 inches (40.6 cm) total length (TL). The Federal red snapper recreational fishing season was reduced to June 1 through September 30. These recreational management measures, in combination, were projected to constrain red snapper harvest to the 2.45 million lb (1.11 million kg) recreational quota based on the assumption all five Gulf states would adopt compatible regulations.

Previously, in 2007, NMFS implemented temporary rules (72 FR 15617, April 2, 2007; 72 FR 54223, September 24, 2007) to initiate reductions in harvest and fishing mortality on the overfished red snapper stock until the more permanent regulations above could be established. The temporary regulations included a recreational quota of 3.185 million lb (1.445 million kg), a two-fish bag limit, a zero-fish bag limit captains and crews of for-hire vessels, a 16-inch (40.6 cm) TL minimum size limit, and a recreational fishing season of April 21 through October 31. These harvesting restrictions were intended to have a 50-percent probability of constraining

recreational harvest to the recreational quota, and also assumed implementation of compatible state regulations throughout the Gulf.

Substantial quantities of red snapper are harvested by the recreational fishery from state waters. This is particularly true for Florida and Texas where state jurisdiction extends 9 nautical miles. State water recreational harvest of red snapper is much more limited off Mississippi, Alabama, and Louisiana, in part due to their more limited 3 nautical-mile jurisdiction. Reported recreational red snapper landings in state waters off the west coast of Florida in 2007 represented more than 25 percent of the total Gulf recreational red snapper landings, and more than 50 percent of the total recreational landings for the state. Although the quantity of recreational red snapper landed from state waters off Texas is only approximately 4.5 percent of the total recreational quota, landings from state waters constitute more than 30 percent of Texas' total recreational landings. During 2007, the Texas Parks and Wildlife Department (TPWD) kept Texas state waters open year-round compared to the restricted Federal season, and anglers were allowed a daily bag limit of four fish compared to the two-fish bag limit in Federal waters. The Florida Fish and Wildlife Conservation Commission (FWC) maintained a fishing season of April 15 through October 31 during 2007 in its state waters, and a four-fish recreational bag limit compared to a two-fish bag limit in Federal waters. These incompatible regulations in state waters contributed to a total recreational harvest that was estimated to exceed the recreational red snapper quota by approximately 1.0 million lb (453,592 kg) in 2007.

To ensure the 2008 recreational red snapper quota would not be exceeded, NMFS and the Council requested the five Gulf states adopt regulations compatible with Federal regulations implemented for red snapper during the 2008 fishing year. In response, the FWC implemented regulations for Florida state waters that allow anglers to possess two fish per day and prohibited retention by captain or crew of for-hire vessels, compatible with Federal regulations, but maintained its recreational fishing season of April 15 through October 31; 78 days longer than the existing June 1 through September 30 Federal fishing season. The TPWD maintained its existing regulations of a year-round fishing season and a four-fish bag limit in Texas state waters.

The ramifications of incompatible state regulations for the Federal red snapper fishery are significant. The

existing regulations for Federal waters were based on the assumption of compatible state regulations. The Magnuson-Stevens Act requires NMFS to specify a recreational red snapper quota and to close the recreational fishery when the quota is met. Constraining harvest to the quota is crucial to meeting the legal requirements to prevent and end overfishing of the overfished red snapper resource of the Gulf of Mexico, and achieve rebuilding targets. With less restrictive regulations in state waters, the likelihood is increased for the recreational red snapper quota to be taken before the end of the existing June 1 through September 30 Federal fishing season.

Because of this concern, NMFS conducted an analysis to project 2008 red snapper recreational landings in accordance with the established Federal and state recreational fishing seasons and harvesting restrictions. These projections were necessary because only one month of landings data, June, will be available by mid-August for the 2008 Federal recreational red snapper fishery. If landings are higher than anticipated, because of less restrictive state regulations, it would be difficult to close the fishery in a timely fashion. Therefore, historical landings were used to project both landings and season length for each state by sector (charter, private, and headboat). The most recent annual estimate of red snapper landings for all recreational sectors was used to project landings, and where necessary, landings were adjusted for changes in regulations (e.g., lower bag limit, shorter season length). Confidence limits were constructed for the 2008 landings projections. These confidence limits were used to assess probabilities of exceeding the recreational quota in 2008.

The projection results indicate that, under the existing Federal recreational fishing season, charter, private, and headboat sectors across the Gulf will land 1,774,952 lb (805,105 kg) of red snapper from Federal waters in 2008. This harvest level would represent more than 72 percent of the total recreational quota.

Under the existing state regulations, NMFS projects the recreational sectors of all five Gulf states combined will harvest a quantity of red snapper representing nearly 41 percent of the total recreational quota from state waters. The projections indicate Florida charter, private, and headboat sectors will land 815,787 lb (370,035 kg) of red snapper in state waters in 2008, representing approximately 33 percent of the total recreational quota. Texas,

Louisiana, Mississippi, and Alabama recreational sectors are projected to land approximately 190,673 lb (86,489 kg) from state waters in 2008; nearly 8 percent of the total recreational quota.

In summary, there is a 50-percent probability that, under the existing Federal and state recreational regulations, recreational red snapper landings for 2008 will be approximately 2.78 million lb (1.26 million kg); a 13.5-percent overage in the 2008 recreational quota. The projections do not account for shifts in fishing effort or non-compliance that may occur as a result of incompatible state and Federal regulations. Therefore, the projections are likely to represent an underestimate of the quantity of red snapper expected to be landed by the recreational fishery during 2008. NMFS must ensure the recreational quota (representing state and Federal landings) is not exceeded during the fishing year.

On March 12, 2007, the United States District Court for the Southern District of Texas, Houston Division, issued a ruling on legal challenges to the red snapper rebuilding plan established in 2005 (*Coastal Conservation Association v. Gutierrez et al.*, Case No. H-05-1214, consolidated with *Gulf Restoration Network et al. v. Gutierrez et al.*, Case No. H-05-2998). The ruling required NMFS and the Council to revise the red snapper rebuilding plan with a goal of having a 50-percent probability, or greater, of ending overfishing for red snapper between 2009 and 2010 and rebuilding the stock by 2032. The revised rebuilding plan, implemented in response to the Court ruling, reduced the recreational quota to 2.45 million pound (1.11 million kg). The rebuilding plan has slightly greater than a 50-percent probability of ending overfishing, assuming directed fishery landings strictly adhere to the total allowable catch and necessary reductions in bycatch mortality are achieved in the shrimp trawl fishery.

Given the recreational quota was exceeded in 2007, and NMFS' projections for the 2008 recreational fishing season indicate the quota again will be exceeded, there is an even greater likelihood of not attaining required reductions in fishing mortality to comply with the legal requirements and end overfishing of red snapper by 2010.

Given the five Gulf states' recreational red snapper regulations for 2008, NMFS estimates there is a 50-percent probability the recreational 2.45 million lb (1.11 million kg) quota will not be exceeded during the 2008 fishing year if Federal waters are closed to recreational fishing on August 24, 2008; 38 days

before the end of the established June 1 through September 30 fishing season.

As previously discussed, the 2007 projections, which were based on a 50-percent probability of constraining recreational harvest to levels consistent with the quota, resulted in an overage of approximately 1 million lb (453,592 kg). The incompatible regulations in Texas and Florida contributed to this overage. Given that both Texas and Florida have decided to maintain incompatible regulations, NMFS is increasingly concerned that non-compliance and shifting effort from Federal to state waters due to the incompatible regulations will result in additional substantial overages, and a concomitant failure to maintain the established rebuilding targets. As a result, NMFS has taken a more precautionary approach to better ensure the fishing mortality reduction in 2008 is attained, and overfishing is ended by 2010. Based on the five Gulf states' 2008 recreational red snapper fishing seasons, NMFS estimates there is a 75-percent probability the 2.45 million lb (1.11 million kg) recreational quota will not be exceeded during the 2008 fishing year if the Federal fishery is closed on August 5, 2008; 57 days before the end of the established June 1 through September 30 recreational fishing season.

#### Requirement for Closure

50 CFR 622.42(a)(2) specifies a recreational quota of 2.45 million lb (1.11 million kg) for Gulf red snapper for the current fishing year, January 1 through December 31, 2008. Under 50 CFR 622.43(a), NMFS is required to close the recreational fishery in the EEZ at such time as projected to be necessary to prevent the recreational fishery from exceeding its quota for the fishing year, by filing a notification to that effect in the **Federal Register**. Accordingly, to better ensure recreational landings do not exceed the 2008 recreational quota, the recreational fishery for red snapper in the Gulf of Mexico EEZ is closed effective 12:01 a.m., local time, August 5, 2008, through December 31, 2008, the end of the fishing year. The recreational red snapper fishery will reopen June 1, 2009, the start of the 2009 fishing season.

During the closure, the bag and possession limits for red snapper in or from the Gulf EEZ is zero.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that 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)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the quota already has been subject to notice and comment, and all that remains is to notify the public of the closure. NMFS has a legal obligation to keep harvest within the quota limits established by the stock rebuilding plan. There is a need to implement these measures in a timely fashion to prevent an overrun of the recreational quota of Gulf red snapper, given the capacity of the fishing fleet to harvest 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. To meet the legal obligation to constrain total recreational harvest to the quota, NMFS must close the recreational fishery in the EEZ earlier, i.e., by August 5, 2008, to compensate for continued fishing that will occur in those state waters where no compatible regulations exist. Those affected by this earlier closure, particularly charter vessel and headboat operations, need as much time as possible to adjust business plans to account for the earlier closure. Delaying the closure rule to accommodate prior public notice and comment would decrease the time available to adjust business plans.

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

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

Dated: March 19, 2008.

**Alan D. Risenhoover,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XG54

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

**ACTION:** Temporary rule; trip limit reduction.

**SUMMARY:** NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

**DATES:** This rule is effective 12:01 a.m., local time, March 22, 2008, through June 30, 2008, unless changed by further notification in the **Federal Register**.

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

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) 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.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota for the hook-and-line fishery in the southern Florida west coast subzone is 520,312 lb (236,010 kg) (50 CFR 622.42(c)(1)(i)(A)(2)(i)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(2), from the date that

75 percent of the southern Florida west coast subzone's hook-and-line gear quota has been harvested until a closure of the subzone's hook-and-line fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line gear quota for Gulf group king mackerel from the southern Florida west coast subzone has been reached. Accordingly, a 500-lb (227-kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the southern Florida west coast subzone effective 12:01 a.m., local time, March 22, 2008. The 500-lb (227-kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2008), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL boundary) along the west coast of Florida to 87°31'06" W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and southern subzones. From November 1 through March 31, the southern subzone is designated as the area extending south and west from 25°20.4' N. lat. to 26°19.8' N. lat. (a line directly west from the Lee/Collier County, Florida, boundary), i.e., the area off Collier and Monroe Counties. Beginning April 1, the southern subzone is reduced to the area off Collier County, Florida, between 25°48' N. lat. and 26°19.8' N. lat.

#### Classification

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