

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 090508900-9901-01]

RIN 0648-AX75

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Red Snapper Closure**

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

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** This proposed temporary rule would implement interim measures to establish a closure of the commercial and recreational fisheries for red snapper in the South Atlantic as requested by the South Atlantic Fishery Management Council (Council). The intended effect is to reduce overfishing of red snapper while permanent management measures are developed in Amendment 17 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 17) to end overfishing of red snapper.

**DATES:** Written comments must be received no later than 5 p.m., eastern time, on August 5, 2009.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648-AX75" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Karla Gore.
- Mail: Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0089" in the keyword search, then select "Send a Comment or

Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of documents supporting this proposed rule, which includes an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:**

Karla Gore, telephone: 727-551-5753, fax: 727-824-5308, e-mail: [karla.gore@noaa.gov](mailto:karla.gore@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the 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 Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on an continuing basis, the optimum yield for federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protected marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable. Amendment 17, currently under development, will include management measures to end overfishing of red snapper and rebuild the red snapper stock. However because Amendment 17, if approved, would not likely be implemented until early 2010, this temporary rule contains management measures intended to address overfishing of red snapper on an interim basis.

The Council was notified in July 2008 that red snapper are overfished and undergoing overfishing. The status of red snapper was determined by the Southeast Data Assessment and Review process in 2008. The Council's

Scientific and Statistical Committee has determined overfished and overfishing determinations for South Atlantic red snapper are based on the best available scientific information.

At the March 2009 Council meeting in Jekyll Island, Georgia, the Council voted (7-6) to proceed with an interim rule for red snapper. On March 23, 2009, the Council submitted a letter to NMFS requesting interim measures to prohibit harvest and possession of red snapper pursuant to Section 305(c) of the Magnuson-Stevens Act.

**Management Measures Proposed by This Temporary Rule***Prohibition on Harvest, Possession, or Sale of Red Snapper*

The proposed temporary rule would establish a closure of the commercial and recreational fisheries for red snapper in the South Atlantic exclusive economic zone (EEZ) (180 days with the possibility of extending for another 186 days). During the closure, the harvest, possession, or sale of red snapper in or from the South Atlantic EEZ would be prohibited for both recreational and commercial fishermen. For a person who has been issued a valid commercial vessel permit or charter vessel/headboat permit for South Atlantic snapper-grouper, the provisions of the proposed temporary rule would apply regardless of where the red snapper are harvested (i.e. state or Federal waters).

**Future Action**

NMFS believes that this proposed rule is necessary to reduce overfishing of red snapper in the South Atlantic. NMFS will consider all public comments received on this proposed rule in determining whether to proceed with a final rule and, if so, whether any revisions would be appropriate in the final rule. If NMFS issues a final rule, it would be effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. The final rule could be extended for an additional 186 days, provided that the public has had an opportunity to comment on the rule and provided that the Council is actively preparing a plan amendment or proposed regulations to address this overfishing issue on a permanent basis. The Council is preparing an FMP amendment to address this issue on a permanent basis.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the South Atlantic Snapper-

Grouper Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed temporary rule. The IRFA describes the economic impact this proposed temporary rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The purpose of this proposed temporary rule is to reduce red snapper overfishing while long-term management measures are developed and implemented. The Magnuson-Stevens Act provides the statutory basis for this proposed temporary rule.

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

This proposed temporary rule would be expected to directly impact commercial fishing and for-hire operators. The Small Business Administration has established size criteria for all major industry sectors in the U.S. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For a for-hire business, the other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2003–2007, an average of 220 vessels per year were permitted to operate in the commercial snapper-grouper fishery and recorded landings of red snapper, ranging from a high of 236 vessels in 2003 to a low of 206 vessels in 2006. Total dockside revenues from all species on all recorded trips by these vessels averaged \$9.78 million (2007 dollars) per year over this period, resulting in a per-vessel average of approximately \$44,500. The highest average revenue per vessel during this period occurred in 2007 at approximately \$54,600. Based on these average revenue figures, it is determined, for the purpose of this assessment, that all commercial vessels

that would be affected by this proposed temporary rule are small entities.

The harvest of red snapper in the EEZ by for-hire vessels requires a snapper-grouper charter vessel/headboat permit. From 2003–2007, an average of 1,635 vessels per year were permitted to operate in the snapper-grouper for-hire fishery, of which 82 vessels are estimated to have operated as headboats. The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The annual average gross revenue for charter vessels is estimated to range from approximately \$80,000–\$109,000 (2007 dollars) for Florida vessels, \$94,000–\$115,000 for North Carolina vessels, \$88,000–\$107,000 for Georgia vessels, and \$41,000–\$50,000 for South Carolina vessels. For headboats, the appropriate estimates are \$220,000–\$468,000 for Florida vessels, and \$193,000–\$410,000 for vessels in the other states. Based on these average revenue figures, it is determined, for the purpose of this assessment, that all for-hire businesses that would be affected by this action are small entities. The number of for-hire vessels that would be expected to be affected by this proposed interim rule is discussed below.

Some fleet activity may exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown, and all vessels are treated as independent entities in this assessment.

This proposed temporary rule would not establish any new reporting, record-keeping, or other compliance requirements.

This proposed temporary rule would be expected to result in a short-term reduction in net operating revenues (NOR), which are trip revenues minus non-labor trip costs, to the commercial snapper grouper sector by approximately \$120,000 (2007 dollars). This reduction in NOR would be expected to increase to a cumulative total of \$289,000 if the proposed prohibition is extended an additional 186 days, resulting in a prohibition for one full year. An average of 220 commercial vessels per year have recorded landings of red snapper. This proposed temporary rule would be expected to result in an average reduction in NOR of approximately \$450 per vessel for the proposed 180-day prohibition, and approximately \$1,300 per vessel if the prohibition is extended an additional 186 days. Although NOR are not directly comparable to dock-side revenues, the average annual dock-side revenues from

all species harvested for vessels with recorded red snapper harvests is estimated to be approximately \$44,500.

For the headboat sector, this proposed temporary rule would be expected to result in a short-term reduction in NOR by a maximum of approximately \$1.76 million (2008 dollars). This reduction in NOR would be expected to increase to a cumulative maximum total of \$3.96 million if the proposed prohibition is extended an additional 186 days. Although 82 vessels are estimated to operate in the snapper-grouper fishery, red snapper target activity is believed to be concentrated in Georgia and northeast Florida (Mayport, FL, south through Cape Canaveral, FL) where 16 headboats operate. Approximately 70 percent of all red snapper harvested (pounds) by the headboat sector from 2003–2007 were harvested by anglers fishing from this area. The expected maximum reduction in NOR is based on the assumption that all angler trips on these 16 vessels during the respective period target red snapper and equals the change in NOR if all these trips were lost. This is considered a worst-case scenario. An unknown number of these trips would likely not target red snapper (many anglers fish to catch whatever species is available) and red snapper has historically comprised only 3 percent of the total number of fish harvested and 11 percent of the total number of pounds of fish harvested by vessels in this area. As a result, it is unlikely that all or necessarily a large portion of these trips would be canceled. Available data, however, do not support the identification of more precise estimates of the number of red snapper target trips that would be expected to be cancelled, and the projected estimates of the expected change in NOR should be considered extreme upper bounds.

Because of the uncertainty associated with the number of affected vessels and the number of trips that may be cancelled, the effective average reduction in NOR per headboat vessel is difficult to project. Under the worst-case scenario, the cancellation of all angler trips on Georgia and northeast Florida vessels (16) would result in a 100-percent loss of NOR for these vessels during this period of time (180 days), or approximately 44 percent of annual total NOR (\$1.76 million/\$3.96 million). However, if the upper bound of effects (\$1.76 million) is assumed to encompass trip cancellation on vessels outside this area, it is unknown how many additional vessels should be included in the analysis. The South Carolina headboat fleet, which contains 14 vessels, accounts for the next highest red snapper harvests after the Georgia

and northeast Florida fleets. If the maximum expected reduction in NOR is spread over all 30 vessels in these areas, the expected reduction in NOR would be less than 100 percent of the total annual NOR, and the average expected reduction in NOR per vessel would be approximately \$58,700. This would increase to a total of approximately \$132,000 under an extension of the proposed prohibition for an additional 186 days. Although NOR are not directly comparable to gross revenues from for-hire fees, the average annual gross revenues from for-hire fees is estimated to be approximately \$220,000-\$468,000 for Florida headboats and \$193,000-\$410,000 for headboats in the other states.

For the charter sector, the proposed temporary rule would be expected to result in a short-term reduction in NOR of approximately \$247,000 (2008 dollars) and increase to a cumulative total of approximately \$427,000 if the proposed prohibition is extended an additional 186 days. It should be noted that, although target data are available for the charter sector, trip cancellation data are not available, and the analysis assumes, similar to the analysis of the headboat sector, that all charter vessel red snapper target effort will be cancelled. As in the headboat sector, the cancellation of all trips that would have targeted red snapper in the charter sector is unlikely to occur and, as a result, the estimates of the expected change in NOR in the charter sector likely overestimate the actual reduction that would occur.

Vessel-level data are unavailable for the charter sector. As a result, it is not known how many vessels would be affected by the proposed temporary rule. An estimated 1,553 charter vessels are permitted to operate in the snapper-grouper fishery, which allows these vessels to harvest red snapper (1,635 total vessels with snapper-grouper charter vessel/headboat permits, of which 82 are estimated to operate as

headboats). If the proportion of charter vessels that would be expected to be affected by the proposed temporary rule is assumed to equal the proportion of headboats constituting the core red snapper vessels (16 vessels out of 82 headboats, or 19.5 percent), then approximately 303 charter vessels (19.5 percent of 1,553 vessels) would be expected to be affected. This would result in an average reduction in NOR of approximately \$800 per vessel, which would increase to a total of approximately \$1,400 under an extension of the proposed prohibition for an additional 186 days. The annual average gross revenue per charter vessel from charter fees is estimated to range from approximately \$80,000-\$109,000 (2007 dollars) for Florida vessels, \$94,000-\$115,000 for North Carolina vessels, \$88,000-\$107,000 for Georgia vessels, and \$41,000-\$50,000 for South Carolina vessels.

Although all the effects described above are short-term in nature, due to the limited duration of the proposed temporary rule, continued long-term unquantified adverse economic effects could occur at the individual vessel and fishery level if the short-term effects result in business failure.

Three alternatives, including the status quo, were considered for this proposed temporary rule. The proposed action would prohibit the harvest (retention) and sale of red snapper in the South Atlantic commercial and recreational fisheries for 180 days, with extension potential for another 186 days. The first alternative to the proposed action, the status quo, would not prohibit the harvest and sale of red snapper, would not reduce overfishing of red snapper while long-term management measures are developed and implemented, and would not achieve NMFS's objective.

The second alternative to the proposed prohibition on the harvest and sale of red snapper would only establish a 4-month seasonal closure. A 4-month

seasonal closure could not be extended and would not be expected to allow sufficient time for the development and implementation of long-term management measures to protect red snapper. As a result, this alternative would not achieve NMFS's objective.

#### List of Subjects in 50 CFR Part 622

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

Dated: June 29, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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 § 622.35, paragraph (l) is added to read as follows:

#### **§ 622.35 Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(l) *Closure of the commercial and recreational fisheries for red snapper.* The commercial and recreational fisheries for red snapper in the South Atlantic EEZ are closed. During the closure, all fishing for red snapper is prohibited, and possession or sale of red snapper, harvested during the closure, in or from the South Atlantic EEZ is prohibited. For a person aboard a vessel for which a valid Federal commercial vessel permit or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply regardless of whether the red snapper were harvested or possessed in state or Federal waters. [FR Doc. E9-15845 Filed 7-2-09; 8:45 am]

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