

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043-4043-01]

RIN 0648-XU86

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, March 19, 2010, through June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727-824-5305, fax 727-824-5308, e-mail Catherine.Bruger@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic 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.

The commercial quota for vermilion snapper in the South Atlantic is 315,523 lb (143,119 kg) for the current fishing period, January 1 through June 30, 2010, as specified in 50 CFR 622.42(e)(4)(ii).

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for vermilion snapper when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. NMFS has determined that the commercial quota for South Atlantic vermilion snapper will be reached by March 19, 2010. Accordingly, the commercial fishery for South Atlantic vermilion snapper is closed effective 12:01 a.m., local time, March 19, 2010, through June 30, 2010.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having

vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, March 19, 2010. During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, March 19, 2010, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), 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)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be 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 of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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 5, 2010.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2010-5128 Filed 3-5-10; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0912281446-0111-02]

RIN 0648-XT32

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline (HG) and seasonal allocations for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2010, through December 31, 2010. These specifications have been determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This rule is intended to conserve and manage Pacific sardine off the West Coast.

DATES: Effective March 10, 2010 through December 31, 2010.

ADDRESSES: Copies of the report "Assessment of Pacific Sardine Stock for U.S. Management in 2010" may be obtained from the Southwest Regional Office (see the Mailing address above).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is

presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC). At that time, the biomass, the overall HG and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council makes its HG recommendation to NMFS.

In November 2009, the Council recommended, and NMFS then approved, a maximum HG of 72,039 mt for the 2010 Pacific sardine fishing year. This HG is based on a biomass estimate of 702,204 mt and the harvest control rule established in the CPS FMP. This HG is slightly higher than the HG for the 2009 fishing season, which was 66,932 mt. The Council also recommended, and NMFS approved, that 5,000 mt of the available 2010 ABC/HG be initially reserved for research activities that would be undertaken under a potential EFP. In 2009, 2,400 mt was subtracted from the total HG for an EFP. The Council will hear proposals and comments on any potential EFPs at its March Council meeting and make a recommendation to NMFS on the proposed EFP(s) for the 5,000 mt research set aside at their April 2010 Council meeting. NMFS will likely make a decision on whether or not to issue an EFP some time prior to the start of the second seasonal period (July 1, 2010). Any of the 5,000 mt that is not issued to an EFP will be rolled into the third allocation period's directed fishery. Any research set aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. Any research set aside attributed to an EFP designed to be conducted during closed fishing times in the third allocation, but not utilized, will not be re-allocated.

The Council recommended, and NMFS approved, that the remaining 67,039 mt (HG of 72,039 mt minus provisional 5,000 mt EFP set aside) be used as the initial overall fishing HG and be allocated across the seasonal periods established by Amendment 11 (71 FR 36999). The Council also recommended, and NMFS approved, an incidental catch set aside of 3,000 mt and a management uncertainty buffer of 4,000 mt. Subtracting this set aside from the initial overall HG establishes an initial directed harvest fishery of 60,039

mt and an incidental fishery of 3,000 mt. The purpose of the incidental fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, if and when a seasonal directed fishery is closed.

The directed harvest levels and incidental set-aside are initially allocated across the three seasonal allocation periods in the following way: January 1–June 30, 22,463 mt is allocated for directed harvest with an incidental set aside of 1,000 mt; July 1–September 14, 25,861 mt is allocated for directed harvest with an incidental set aside of 1,000 mt; September 15–December 31, 11,760 mt is allocated for directed harvest with an incidental set aside of 1,000 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing is closed to directed harvest and only incidental harvest is allowed. For the remainder of the period, any incidental Pacific sardine landings are counted against that period's incidental set-aside. During times when only incidental landings of Pacific sardine are allowed, catch of Pacific sardine is constrained to a 30 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period. If a set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period is automatically adjusted to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total is adjusted to account for this discrepancy as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery will be closed via an appropriate rulemaking until it re-opens either per the allocation scheme or the beginning of the next fishing season. The Regional Administrator will publish a notice in the **Federal Register** announcing the date of such closures.

As stated above, the overall or maximum HG for the 2010 Pacific sardine fishing season is 72,039 mt.; 5,000 mt of this 72,039 mt is initially set aside for use under an Exempted Fishing Permit (EFP), if issued, leaving the remaining 65,732 mt as the initial commercial fishing HG. This HG is

divided across the seasonal allocation periods in the following way: January 1–June 30, 22,463 mt is allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,861 mt is allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,760 mt is allocated for directed harvest with an incidental set-aside of 1,000 mt with an additional 4,000 mt set aside to buffer against reaching the overall HG.

On January 13, 2010, a proposed rule was published for this action that solicited public comments (75 FR 1745). No comments were received. For further background information on this action please refer to the preamble of the proposed rule (75 FR 1745, January 13, 2010).

Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the establishment of the harvest specifications for the 2010 Pacific sardine fishing season. For the reasons set forth below, the immediate implementation of this measure is necessary for the conservation and management of the Pacific sardine resource. This rule establishes seasonal harvest allocations and the ability to restrict fishing when these allocations are approached or reached. These specified allocations are important mechanisms in preventing overfishing and managing the fishery at optimum yield while allowing fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. A delay in effectiveness is likely to prevent the ability to close the fishery when necessary and cause the fishery to exceed an in-season directed harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. During the 2009 fishing season, which had a similar HG as this 2010 season, the first allocation period was closed on

February 20, 2009. Although it has not been necessary to close the 2010 season as quickly, based on the most recent catch data, and best available information from the fishery, it is likely that it will be necessary to close the 2010 fishing season in the near future. Therefore, NMFS finds that there is good cause to waive the 30-day delay in effectiveness in this circumstance. To help keep the regulated community informed of this final rule NMFS will also announce this action through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. Additionally, NMFS will advise the CPS Advisory Subpanel, which is comprised

of representatives from all sectors and regions of the sardine industry, including processors, fishermen, user groups, conservation groups and fishermen association representatives, of current landings as they become available and for the public at-large also post them on NMFS' Southwest Regional Office website, <http://swr.nmfs.noaa.gov/>.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic

impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (75 FR 1745) and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: March 5, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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