

Table 1 would be eligible to carry an observer if requested. However, NMFS would only request a fraction of the total number of participants to carry an observer based on the sampling protocol identified for each fishery by regional observer programs. As noted throughout this proposed rule, NMFS would select vessels and focus coverage in times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot determine the specific number of vessels that would be requested to carry an observer.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. The potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual vessel's total annual fishing time. In addition, 50 CFR 222.404(b) states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared.

The requirements to carry an observer when requested for those fisheries included on the 2010 AD through this final rule are included under an existing collection-of-information that was approved by the Office of Management and Budget (OMB) under OMB control number 0648-0593.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for

regulations to implement this observer requirement in 50 CFR part 222, subpart D. The EA concluded that implementing these regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of fisheries included on the AD, and therefore, this final rule would not change the analysis or conclusion of the EA. If NMFS takes a management action, for example, requiring fishing gear modifications such as TEDs, NMFS would first prepare an environmental document as required under NEPA and specific to that action.

This final rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule would not affect the conclusions of those opinions. Including fisheries on the AD is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse affects to listed species under the ESA.

This final rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles through information collected from observer programs.

#### Literature Cited

Murray, K.T. 2009. Characteristics and magnitude of sea turtle bycatch in US mid-Atlantic gillnet gear. *Endangered Species Research* 8:211–224.

National Marine Fisheries Service. 2009. Draft 2009 Marine Mammal Stock Assessment Reports for the Atlantic Ocean and Gulf of Mexico.

[http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2009\\_draft\\_appendices.pdf](http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2009_draft_appendices.pdf)

Dated: May 11, 2010.

**Samuel D. Rauch III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 090508900-91414-02]

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:** Temporary rule; interim measures extended.

**SUMMARY:** NMFS issues this temporary rule to extend the effective date of interim measures to reduce overfishing of red snapper in the South Atlantic implemented by a temporary rule published by NMFS on December 4, 2009 (74 FR 63673). This temporary rule extends the closure of the commercial and recreational fisheries for red snapper in the exclusive economic zone (EEZ) of the South Atlantic as requested by the South Atlantic Fishery Management Council (Council). The intended effect of this rule is to reduce overfishing of red snapper in the South Atlantic.

**DATES:** The effective date for the interim rule published at 74 FR 63673, December 4, 2009, is extended from June 3, 2010, through December 5, 2010, unless NMFS publishes a superseding document in the **Federal Register**.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) and environmental assessment (EA) 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: 727-551-5305.

**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.

On December 4, 2009, NMFS published the final temporary rule (74 FR 63673) to implement measures to establish a closure of the commercial

and recreational fisheries for red snapper in the South Atlantic. The purpose of the interim measures and this extension of the rule is to reduce the overfishing of red snapper while long-term management measures are developed and implemented through Amendment 17A to the FMP. Amendment 17A, currently under development by the Council, will include management measures to end overfishing and rebuild the red snapper stock. Section 305(c)(2) of the Magnuson-Stevens Act provides the Council the authority to request interim measures, if necessary, to reduce overfishing. On March 23, 2009, the Council submitted a letter to NMFS requesting interim measures to prohibit the harvest and possession of red snapper in the South Atlantic. Section 305(c)(3)(B) of the Magnuson-Stevens Act allows for interim measures to be extended for one additional period of 186 days provided that the public has had an opportunity to comment on the interim measures and that the Council is actively preparing a plan amendment to address the overfishing on a permanent basis. A proposed temporary rule, published on July 6, 2009 (74 FR 31906), requested public comments on these same interim measures. NMFS responded to these comments in the final temporary rule published on December 4, 2009 (74 FR 63673), and they are not repeated here.

This rule extends, for an additional 186 days, a closure of the commercial and recreational fisheries for red

snapper in the South Atlantic EEZ. During this closure, the harvest, possession, or sale of red snapper in or from the South Atlantic EEZ is prohibited for both commercial and recreational fishermen. For a person issued a valid commercial vessel permit or charter vessel/headboat permit for South Atlantic snapper-grouper, the provisions of this rule apply regardless of where the red snapper are harvested (i.e., state or Federal waters).

#### Classification

The Administrator, Southeast Region, NMFS, (RA) has determined that the interim measures this temporary rule extends are necessary for the conservation and management of the South Atlantic red snapper stock, until more permanent measures are implemented, and is consistent with the Magnuson-Stevens Act and other applicable laws. The Council is preparing Amendment 17A to establish long-term measures to end the overfishing of red snapper and rebuild the stock.

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

This interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and comment.

An EA was prepared for the interim measures contained in the December 4, 2009, interim rule (74 FR 63673). Because the conditions that existed at

the time the December 4, 2009, interim rule was implemented have not changed, the impacts of continuing the interim measures through this extension have already been considered. Copies of the EA are available from NMFS (see ADDRESSES).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553 (b)(B) to waive prior notice and opportunity for public comment on this interim rule extension. This rule would continue interim measures implemented by the December 4, 2009, interim rule, for not more than an additional 186 days beyond the current expiration date of June 2, 2010. The conditions prompting the initial interim rule still remain, and more permanent measures to be completed through Amendment 17A have not yet been finalized. Failure to extend these interim measures, while the Council continues to develop more permanent measures in Amendment 17A, would result in additional overfishing of the red snapper stock, in violation of national standard 1 of the Magnuson-Stevens Act.

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

Dated: May 12, 2010

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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