

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100510220-0334-03]

RIN 0648-AY90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Emergency Fisheries Closures in the Southeast Region Due to the Deepwater Horizon MC252 Oil Spill; Publication of Coordinates

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS has taken emergency action through a series of emergency rules to prohibit all fishing and harvesting of marine resources in areas of the United States exclusive economic zone (EEZ) that are impacted by the Deepwater Horizon MC252 oil spill. The most recent of these emergency rules, which became effective on May 11, 2010, and continues to remain in effect, allows NMFS to make more timely revisions to the area closed to all fishing. The rule established a protocol for reopening closed areas and a procedure to inform the public of the specific coordinates of the Federal closed area related to the Deepwater Horizon MC252 oil spill (fishery closed area) via a broad range of information transfer tools. NMFS is publishing this temporary rule to provide additional notice to the regulated public by designating the current boundary coordinates for the area closed to all fishing and the area reopened to finfish harvest only in the Gulf of Mexico (Gulf), thereby increasing seafood safety and public safety. Future changes to the closed area will continue to be made using the procedure established by the emergency rule effective May 11, 2010.

DATES: This rule is effective August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, telephone: 727-824-5305, fax: 727-824-5308, e-mail: anik.clemens@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides the legal authority for the promulgation of emergency regulations under section 305(c).

Background

NMFS responded to the April 20, 2010 Deepwater Horizon MC252 oil spill by closing a portion of the Gulf EEZ to all fishing through an emergency rule effective May 2, 2010 (75 FR 24822, May 6, 2010). Oil continued to leak from the Deepwater Horizon MC252 site and the spatial and temporal location of the oil in the Gulf EEZ continued to change. NMFS revised the closed area in a second emergency rule that became effective May 7, 2010 (75 FR 26679, May 12, 2010). The dynamic situation regarding the Deepwater Horizon MC252 oil spill required a method to respond rapidly to changing conditions. Delaying the announcement of the new fishery closed area could have led to the possible harvest of adulterated seafood products. Therefore, NMFS issued a third emergency rule, effective May 11, 2010 (75 FR 27217, May 14, 2010) that allowed NMFS to revise the closed area as needed (on a daily or weekly basis) and announce the revised closed area via NOAA Weather Radio, Fishery Bulletin, and NOAA Web site updates, without the need to announce the new closure boundary coordinates in the **Federal Register**.

Reopening Protocol

The third emergency rule also identified a protocol for reopening closed areas. Closed areas may be reopened if NMFS has determined that oil from the Deepwater Horizon MC252 oil spill has never been in those areas. Closed areas may also be reopened if NMFS has determined that fish and other marine species within the closed area meet FDA standards for public health and wholesomeness. Finfish and other marine species, including invertebrates, are sampled from within the closed area at different rates. They also metabolize oil at different rates. Therefore, reopening closed areas may occur for finfish and invertebrates at different rates as well. In collaboration with the FDA, NOAA has developed specific technical guidelines for reopening oil-impacted areas closed to seafood harvesting under this protocol. A summary of these procedures may be found at: <http://www.fda.gov/Food/ucm217598.htm>.

Need for this Temporary Rule

Currently, the public may obtain the updated boundary coordinates for the fishery closed area by listening to NOAA Weather Radio, visiting various NOAA Web sites, reading the e-mailed or posted Fishery Bulletins, receiving a text message or a tweet that the closed area has been revised, or by calling the

Deepwater Horizon MC252 oil spill hotline number (1-800-627-6622) to listen to a recorded message of the updated boundary coordinates. To improve public outreach, the fishery bulletins and the recorded messages are also available in Spanish and Vietnamese.

This rulemaking would provide another means of informing the public of the boundary coordinates of the area closed to all fishing as well as the area reopened to finfish only. NMFS anticipates that the fishery closed area will continue to be reduced in size in the upcoming months, and subsequent publication of an expanded area would be unnecessary. The area closed to all fishing related to the Deepwater Horizon MC252 oil spill, as of August 13, 2010, is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	FL State/EEZ boundary	87°00'
B	29°30'	87°00'
C	29°30'	86°00'
D	28°24'	86°00'
E	28°19'	85°30'
F	27°00'	85°30'
G	27°00'	86°23'
H	27°39'	89°50'
I	27°35'	90°33'
J	28°36'	91°08'
K	28°36'	91°32'
L	28°58'	91°40'
M	29°31'	93°36'
N	LA State/EEZ boundary	93°30'

The area reopened to finfish harvest only, as of August 13, 2010, is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	FL State/EEZ boundary	85°29'
B	28°23'	85°55'
C	28°24'	86°00'

Point	North lat.	West long.
D	29°30'	86°00'
E	29°30'	87°00'
F	LA State/ EEZ boundary	87°00'

The intent of this temporary rule is to provide additional notice only and has no effect on the emergency rule that became effective May 11, 2010 (75 FR 27217, May 14, 2010) and which continues to remain in effect. Future changes to the closed area will continue to be made using the procedure established by that emergency rule.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c).

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

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and the opportunity for public comment would be unnecessary. It is unnecessary because the rule is merely publishing the coordinates for a closed area that is already in effect. Thus, it creates no new restrictions on persons in the closed area. This temporary rule is simply providing additional public notice of the current coordinates of the area closed to all fishing and the area reopened to finfish harvest.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

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

Dated: August 12, 2010.

Samuel D. Rauch III,

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

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