

notice and opportunity for public comment on the re-opening is unnecessary because the rule establishing the annual quota has already been subject to notice and comment, and all that remains is to notify the public that additional harvest remains in the established quota and, therefore, the fishery will re-open for a limited time period.

This rule relieves a restriction by re-opening the recreational red snapper season after September 30, the end of the fishing season. Because it relieves a restriction, this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedures Act pursuant to 5 U.S.C. 553(d)(1).

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: September 21, 2010.

Carrie Selberg,

Acting 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. 100713296-0452-02]

RIN 0648-BA06

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Emergency Rule to Authorize Re-Opening the Recreational Red Snapper Season

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

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to authorize the Regional Administrator, Southeast Region, NMFS (RA) to re-open the Gulf of Mexico (Gulf) recreational red snapper season after the September 30, 2010, end of the fishing season. NMFS has determined that the recreational red snapper quota was not met by the 12:01 a.m., local time, July 24, 2010, closure date. The BP Deepwater Horizon MC252 oil spill and the associated large-area fishery closure (fishery closed area) in the north-central Gulf are located where a substantial portion of the recreational red snapper fishing effort occurs. Therefore, the Gulf

of Mexico Fishery Management Council (Council) requested NMFS publish this emergency rule. The intent of this rulemaking is to provide the RA the authority to allow fishermen the opportunity to harvest the recreational red snapper quota, and to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: This emergency rule is effective September 24, 2010 through December 31, 2010.

ADDRESSES: Copies of the environmental assessment, the final regulatory flexibility analysis (FRFA), and the regulatory impact review for this rule may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail steve.branstetter@noaa.gov; or may be downloaded from the SERO Web site at <http://sero.nfms.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Steve Branstetter, 727-824-5796.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.* (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1355(c)).

On August 16, 2010, NMFS published a proposed emergency rule to grant the RA the authority to re-open the Gulf recreational red snapper season after September 30, and requested public comment (75 FR 49883). The rationale for the measures contained in this emergency rule is provided in the environmental assessment and the proposed emergency rule and is not repeated here.

Comments and Responses

A total of 139 comments were received on the proposed emergency rule. A summary of those comments, and NMFS responses, follows.

Comment 1: More than 50 percent of the comments expressed broad general support re-opening the recreational red snapper fishing season during 2010 without regard to specific timing. Another 25 percent specifically expressed support for re-opening later in the year and/or giving NMFS the authority to re-open the season after the September 30 end of the fishing season. At its August 2010 meeting, the Council

recommended re-opening the recreational red snapper fishing season on eight consecutive weekends (Friday through Sunday) beginning October 1, 2010. Several comments received after this meeting expressed opinions regarding weekend openings versus opening during the week as well.

Response: This emergency rule gives the RA the authority to re-open the recreational red snapper fishing season after September 30, 2010. Without this rulemaking NMFS is only authorized to re-open the season through the end of the designated June 1 through September 30 fishing season. The recreational red snapper quota is established based on an allowable biological catch level determined from the results of a peer-reviewed and vetted stock assessment, which is based on the best scientific information available. This rulemaking will provide the opportunity for the recreational sector to harvest the remaining quota and achieve the Council's designated optimum yield (OY) for the fishery, thus enhancing social and economic benefits to fishermen and the tourism industries of Gulf coastal communities. The timing and duration of a re-opening will not affect the goal of harvesting the allowable catch established in accordance with the red snapper rebuilding plan, which seeks to achieve OY for the red snapper component of the reef fish fishery. NMFS will publish an additional rulemaking specifying the dates of a re-opening.

Comment 2: A few comments suggested that areas that had been open to fishing during the June 1 through July 23 recreational red snapper season should remain closed. Any re-opening of the season should be restricted to those areas that had been closed to all fishing because of BP Deepwater Horizon MC252 oil spill, but are now re-opened to fishing.

Response: The recreational red snapper quota is a Gulf-wide quota; it is not separated into regional components. Current regulations do not allow NMFS to designate fishing season openings for specific geographic regions. In addition, many areas are still closed to all fishing because of the BP Deepwater Horizon MC252 oil spill, and may not be re-opened to fishing during the recommended eight consecutive weekend openings. Re-opening the recreational red snapper fishing season to specific geographic regions would create substantial regulatory confusion for the public, and increase the difficulty of enforcement.

Comment 3: A few comments suggested that the recreational red snapper fishing season should remain

closed for 2010. It was suggested NMFS should not be authorized to change the existing regulations intended to protect the red snapper stock just because the quota was not harvested. It would be irresponsible to re-open the recreational red snapper fishing season without first determining the effects of the BP Deepwater Horizon MC252 oil spill to the environment and associated fish stocks. A stock assessment should be conducted before allowing additional fishing mortality.

Response: NMFS acknowledges the concern for potential impact to fishery stocks from the BP Deepwater Horizon MC252 oil spill. Oil from the spill dispersed on the surface as well as within the water column. Red snapper spawn during summer and fall. Oil in surface waters could affect the survival of eggs and larvae; however, if oil has not dispersed to the ocean floor, the impacts to the demersal juvenile and adult red snapper and their benthic habitat may not be substantial. This anthropogenically-induced natural mortality on larvae caused by the oil spill could result in declines in recruitment in future year classes.

At this time, data are not available to demonstrate any specific adverse effects of the BP Deepwater Horizon MC252 oil spill on the red snapper resource or its habitat. As a result, no information is available indicating that the 2010 recreational red snapper quota should not be harvested. The current rebuilding schedule is intended to allow a specific harvest that will allow the stock to rebuild on a specified schedule, while providing for a quota-controlled harvest that will achieve maximum economic and social benefits. No information is available that indicates reduced harvests are necessary to maintain the current rebuilding schedule, i.e., to mitigate biological harm resulting from the oil spill. In the absence of biological harm or a need for beneficial mitigation (although not harvesting the quota would reduce overall fishing mortality), this would not be expected to result in greater economic and social benefits. In addition, substantial portions of the red snapper population are found in the northwestern and western Gulf (western Louisiana and Texas) and an increasing population of red snapper is re-establishing off the west Florida continental shelf. Spawning by these segments of the stock should mitigate the overall impact of any potentially compromised spawn by that part of the stock located in oil-affected areas.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c).

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

NMFS prepared an FRFA. The FRFA describes the economic impact this emergency rule is expected to have on small entities. A description of the action, why it is being considered, and the 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 FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA analysis follows.

The purpose of this emergency rule is to authorize the Regional Administrator, Southeast Region, NMFS (RA), to re-open the Gulf of Mexico recreational red snapper season after the September 30, 2010, end of the fishing season in order to provide fishermen the opportunity to harvest the recreational red snapper quota, and to achieve the OY for the fishery, thus enhancing the social and economic benefits to the fishery. The Magnuson-Stevens Act provides the statutory basis for this emergency rule.

This emergency rule does not establish any new reporting, record-keeping, or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

No significant issues were raised by public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) and no changes were made in the emergency rule as a result of such comments.

This emergency rule will grant NMFS the authority to re-open the Gulf recreational red snapper season. Because this emergency rule will only grant the authority to re-open the red snapper fishing season, and not actually re-open the season (re-opening would only occur as a result of subsequent rule-making), this emergency rule is an administrative action and no direct effects on any small entities have been identified or are expected.

However, a reasonably foreseeable consequence of this emergency rule is the re-opening of the Gulf red snapper fishing season. If the recreational red snapper season is re-opened, federally permitted for-hire fishing businesses that sell services to fish for red snapper in the Gulf of Mexico would be expected to be directly affected. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an

individual angler (head) basis. A Gulf reef fish for-hire permit is required to harvest red snapper in the Federal waters of the Gulf of Mexico. During 2009, there were 1,424 valid (non-expired) Federal reef fish for-hire permits that allowed permit holders to fish during any portion of the year. Although the Federal for-hire permit does not distinguish between headboats and charter boats, an estimated 79 headboats operate in the Gulf of Mexico. It cannot be determined with available data how many of the for-hire vessels permitted to operate in the reef fish fishery fish for or harvest red snapper, either through directed effort or incidental harvest, so all permitted vessels are assumed, for this analysis, to comprise the universe of potentially affected vessels. The average charterboat is estimated to earn approximately \$88,000 (2008 dollars) in annual revenues, while the average headboat is estimated to earn approximately \$461,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry 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 \$7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all for-hire vessels that would be expected to be directly affected by actual re-opening of the red snapper season are determined for the purpose of this discussion to be small business entities.

As stated previously, this emergency rule is an administrative action and no direct economic effects on any small entities have been identified or are expected.

For-hire vessels that would be directly affected by subsequent rule-making to re-open the red snapper season would be expected to receive an increase of approximately \$4.4 million (2008 dollars) in net operating revenues (revenues minus non-labor variable operating costs) compared to not re-opening. As previously discussed, it cannot be determined how many of the for-hire vessels permitted to operate in the reef fish fishery fish for or harvest red snapper. If spread over all 1,424 vessels with Federal reef fish for-hire permits, this increase in net operating revenues would equate to an average of approximately \$3,000 per vessel. However, not all for-hire vessels with Federal reef fish permits would be expected to benefit from re-opening the

red snapper season, and some vessels would be expected to benefit more than others. Estimates of the average annual net operating revenues per vessel are not available, and estimates of the average annual gross revenues per vessel, provided above, are an inappropriate proxy because gross revenues do not account for operating expenditures. As a result, estimates of the average percentage increase in net operating revenues are not available. It is noted, however, that because these effects would only occur in response to subsequent rule-making, these effects would indirectly result from this emergency rule.

Because no direct effects on any small entities have been identified or are expected to occur as a result of this emergency rule, the issue of significant alternatives is not relevant.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries (AA) finds good cause to waive the delay in effectiveness of this final emergency rule. This rule grants NMFS the authority to re-open the Gulf recreational red snapper season. The re-opening of the red snapper fishing season would only occur as a result of subsequent rule-making. This emergency rule is purely procedural in nature, and does not impose any new compliance requirements or reporting burdens on the public for which a delay in effectiveness would be necessary. For these reasons, the AA finds good cause to waive the 30-day delay in effectiveness of this rulemaking.

List of Subjects in 50 CFR Part 622

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

Dated: September 20, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 622 is 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:AUTHS

Authority:

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

■ 2. In § 622.34, paragraph (m) is suspended and paragraph (v) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(v) *Closure of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090511911-0307-02]

RIN 0648-AX89

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains three corrections to the final rule pertaining to Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery published on August 30, 2010. These corrections amend content within tables to eliminate potential confusion by the public.

DATES: Effective September 29, 2010.

FOR FURTHER INFORMATION CONTACT:

Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on August 30, 2010 (75 FR 53026) that revises several sections of regulations that pertain to the management of Chinook salmon bycatch in the Bering Sea subarea of the Bering Sea and Aleutian Islands Management Area (BSAI). This final rule applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Theragra chalcogramma*) fishery that is managed under the Fishery Management Plan for Groundfish of the BSAI.

The first error is an incorrect table number that exists within a table used

to determine the amount of Chinook salmon associated with each CDQ group. The second and third errors occur in the “locate and remove” table. The “locate and remove” table is used to define specific technical changes in regulatory citations. The errors occurred in the listing of specific citation changes in this table. These changes are unnecessary and need to be removed because the citations are identified earlier for removal in the amendatory instructions. These errors should be corrected immediately to eliminate potential confusion by the regulated public.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be unnecessary and contrary to the public interest. These errors should be corrected immediately to eliminate potential confusion by the regulated public. If the effective date for these corrections is delayed to solicit prior public comment, these technical errors will not be corrected by the effective date of this final rule, thereby undermining the conservation and management objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

NMFS is correcting these errors and is not making substantive changes to the document in rule FR Doc. 2010-20618 published on August 30, 2010 (75 FR 53026).

Need for Correction

Accordingly, the final rule published on August 30, 2010 (75 FR 53026), to be effective September 29, 2010, is corrected as follows:

§ 679.21 [Corrected]

1. On page 53061, in § 679.21 (f)(4)(i)(D), in the fourth column of the table, under the column heading “Reduce the B season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:”, correct the reference to “Table 43d” to read as “Table 47d”.

§§ 679.7 and 679.26 [Corrected]

2. On page 53069, in the “locate and remove” table at the bottom of the page, under all four columns, remove line seven, that starts with, “§ 679.7(d)(18)” and remove line eleven that starts with “§ 679.26(c)(1).”