

**§ 622.37 Size limits.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(v) Red snapper—20 inches (50.8 cm), TL, however, *see* § 622.32(b)(3)(vii) for the current prohibition on the harvest and possession of red snapper.

■ 5. In § 622.39, paragraph (d)(1)(iv) and (d)(1)(viii) are revised and paragraph (d)(1)(ix) is added to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) Snappers, combined—10. However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and red snapper and vermilion snapper. (*See* § 622.32(b)(3)(vii) for the prohibition on harvest and possession of red snapper and § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(viii) South Atlantic snapper-grouper, combined—20. However, excluded from this 20-fish bag limit are tomtate, blue runner, and those specified in paragraphs (d)(1)(i) through (vii), and (ix) of this section.

(ix) No red snapper may be retained.

■ 6. In § 622.41, the introductory text in paragraph (n) is revised and paragraph (n)(2) is added to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(n) *Required gear in the South Atlantic snapper-grouper fishery.* For a person on board a vessel to harvest or possess South Atlantic snapper-grouper in or from the South Atlantic EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (n)(1) and (n)(2) of this section.

(2) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required to be used when fishing with hook-and-line gear and natural baits north of 28E N. lat.

■ 7. In § 622.45, paragraph (d)(10) is added to read as follows:

**§ 622.45 Restrictions on sale and purchase.**

\* \* \* \* \*

(d) \* \* \*

(10) No person may sell or purchase a red snapper harvested from or

possessed in the South Atlantic, *i.e.*, State or Federal waters, by a vessel for which a Federal commercial permit for South Atlantic snapper-grouper has been issued.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 101124587–0586–01]

**RIN 0648–BA47**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Emergency Rule To Delay Effectiveness of the Snapper-Grouper Area Closure**

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

**ACTION:** Temporary rule; emergency action.

**SUMMARY:** NMFS issues this temporary rule to delay the effective date of the area closure for snapper-grouper specified in Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The area closure will become effective on January 3, 2011, through the final rule that implements Amendment 17A. A Southeast Data Assessment and Review (SEDAR) benchmark stock assessment for red snapper (SEDAR 24) was just completed on October 25, 2010, and was reviewed by the South Atlantic Fishery Management Council’s (Council’s) Scientific and Statistical Committee (SSC) during its meeting from November 9–11, 2010. The new stock assessment still shows red snapper to be overfished and undergoing overfishing, however, the rate of overfishing found in SEDAR 24 is less than the rate of overfishing found in the previous stock assessment (SEDAR 15). The SSC concluded that, based on SEDAR 24, the snapper-grouper area closure approved in Amendment 17A is more conservative than what is needed to end overfishing of red snapper. Temporarily delaying the effective date of the snapper-grouper area closure specified in Amendment 17A will allow the Council time to respond to the new stock assessment information through a regulatory

amendment, which will be discussed at the Council’s December meeting. This emergency action is necessary to mitigate negative socioeconomic impacts associated with the snapper-grouper area closure on South Atlantic snapper-grouper fishermen and to ensure the area closure is based upon the best scientific information available.

**DATES:** This rule is effective January 3, 2010 through June 1, 2011, unless NMFS publishes a superseding document in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by “0648–BA47”, by any one 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. *Attn:* Kate Michie.
- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701.

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulation.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 ANOAA–NMFS–2010–0243” in the keyword search, then check the box labeled “Select to find documents accepting comments or submissions”, 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supporting documentation for this emergency rule, as well as Amendment 17A and its accompanying analyses, may be obtained from Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone 727–824–5305; e-mail [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS under the

authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c).

### Background

A final rule to implement Amendment 17A to the FMP is published in the same issue of the **Federal Register** as this emergency rule. Amendment 17A contains measures to end the overfishing of red snapper and rebuild the stock. The management measures in the final rule include prohibiting the harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) (and in state or Federal waters for a vessel with a Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper), requiring the use of non-stainless steel circle hooks when fishing for snapper-grouper species with hook and line gear north of 28° N. latitude in the South Atlantic EEZ, and implementing an area closure for South Atlantic snapper-grouper. The area closure includes 4,824 square miles (7,763 square km) off the coasts of southern Georgia and northeast Florida where the harvest and possession of snapper-grouper species would be prohibited, except when fishing with black sea bass pot gear or spearfishing gear for species other than red snapper. NMFS is delaying the effective date of this snapper-grouper area closure until June 1, 2011, with a possible 186-day extension, to provide the Council time to respond to new scientific information. Based upon the results of the SEDAR 24 benchmark stock assessment, this delay of the effective date of the snapper-grouper area closure will not impact the ending of overfishing of the red snapper stock.

The SEDAR 24 benchmark stock assessment for red snapper was completed on October 25, 2010. The assessment incorporated the high landings from recent years, as well as new scientific information regarding the availability of older red snapper to fishing gear, post-release mortality, and methodologies for estimating historic recreational landings. The new stock assessment was reviewed by the Council's SSC during its meeting from November 9–11, 2010. The SSC-endorsed model runs from the new stock assessment indicate that the snapper-grouper area closure could be modified without compromising the red snapper conservation objective of ending overfishing, while better

minimizing the negative socio-economic effects on fishing communities.

Amendment 17A was approved by the Secretary of Commerce on October 27, 2010. A final rule implementing Amendment 17A will become effective on January 3, 2011, except for the prohibition on the harvest and possession of red snapper, which will become effective on December 3, 2010, and the circle hook requirement, which will become effective March 3, 2011. This emergency rule will delay the effective date of the snapper-grouper area closure until June 1, 2011, with a possible 186-day extension, unless superseded by subsequent rulemaking.

The delayed effective date of the snapper-grouper area closure will provide the Council time to respond to the new scientific information from the SEDAR 24 benchmark stock assessment through a regulatory amendment. The intended effect of this emergency action is to mitigate the negative socio-economic effects of the snapper-grouper area closure contained in Amendment 17A on snapper-grouper fishermen.

This emergency rulemaking meets the criteria and justifications for invoking emergency rulemaking procedures under section 305(c) of the Magnuson-Stevens Act and the NMFS policy guidelines for use of emergency rules (62 FR 44421, August 21, 1997). Specifically, the results of the new benchmark stock assessment for red snapper (SEDAR 24), which indicate the snapper-grouper area closure in Amendment 17A is more conservative than what is necessary to end overfishing of red snapper, are considered to be recent unforeseen and recently discovered circumstances. Because the snapper-grouper area closure is scheduled to take effect on January 3, 2011, the immediate benefits of mitigating the negative socio-economic impacts to snapper-grouper fishermen by delaying the effective date of the area closure through this emergency action justify waiving the requirement to provide advance notice and opportunity for public comment. This emergency action seeks to prevent significant direct economic loss to snapper-grouper fishermen, thus meeting the justification for emergency action.

### Classification

The Administrator, Southeast Region, NMFS, determined that this temporary rule is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section

305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 533(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest.

Unnecessary economic harm and negative social impacts will occur to fishery participants if this action to delay the implementation of the area closure is not enacted as quickly as possible. Notice and comment rulemaking would significantly reduce the effectiveness of this emergency action. The snapper-grouper area closure contained in the final rule for Amendment 17A will take effect January 3, 2011. Therefore, this emergency rule must be published and become effective on the same day as the snapper-grouper area closure in Amendment 17A. Otherwise the purpose of this emergency rule will be undermined. This emergency rule will delay the implementation of the area closure until June 1, 2011, with up to a 186-day extension, unless superseded by subsequent rulemaking. The Council is currently developing a regulatory amendment, which will be reviewed at its December 2010 meeting. New scientific information on red snapper became available in late October 2010, and the SSC reviewed this information in November 2010. Therefore, NMFS is making use of this new information in the interim, through this emergency action, while the Council develops a regulatory amendment and additional rulemaking over the long-term, which will include the new scientific information from SEDAR 24 and will consider less restrictive management measures to end overfishing of red snapper and rebuild the stock. If the regulatory amendment and any resulting rulemaking is approved, the public will be provided the opportunity to comment during notice and comment rulemaking for the regulatory amendment.

Pursuant to section 553(d)(1), the Assistant Administrator waives the 30-day delay in the effective date of this temporary rule, as required by 5 U.S.C. 553(d), because this rule relieves a restriction on snapper-grouper fishermen. This emergency action is being implemented to delay the effective date of the snapper-grouper area closure contained in Amendment 17A to the FMP. The snapper-grouper area closure would prohibit the harvest and possession of all snapper-grouper species, except when fishing with black sea bass pot gear or spearfishing gear for species other than red snapper, in an

area that covers 4,824 square miles (7,763 square km) off the coasts of southern Georgia and northeast Florida. The result of this waiver will be to reduce the economic costs that the final rule for Amendment 17A would otherwise create. An additional 30-day delay would undermine that intent.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment

pursuant to 5 U.S.C. 553 or any other law.

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

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

Dated: November 30, 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:

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

**§ 622.35 [Amended]**

■ 2. In § 622.35, paragraph (l) is suspended.

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