

§ 622.33 Caribbean EEZ seasonal and/or area closures.

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(d) *Queen conch closure in the Caribbean EEZ.* (1) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands, when the U.S. Virgin Islands closes territorial waters off St. Croix to the harvest and possession of queen conch, the Regional Administrator will concurrently close the Caribbean EEZ, in the area east of 64°34' W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the next fishing season for territorial waters opens November 1.

(2) During the closure, as specified in paragraph (d)(1) of this section, no person may fish for or possess on board a fishing vessel, a Caribbean queen conch, in or from the Caribbean EEZ, in the area east of 64°34' W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket Nos. 100610255-0257-01 and 040205043-4043-01]

RIN 0648-XA353

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Reef Fish Fishery; 2011 Accountability Measures for Greater Amberjack and Closure of the 2011 Gulf of Mexico Commercial Sector for Greater Amberjack

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial and recreational greater amberjack in the Gulf of Mexico (Gulf) for the 2011 fishing year through this temporary final rule, announces the closure date for the 2011 commercial sector for greater amberjack of the Gulf reef fish fishery, and provides an estimated season length for the 2011 recreational greater amberjack sector of

the Gulf reef fish fishery. This rule reduces the 2011 commercial and recreational quotas for greater amberjack based on the 2010 quota overages. Additionally, NMFS has determined that the 2011 adjusted commercial quota for Gulf greater amberjack will have been reached by June 18, 2011. These actions are necessary to reduce overfishing of the Gulf greater amberjack resource.

DATES: This rule is effective April 29, 2011 through December 31, 2011, except for the greater amberjack commercial sector closure provision. The closure of the commercial sector for Gulf greater amberjack is effective 12:01 a.m., local time, June 18, 2011, until 12:01 a.m., local time, on January 1, 2012.

ADDRESSES: Copies of the final rule for Amendment 30A, the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 30A, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727-824-5305, e-mail *Rich.Malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (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.

Background

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that annual catch limits (ACLs) and AMs be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP (Amendment 30A). Amendment 30A established commercial and recreational quotas for Gulf greater amberjack and AMs that would go into effect if the commercial and recreational quotas for greater amberjack are exceeded. In

accordance with regulations at 50 CFR 622.49(a)(1)(i), when the applicable commercial quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. If despite such closure, commercial landings exceed the quota, the AA will reduce the quota the year following an overage by the amount of the overage of the prior fishing year.

Amendment 30A also implemented AMs for the Gulf greater amberjack recreational sector of the reef fish fishery. As described at 50 CFR 622.40(a)(1)(ii), if recreational landings are met or projected to be met, the AA will close the recreational sector for the remainder of the fishing year. In addition, if recreational landings exceed the quota, the AA will reduce the length of the recreational fishing season the year following an overage by the amount necessary to recover the overage of the prior fishing year. Also, if necessary, the reduced fishing season may be adjusted during the fishing year to ensure the recreational harvest achieves, but does not exceed the intended harvest level.

Management Measures Contained in This Temporary Rule

In 2009, the commercial sector of greater amberjack was closed on November 7, when the commercial quota of 503,000 lb (228,157 kg) was determined to be reached. Finalized 2009 commercial landings data indicated the commercial quota was exceeded by 25.8 percent, or 129,928 lb (58,934 kg). The reduced 2010 commercial quota for Gulf greater amberjack was 373,072 lb (169,222 kg). NMFS closed the commercial sector for Gulf greater amberjack on October 28, 2010 (75 FR 64171), when NMFS projected that the 373,072 lb (169,222 kg) quota had been reached. Finalized 2010 commercial landings data indicate the commercial quota was exceeded by 50.7 percent, or 189,100 lb (85,774 kg). Therefore, the reduced 2011 commercial quota for Gulf greater amberjack is 313,900 lb (142,383 kg).

The NMFS Southeast Fisheries Science Center (SEFSC) estimates that 189,618 lb (86,009 kg) of greater amberjack were landed by the commercial sector during the months of January and February of 2011. Commercial harvest of greater amberjack is prohibited during the months of March through May each year to protect spawning aggregations. The fishing season for commercial greater amberjack re-opens on June 1, 2011 at which time the remaining 124,282 lb (56,373 kg) of

the 2011 adjusted commercial quota established through this rulemaking will be available for harvest. Based on current statistics, NMFS has determined that the remaining commercial adjusted quota will be harvested by June 18, 2011. Accordingly, NMFS is closing commercial harvest of greater amberjack in the Gulf EEZ at 12:01 a.m., local time, on June 18, 2011, and it will remain closed until 12:01 a.m., local time, on January 1, 2012. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having greater amberjack aboard must have landed and bartered, traded, or sold such greater amberjack prior to 12:01 a.m., local time, June 18, 2011.

During the closure, all commercial harvest or possession of greater amberjack in or from the Gulf of Mexico EEZ, and the sale or purchase of greater amberjack taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of greater amberjack that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 18, 2011, and were held in cold storage by a dealer or processor. In addition to the Gulf EEZ closure, a person on board a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with these closure provisions regardless of where the Gulf greater amberjack are harvested, i.e., in state or Federal waters. This closure is intended to prevent overfishing of Gulf greater amberjack and increase the likelihood that the 2011 quota will not be exceeded.

The 2012 commercial quota for greater amberjack will return to the quota specified at 50 CFR 622.42(a)(1)(v) unless accountability measures are implemented due to a quota overage and a reduced quota is specified through notification in the **Federal Register**, or subsequent regulatory action is taken to adjust the quota.

Also, in 2009, the recreational quota for Gulf greater amberjack of 1,368,000 lb (620,514 kg) was projected to be met and the sector closed on October 24, 2009. Finalized 2009 recreational landings data indicated the recreational quota was exceeded by 9 percent or 124,817 lb (56,616 kg). Based on the 2009 quota overage, the reduced 2010 recreational quota of 1,243,184 lb (563,899 kg) for Gulf greater amberjack was projected to be met in late August. However, because of the extensive fishery area closures established because of the Deepwater Horizon MC252 oil spill, recreational fishing effort was severely curtailed during the summer period. For the 2010 fishing year, the recreational sector of Gulf

greater amberjack remained open through December 2010. However, finalized 2010 landings data have determined that the recreational quota was exceeded by 4.2 percent or 52,776 lb (23,939 kg). Therefore, the reduced 2011 recreational quota for Gulf greater amberjack is 1,315,224 lb (596,576 kg).

The 2012 recreational quota for greater amberjack will return to the quota specified at 50 CFR 622.42(a)(2)(ii) unless accountability measures are implemented due to a quota overage in 2011 and a reduced quota is specified through notification in the **Federal Register**, or subsequent regulatory action is taken to adjust the quota.

If required, the exact closure date of the 2011 recreational season for greater amberjack will be published in the **Federal Register** after preliminary 2011 landings data become available and NMFS can project when, and if, the 2011 recreational quota will be reached. However, taking into account current projections based on the 2010 quota overage, the reduced 2011 recreational quota of 1,315,224 lb (596,576 kg), and a June through July seasonal closure of the recreational sector for greater amberjack as approved by the Council at its October 2010 meeting, NMFS does not expect that the recreational sector will meet, or exceed, its quota for the 2011 fishing year. NMFS will monitor recreational landings throughout the year and take appropriate action if landings appear they will meet the recreational quota prior to the end of the fishing year.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the Gulf greater amberjack component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

NMFS prepared a FSEIS for Amendment 30A. A notice of availability for the FSEIS was published on April 18, 2008 (73 FR 21124). A copy of the FSEIS and the Record of Decision are available from NMFS (*see ADDRESSES*).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity

for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by Amendment 30A and located at 50 CFR 622.49(a)(1)(i) and (ii) and the quota closure provisions located at 50 CFR 622.43(a) authorize the AA to file a notice with the Office of the **Federal Register** to reduce the commercial and/or recreational quotas the following fishing year if an overage occurs, close harvest for a species or species group when the quota for that species or species group is reached, or is projected to be reached, and reduce the length of the recreational fishing season the following fishing year if an overage occurs. The final rule for Amendment 30A implementing these AMs was subject to notice and comment as well as the rule implementing the commercial quota and the associated requirement for closure of commercial harvest when the quota is reached or projected to be reached, and all that remains is to notify the public of the 2011 commercial and recreational quotas, the closure of the commercial sector for Gulf greater amberjack, and the season length for the 2011 recreational fishing season.

Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Many of those affected by the recreational season duration, particularly charter vessel and headboat operations, book trips for clients in advance and, therefore need as much time as possible to adjust business plans to account for the season length. Those persons affected by the commercial season duration need to plan fishing trips, vessel provisioning, and vessel modifications in advance and, therefore, they also need as much time as possible to adjust business plans to account for the commercial season length. Additionally, advance notice is required for business planning given the short duration of time between the opening date of the commercial season and the quota closure date of the commercial season. Delaying the announcement of the projected recreational season duration and the commercial sector closure to accommodate prior notice and comment would result in significantly less advance notice of the duration of the seasons for these individuals; decrease the time available for affected participants to adjust business plans; and be very disruptive. Given the regulatory obligation for NMFS to announce the duration of the commercial and recreational seasons in a timely manner, it is important this announcement be made as soon as

possible to allow affected participants the maximum amount of time to adjust their fishing activities to account for a projected closure of the commercial sector in June and no projected closure of the recreational sector.

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).

Dated: April 26, 2011.

James P. Burgess,

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. 110207101-1257-02]

RIN 0648-BA54

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule increases the commercial and recreational quotas for red snapper for the 2011 fishing year and closes the recreational red snapper component of the Gulf of Mexico (Gulf) reef fish fishery at 12:01 a.m., local time, July 19, 2011. This rule also makes minor revisions to codified text, including revisions to the definition of “actual ex-vessel price,” extending the maintenance window for the Gulf individual fishing quota (IFQ) programs, and removing obsolete codified text for Gulf grouper. The intended effect of this final rule is to help achieve optimum yield (OY) for Gulf red snapper without increasing the risk of the red snapper resource experiencing overfishing, allow for better functioning and enforcement of the Gulf IFQ programs, and to remove obsolete text from the regulations.

DATES: This rule is effective May 31, 2011.

ADDRESSES: Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from Dr. Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Ave South, Saint Petersburg, FL 33701; telephone 727-824-5308; e-mail Steve.Branstetter@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727-824-5308.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the 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 (Magnuson-Stevens Act).

On February 22, 2011, NMFS published a proposed rule for the regulatory amendment and requested public comment (76 FR 9735). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This final rule sets the Gulf red snapper commercial quota at 3.664 million lb (1.662 million kg) and the recreational quota at 3.521 million lb (1.544 million kg). NMFS has determined that the combined commercial and recreational quota from 2010 was not exceeded, therefore, NMFS may increase the commercial and recreational quotas for red snapper in 2011, consistent with the rebuilding plan.

The regulatory text contained in this final rule reflects the commercial and recreational quotas for the 2011 fishing year only. This differs from the proposed rule because the proposed rule contained regulatory text for the 2010 fishing year and the 2011 fishing year, with a caveat that if the 2010 landings, as estimated by the Southeast Fisheries Science Center (SEFSC), NMFS, indicate the combined quota is exceeded, then the recreational quota would be maintained at the 2010 quota. Because NMFS has determined that the combined quota from 2010 was not exceeded, the 2010 quota and the caveat following the 2011 quota have been removed from the regulatory text.

The Magnuson-Stevens Act requires NMFS to close the recreational red snapper sector in Federal waters when the quota is met or projected to be met. Finalized 2010 recreational landings data indicate that the recreational red snapper quota is projected to be met on or by July 18, 2011. Therefore, NMFS will close the recreational red snapper

fishing season at 12:01 a.m., local time, July 19, 2011, which constitutes a 48-day fishing season. NMFS will continue to monitor landings after the 2011 fishing season opens June 1. If, as a result of the continuous monitoring, the quota is not projected to be met on or by July 18, 2011, a re-opening of the recreational sector could occur later in the fishing season.

The red snapper management measures contained in this final rule will achieve the goal of National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery. Because the 2010 recreational red snapper quota was not met, the Council has requested that the SEFSC re-run the 2009 update assessment projections using final landings data for 2009 and 2010. These projections will be provided to the Council's Scientific and Statistical Committee (SSC) for review at the SSC's May meeting, which could potentially change the allowable biological catch (ABC) recommendation. The Council will receive the SSC's recommendation for ABC at its June Council meeting. If the SSC recommends a higher ABC, red snapper TAC could be adjusted for the 2012 fishing year.

Additional Measures Contained in This Final Rule

This final rule removes the definition of “actual ex-vessel value” and adds the definition of “actual ex-vessel price,” so that actual ex-vessel price represents the total monetary sale amount per pound of fish before any deductions are made for transferred (leased) allocation and goods and services (e.g., bait, ice, fuel, repairs, machinery replacement, etc.), extends the IFQ maintenance window an additional 8 hours to allow for more time to conduct end-of-year maintenance, and removes obsolete text regarding the sale and purchase of Gulf grouper from the old February 15–March 15 seasonal closure for commercial gag, red, and black grouper. These additional measures are unrelated to the actions contained in the regulatory amendment.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and the regulatory amendment, and NMFS respective responses. During the comment period, NMFS received 88 comments on the proposed rule. The majority of the comments addressed issues beyond the scope of rule and therefore these