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References Cited

You may request a complete list of all references cited herein, as well as others, from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Mr. J. Allen Ratzlaff (see **ADDRESSES** section) (828/258-3939, Ext. 229).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
		*	*	*	*	*	
SNAILS							
Campeloma, slender	<i>Campeloma decampi</i>	U.S.A. (AL)	NA	E	688	NA	NA
Snail, armored	<i>Pyrgulopsis (=Marstonia) pachyta</i>	U.S.A. (AL)	NA	E	688	NA	NA
		*	*	*	*	*	

Dated: December 22, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990823235-9235-01; I.D. 061699F]

RIN 0648-AM55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Extension of Effective Date of Closure of the Red Porgy Fishery

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule is in effect through March 1, 2000, that prohibits the harvest and possession of red porgy in or from the exclusive economic zone (EEZ) off the southern Atlantic states. NMFS extends the emergency interim rule for an additional 180 days. The intended effect of this rule is to protect the red porgy resource, which is currently overfished.

DATES: The effective date for the emergency interim rule published at 64 FR 48324, September 3, 1999, is extended from March 1, 2000, through August 28, 2000.

ADDRESSES: Copies of documents supporting this action may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 727-570-5305, fax: 727-570-5583.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge, telephone: 727-570-5305, fax: 727-570-5583, email: Peter.Eldridge@noaa.gov.

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 South Atlantic 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.

In response to a request from the Council, NMFS published an emergency interim rule (64 FR 48324, September 3, 1999), under section 305(c)(1) of the Magnuson-Stevens Act, that prohibited the harvest and possession of red porgy in or from the EEZ off the southern Atlantic states. This action was required because of the overfished status of red porgy. Red porgy remains overfished.

Under section 305(c)(3)(B) of the Magnuson-Stevens Act, NMFS may extend the effectiveness of an emergency interim rule for one additional period of 180 days, provided the public has had an opportunity to comment on the emergency interim rule and the Council is actively preparing an amendment to the FMP to address the overfishing on a permanent basis. NMFS solicited comments on the initial emergency interim rule and received four comments. The responses are provided in this emergency interim rule. The Council is preparing Amendment

12 to the FMP, which will address the overfished status of red porgy. The effectiveness of the initial emergency interim rule is being extended because red porgy remain overfished and action to address the overfished status under Amendment 12 cannot be implemented by March 1, 2000.

Additional details concerning the basis for the closure of the red porgy fishery are contained in the preamble to the initial emergency interim rule and are not repeated here.

Comments and Responses

NMFS received four comments on the emergency interim rule (64 FR 48324, September 3, 1999). A summary of those comments and NMFS' responses follow.

Comment 1: Three commenters supported the closure of the red porgy fishery and requested that NMFS obtain bycatch data on red porgy taken incidentally by other snapper-grouper fishermen. In addition, they supported the use of marine reserves as a tool to rebuild the overfished red porgy resource.

Response: NMFS agrees, and efforts will be made to collect bycatch data from both commercial and recreational fishermen. Also, NMFS supports the concept of marine reserves and believes that they are a valid management tool.

Comment 2: Three commenters stated that NMFS should have taken action earlier to prevent overfishing of the red porgy resource.

Response: NMFS does not disagree with the comment; however, the full extent of the overfished condition of the red porgy resource was not known until March 1999. The Council and NMFS took action as soon as they received this information.

Comment 3: One commenter stated that the overfished condition of the red porgy resource was caused solely by commercial fishermen and that recreational fishermen and charter boat operators should not be restricted to address that overfishing.

Response: Both the recreational and commercial sectors contributed to the overfishing of the red porgy resource. Both sectors should practice conservation measures to rebuild the

resource because both sectors will benefit from this effort in the future.

Comment 4: One commenter opposed the closure of the fishery and recommended that NMFS implement no additional red porgy measures other than those implemented in Amendment 9 to the FMP. The commenter claimed that the red porgy resource was not overfished.

Response: NMFS disagrees with the claim that the red porgy resource is not overfished. The 1999 stock assessment clearly shows that the resource is severely overfished and that there is an urgent need to rebuild this resource. Commercial and recreational landings have declined substantially, and the resource has experienced recruitment failure. A failure to act at this time would exacerbate the decline in this resource. An analysis of the red porgy management measures implemented in Amendment 9 indicated that the measures would have prevented a further decline in abundance. However, the resource would not have recovered if only those measures were applied. Since the Magnuson-Stevens Act requires that managers rebuild overfished resources, additional measures were required. The Council is developing Amendment 12 to the Snapper-Grouper FMP not only to rebuild the resource, but also to minimize the short-term economic impacts of the rebuilding program. The extension of this emergency rule will provide the Council sufficient time to accomplish this task.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that the extension of the emergency interim rule is necessary to minimize significant long-term adverse biological, social, and economic impacts that would occur with the resumption of fishing for red porgy. The AA has also determined that this extension is consistent with the Magnuson-Stevens Act and other applicable laws.

This extension of the emergency interim rule is not subject to review under Executive Order 12866.

NMFS prepared an economic evaluation of the regulatory impacts

associated with the emergency interim rule, which is summarized as follows.

During the period 1993 through 1997, annual commercial landings of red porgy averaged 326,800 lb (148,236 kg) with revenues averaging approximately \$397,300. Such landings and revenues were approximately 8.2 and 6.3 percent, respectively, of the total landings and revenues of all species landed on trips on which red porgy were landed. An average of 331 vessels per year reported landings of red porgy during this period. The predicted total losses to commercial fishermen would have averaged approximately \$365,300 per year between 1993 and 1997 had the red porgy fishery been closed. This prediction is a modeled result based on average vessel harvesting costs per trip. The actual short-term economic effect of a moratorium will depend on individual vessel's trip costs.

As the resource has declined, red porgy have not been an important species for charter vessels, headboats, and other recreational fishing vessels. The headboat sector is the most dominant sector in the fishery, yet red porgy still comprise less than 10 percent of total headboat harvests for all South Atlantic states combined. Data do not exist to estimate the impact of the moratorium on these vessels, but it appears to be minor.

The long-term economic effects of the moratorium cannot be estimated without additional information about the rate at which the red porgy population would recover. Although the economic analysis does not estimate the long-term economic effects of the moratorium, NMFS data indicate that the maximum sustainable yield of red porgy, which is the ultimate goal of the moratorium and future actions to rebuild the resource, is in excess of 1,500,000 lb (680,400 kg), with potential revenues then exceeding \$1,800,000 (assuming a price of \$1.20 per lb (\$2.64 per kg), though it is unlikely that current prices could be maintained while more than tripling the market supply). Copies of the economic evaluation are available (see **ADDRESSES**).

The red porgy resource is severely overfished and stock recruitment (i.e., addition of fish to the red porgy population) is at a dangerously low level. A resumption of fishing will worsen the stock condition, fail to reverse the overfished status, and increase the probability of recruitment and stock collapse, with severe economic impacts on those dependent on the fishery. Thus, continued closure of the fishery has potential significant benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under

the normal rulemaking process. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment because the delay associated with such procedures would be contrary to the public interest. For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this emergency interim rule would be contrary to the public interest.

Because prior notice and an opportunity for public comment are not required to be provided 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.

Dated: February 18, 2000.

Penelope D. Dalton,

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

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