

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

[Docket No. 110103005–1255–02]

RIN 0648–BA48

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack 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 establishes a June through July seasonal closure of the recreational sector for greater amberjack in or from the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). The intended effect of this final rule is to mitigate the social and economic impacts associated with implementing in-season closures. This rule also revises codified text to clarify the definition of a venting device used to deflate the abdominal cavity of a Gulf reef fish.

**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 the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be downloaded from the Council's Web site at <http://www.gulfcouncil.org/>.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, 727–824–5305; fax: 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 January 24, 2011, NMFS published a proposed rule for the greater amberjack regulatory

amendment and requested public comment (76 FR 4084). On March 10, 2011, NMFS extended the comment period for an additional 15 days (76 FR 13122) in order to ensure that the public fully understood the intent of the greater amberjack regulatory amendment. The proposed rule and the regulatory amendment outline the rationale for the measures contained in this final rule. The final rule establishes a 2-month seasonal closure (June and July each year) of the recreational sector for greater amberjack within the Gulf reef fish fishery. During the closure, harvest and possession of recreational greater amberjack is prohibited in or from the EEZ.

This final rule also revises the definition of “venting device” to more accurately characterize the part of a fish's anatomy where the venting device should be utilized.

**Comments and Responses**

The following is a summary of the comments NMFS received on the proposed rule and the greater amberjack regulatory amendment, and NMFS's respective responses. During the initial comment period, NMFS received 64 submissions on the proposed rule. During the second comment period, NMFS received an additional 57 submissions. All submissions were from private or for-hire fishers. Overall, NMFS received 10 comments that expressed general support of the action contained in this final rule. The remainder of the comments either did not support the proposed action or suggested alternative management approaches. These comments are grouped in the comments addressed below.

*Comment 1:* Allowing fishing during June and July is very important for the economy of Gulf coast communities; this is the major time of year for both private and for-hire fishing trips. Marinas, charter boats, fishing tournaments, bait and tackle shops, hotels, and restaurants will be hurt by this closure. People will start limiting their trips to the Gulf coast because of the limited opportunity to keep the fish they catch during a trip. If a closure must be implemented to protect greater amberjack from overfishing, it should occur either earlier or later in the year when fishing effort is reduced. A spring spawning season closure or a winter seasonal closure would be preferable.

*Response:* In 2009, the recreational sector met its greater amberjack quota in August. In early 2010, NMFS projected that the 2010 and 2011 quotas would also be met between August and October. Even with the extensive fishery

closures that were in place in 2010 because of the Deepwater Horizon MC252 oil spill, preliminary recreational landings data indicate the recreational quota was met. The Council recognized that these projected lengthy and early in-season closures could cause economic and social disruption to for-hire businesses, private anglers, and shoreside support facilities, such as marinas, bait shops, hotels, and restaurants.

The Council considered several closure options, including spring and fall closures, but determined the 3-to 5-month closed periods needed in the spring and fall to adequately constrain harvest to the quota were too long, and would create an economic burden to the recreational sector through the longer duration seasonal closure. Thus, they selected a shorter closure period during the peak of fishing effort, which is expected to constrain harvest, and allow fishing for the other 10 months of the year. During the Council's deliberations, many for-hire operators indicated a June-July closure was a preferred option, as it occurs during the red snapper recreational sector open season, thereby allowing them to market greater amberjack as a trophy fish during the other approximately 10 months their preferred target species of red snapper was unavailable.

*Comment 2:* Greater amberjack are closer to shore and more abundant during the summer, whereas in the winter they are farther offshore and more dispersed, thus making them more difficult to catch than in the summer. The most favorable summer weather is during June and July, allowing small-boat fishermen greater opportunity to go fishing as a result of the ocean conditions. Forcing fishermen to fish for greater amberjack during other times of the year will mean traveling farther offshore, decreasing vessel safety because of distance from shore and less favorable weather, and/or reduce fishing opportunities because of bad weather. Discards will increase because of the summer closure.

*Response:* NMFS and the Council recognize that there may be reduced opportunities to fish for greater amberjack during off-peak periods because of weather or other circumstances. However, the social and economic impacts of a June-July closure will be less than an early in-season closure, as described in the response to Comment 1. NMFS and the Council also recognize that discards will occur during the closed season. However, by ending the targeting of greater amberjack during the closure, overall removals are expected to decrease. Release mortality

is not well documented, but is thought to be low, so mortality is expected to be reduced during the closure.

*Comment 3:* A seasonal closure for greater amberjack is not necessary. The stock is healthy off Alabama and Louisiana; the oil and gas platforms are teeming with large greater amberjack. The data used in the stock assessment are incorrect and do not represent what fishermen and divers observe every day when on a fishing trip. No additional regulations should be implemented until the data collection process has been improved. The Deepwater Horizon MC252 oil spill led to an extensive area closed to all fishing during the peak of the fishing season. This reduced fishing pressure during 2010 should be considered in allowing harvest for 2011.

*Response:* The seasonal closure helps constrain the recreational harvest to the allowable catch, which in turn prevents overfishing. The recreational sector has demonstrated the continued ability to harvest the quota within the fishing year. As noted in Comment 1, the quota was met in August of 2009, and even with the extensive fishery closures during 2010 because of the Deepwater Horizon MC252 oil spill, preliminary recreational landings data for 2010 indicate the quota was met. The closure is intended to constrain recreational harvest to within the quota while providing the longest duration fishing season possible, thus minimizing social and economic disruptions.

*Comment 4:* It seems inconsistent to state that a closure is a way to increase recreational fishing opportunities.

*Response:* As noted in Comments 1 and 3, without additional action to constrain recreational catch and effort, the recreational sector met its fishing year quota in August 2009, met its quota in 2010, even with the extensive fishery closures during 2010 because of the Deepwater Horizon MC252 oil spill, and is projected to meet its recreational quota by August 2011, for the current fishing year. To minimize the social and economic impacts of lengthy and early in-season quota closures, the Council selected the shortest duration seasonal closure that is projected to constrain recreational harvest to the quota while still allowing harvest to occur through the end of the fishing year. During the Council's public hearing process, many for-hire operators indicated a June-July closure was preferred, because this seasonal closure period would allow them to market greater amberjack as a trophy fish during the fall and winter months when their preferred target of red snapper was unavailable as a result of the recreational season being closed.

*Comment 5:* Recreational harvest of greater amberjack is not the problem; commercial fishermen harvest much more fish than recreational fishermen do. Recreational fishermen account for only a small part of the total catch. Commercial fishing is depleting this resource.

*Response:* Regulations allocate the Gulf greater amberjack total allowable catch between the commercial and recreational sectors. Total annual allowable catch for greater amberjack in the Gulf of Mexico is 1,871,000 lb (848,671 kg), whole weight. The recreational quota, allocated at 73 percent of the total allowable catch, is 1,368,000 lb (620,514 kg), whole weight. The commercial quota, which is 27 percent of the total allowable catch is 503,000 lb (228,157 kg), whole weight.

*Comment 6:* Several alternative management options were suggested in lieu of a closure. These included issuing tags to allow recreational fishermen to harvest specific numbers of fish, reducing the recreational bag limit from one per person to one per vessel or one per two people onboard, creating a slot limit, increasing the size limit, or regionalized management.

*Response:* The Council has a variety of management options available to constrain harvest of any fishing sector, including those identified in the comments. The for-hire fishing industry provided input to the Council during their development of the greater amberjack regulatory amendment. They requested seasonal closures to help them properly plan for their fishing activities so that for-hire bookings are not unexpectedly cancelled because of early in-season quota closures. The Council considered both spring and fall closures, ranging from 3 to 5 months in length but determined these longer closures resulted in greater social and economic impact. In addition, early in-season quota closures affect many fishing tournaments held during the fall of the year. With the establishment of a fixed closed season, such tournaments can be scheduled around the fixed closed season.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this regulatory amendment is necessary for the conservation and management of Gulf greater amberjack, to reduce the social and economic impacts to the Gulf greater amberjack recreational sector, and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA or that have socioeconomic implications were received and therefore no comments are addressed in this FRFA, although the response to Comment 4 addressed the economic impacts of the final rule more generally and may be referred to for additional information. No changes in the final rule were made in response to public comments.

The Magnuson-Stevens Act provides the statutory basis for this final rule. This final rule will not establish any new reporting, record-keeping, or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

The preamble of this final rule and the previously published proposed rule provides a statement of the need for and objectives of this rule, and it is not repeated here.

The final rule is expected to directly affect for-hire fishing vessels that harvest greater amberjack in the Gulf. The for-hire sector is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. For-hire vessels are required to have a Gulf reef fish for-hire permit to harvest greater amberjack in the Gulf. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A for-hire business involved in fish harvesting 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).

In 2009, there were 1,422 unique for-hire vessels that were permitted to operate in the Gulf reef fish recreational sector. These vessels were distributed as follows: 140 vessels in Alabama, 877 vessels in Florida, 101 vessels in Louisiana, 54 vessels in Mississippi, and 232 vessels in Texas. The Federal for-hire permit does not distinguish between headboats and charter boats, but in 2009, the headboat survey program included 79 headboats. The

majority of headboats were located in Florida (43), followed by Texas (22), Alabama (10), and Louisiana (4). It cannot be determined with available data how many of the 1,422 for-hire vessels permitted to operate in the Gulf reef fish fishery harvest greater amberjack, so all permitted for-hire vessels are assumed 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).

Based on these revenue estimates, all for-hire vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities. Some fleet activity (i.e., multiple vessels owned by a single entity) may exist in the for-hire sector but its extent is unknown, and all vessels are treated as independent entities in this analysis.

All entities expected to be directly affected by the final rule are determined for the purpose of this analysis to be small business entities, so no disproportionate effects on small entities relative to large entities are expected because of this action.

The final rule establishes a June 1 through July 31 seasonal closure of the recreational greater amberjack sector of the Gulf reef fish fishery. On the other hand, the no action alternative would likely result in a recreational sector closure commencing on approximately August 27, 2011, as a result of the quota being met or exceeded. Relative to the no action alternative, the final rule is expected, for the first year, to result in an increase in profits by \$52,526 for the charterboat sector as a whole, or by \$39 per charterboat. On the other hand, the final rule is expected, for the first year, to result in a decrease in profits by \$59,832 for the headboat sector as a whole, or by \$757 per headboat. Relative to the average revenues of \$88,000 per charterboat and \$461,000 per headboat, the estimated effects of the final rule may be deemed relatively small. Considering the effects on charterboats and headboats as a whole, the final rule is expected, in the first year, to result in a net decrease in overall for-hire vessel profits of \$7,306. This net amount is deemed small, particularly when spread over all 1,422 for-hire vessels. In addition, it is expected that net profits for both charterboats and headboats would not deteriorate as much as they would under an unplanned quota closure associated with the no action alternative. Based on the resulting net effects on profits, it is concluded that

the final rule would not have a significant economic impact on a substantial number of small entities.

Four alternatives, including the final action, were considered in this amendment. The first alternative to the final action is the no action alternative. This alternative, which would not establish a recreational seasonal closure, resulted in a quota closure and overages in 2009, prompting a reduction in the following year's (2010) quota. In April 2010, the recreational sector requested that the Council consider a seasonal closure to minimize the adverse effects of the quota closure. The second alternative to the final action would establish a March through May seasonal closure. This alternative would be expected to result in larger overall adverse economic effects than the final action. While this alternative would result in lower headboat profit reductions of \$32,713 for the first year, the charterboat profit reductions would be substantially larger at \$516,062 for the first year. The third alternative to the final action would establish a May through June seasonal closure. This third alternative would likely result in larger adverse economic effects than the final action. Similar to the second alternative to the final action, this third alternative would result in lower headboat profit reductions of \$29,844 for the first year but substantially larger charterboat reductions of \$252,017 for the first year.

The provision contained in this final rule that corrects the definition of venting device would have no additional economic effects on small entities because this tool is already required to be used, and this correction merely clarifies how it should be used.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf reef fish for-hire sector as well as other interested parties.

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

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

Dated: April 26, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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.*

■ 2. In § 622.2, the definition for “venting device” is revised to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Venting device* means a device intended to deflate the abdominal cavity of a fish to release the fish with minimum damage.

\* \* \* \* \*

■ 3. In § 622.34, paragraph (o) is added to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

\* \* \* \* \*

(o) *Seasonal closure of the recreational sector for greater amberjack.* The recreational sector for greater amberjack in or from the Gulf EEZ is closed from June 1 through July 31, each year. During the closure, the bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

\* \* \* \* \*

■ 4. In § 622.41, the first sentence of paragraph (m)(3) is revised to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(m) \* \* \*

(3) *Venting tool.* At least one venting tool is required and must be used to deflate the abdominal cavities of Gulf reef fish to release the fish with minimum damage. \* \* \*

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[FR Doc. 2011-10479 Filed 4-28-11; 8:45 am]

**BILLING CODE 3510-22-P**