

Dated: August 17, 2005.

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Regional Director, Region 5.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 050405E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Petition for Emergency Rulemaking for Red Snapper

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

ACTION: Denial of a petition for emergency rulemaking.

SUMMARY: NMFS announces its decision to deny a petition for emergency or interim rulemaking under the Administrative Procedure Act (APA) and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Coastal Conservation Association (CCA), a marine conservation group composed of approximately 90,000 members, petitioned the U.S. Department of Commerce to immediately promulgate an emergency or interim rule under the Magnuson-Stevens Act to prevent overfishing of red snapper resulting from bycatch in the shrimp trawl fishery of the Gulf of Mexico. NMFS finds the emergency or interim rulemaking is not warranted, and additional management measures to end overfishing of red snapper would better be addressed through a Gulf of Mexico Fishery Management Council (Council) regulatory amendment and development of a fishery management plan (FMP) amendment.

ADDRESSES: Copies of the NMFS decision on the CCA petition are available from Phil Steele, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305, and via internet at: <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Phil Steele, Fishery Administrator, NMFS, Southeast Regional Office; telephone: 727-824-5305; e-mail: phil.steele@noaa.gov.

SUPPLEMENTARY INFORMATION: CCA filed a petition for emergency or interim

rulemaking on March 29, 2005. NMFS published a notice of receipt of petition for rulemaking on May 12, 2005 (70 FR 39700), and invited public comments for 60 days ending July 11, 2005. Summaries of and responses to comments are provided in the Response to Public Comments section below.

The Petition

The petition filed by CCA states the red snapper stock in the Gulf of Mexico is overfished and undergoing overfishing. Although the petition acknowledges the directed red snapper commercial and recreational sectors share responsibility for rebuilding the stock, it asserts the failure of bycatch reduction devices (BRDs) required in the commercial shrimp fishery to meet established bycatch reduction standards makes recovery of the Gulf red snapper fishery unlikely and ensures years of continued overfishing of this stock. The petition states the directed recreational and commercial red snapper sectors have already adopted many measures necessary to rebuild the stock. The petition seeks emergency regulations or interim measures to stop the overfishing resulting from excessive bycatch of juvenile red snapper in the Gulf shrimp fishery. The petition also suggests management measures such as bag limits and total allowable catch restrictions would be applicable to the directed red snapper fishery.

The CCA petition states the prevention of overfishing and recovery of the red snapper stock is predicated on at least a 44-percent reduction from the average level of bycatch mortality on juvenile red snapper, age 0 and age 1, by the Gulf shrimp fishery during the years 1984-1989. Further, because recent research indicates current BRD use, in practice, yields only a 12-percent bycatch reduction, CCA argues that the existing plan for preventing overfishing and rebuilding the red snapper stock must be declared a failure. CCA asserts the fisheries regulatory establishment is plainly aware of red snapper overfishing by the shrimp trawl fishery, but has failed to take corrective action. The petition requests NMFS immediately initiate emergency regulations or interim measures resulting in bycatch reduction sufficient to allow the red snapper stock to rebuild within the time period established in the Reef Fish Fishery Management Plan (Reef Fish FMP). The petition states such bycatch reduction measures should include strict bycatch quotas tracked by observer data, time and area closures or restrictions, improved BRDs, season limitations, seasonal closures, and/or other

reduction measures. In addition, the petition states a firm bycatch reduction target of 60-80 percent of historic levels should be set, with a time line to achieve the target within the shortest period possible. The petition also proposes a mandated effort reduction program for the Gulf shrimp fleet.

History of NMFS and Council Efforts to Reduce Bycatch in the Shrimp Fishery

Efforts to rebuild the red snapper stock are complicated by significant amounts of bycatch in the shrimp fishery. Ending overfishing and allowing the stock to rebuild cannot occur through regulations on the directed red snapper fishery alone. The shrimp fishery annually removes 25 to 45 million juvenile red snapper (approximately 2-5 million lb (0.9-2.3 million kg)), primarily from the western Gulf, whereas the directed fishery removes approximately 4 million adult fish (approximately 9 million lb (4.1 million kg)) annually. The success of the red snapper rebuilding plan depends heavily on reductions in shrimp trawl bycatch.

The Council recognized the inherent need to reduce red snapper bycatch in the shrimp fishery in 1997 when they approved Amendment 9 to the Shrimp Fishery Management Plan (Shrimp FMP). The purpose of this amendment was to reduce unwanted bycatch of juvenile red snapper in the shrimp fishery and, to the extent practicable, not adversely affect the shrimp fishery. Because of substantial fishing mortality on juvenile red snapper and the need to rebuild the overfished stock, the Council considered development and use of BRDs and other management measures to reduce bycatch. The Council approved a goal for reducing red snapper bycatch by 44 percent from the average annual mortality of age-0 and age-1 red snapper during 1984-1989. Upon approval of Amendment 9, the fisheye BRD and Andrews Turtle Excluder Device (Andrews TED) were the only two devices determined to be capable of reducing bycatch by the required amount; however, the Andrews TED was proposed to be certified as a BRD only during a time when and in a geographical area where it is an approved TED. On December 19, 1997, approval of the Andrews TED, as a TED, was withdrawn; therefore, the Andrews TED was not certified as a BRD in the final rule implementing Amendment 9. However, the framework procedure approved by the Council in Amendment 9 allowed for additional BRDs to be certified by NMFS. Cooperative industry/government research available in 1997 indicated the approved BRDs

would reduce red snapper bycatch by 58 to 77 percent.

In 1998, an intensive monitoring effort quantified the effectiveness of the mandatory use of certified BRDs and evaluated the effectiveness of uncertified BRDs. The study found there were performance problems with the fisheye BRD in some configurations, and regulations were amended to modify the allowable placement of the fisheye BRD to improve performance and bycatch reduction. In 1999, BRD testing and certification procedures were established, and two new BRDs, the Jones-Davis BRD and "Gulf" fisheye BRD, were certified by NMFS after determining they exceeded the bycatch reduction goal. Available data in 1999 indicated these BRDs reduced red snapper mortality by 52 to 70 percent.

Monitoring the performance of BRDs in the fishery continued through an observer program from 1999 to 2003, during which time the Council began development of a regulatory amendment, and subsequently Amendment 22 to the Reef Fish FMP. The Council submitted a rebuilding plan to NMFS through a regulatory amendment in 2001. This amendment was returned to the Council by NMFS with a request to further explore alternative rebuilding plans based on realistic expectations for future reductions in shrimp trawl bycatch, and to more fully evaluate the effects of alternatives to reduce bycatch through a supplemental environmental impact statement. In 2004, the Council approved Amendment 22, which established a rebuilding plan for red snapper based on the results of the 1999 stock assessment. The rebuilding plan was projected to end overfishing by 2009 or 2010, and rebuild the stock by 2032. The amendment called for large reductions in bycatch mortality from the shrimp fishery to be achieved either through technological means, such as improved BRD designs, and/or reductions in shrimp fishing effort. The selected rebuilding plan recognized the need for periodic reviews of the stock status to ensure the rebuilding plan was adequately progressing toward the rebuilding goal. Review of the plan was designed to incorporate new information and to address unanticipated developments in the red snapper and shrimp fisheries, and to make appropriate adjustments in red snapper regulations should insufficient or unexpectedly rapid rebuilding progress occur.

In May 2004, the Council was presented with the results of the ongoing BRD observer study mentioned above. This study indicated BRDs,

under actual fishing conditions, were reducing red snapper bycatch by 11.7 percent, which was far less than previously documented during research trials. The study noted several changes in fishing practices and gear characteristics (e.g., increased haulback speeds, illegal BRD placement) reduced the performance of the fisheye BRD, the most commonly used BRD in the shrimp fishery. Results from a majority of trips where observers were aboard revealed BRDs were often placed in illegal net positions, resulting in poor BRD performance. However, BRD performance also was noted to be poor for legal installations due largely to alterations in fishing practices.

The results of this BRD observer study were incorporated into the 2005 red snapper stock assessment, which concluded red snapper continued to be overfished and undergoing overfishing. The conclusions of the assessment were consistent with previous assessments despite changes in stock status criteria and assessment methods. The Southeast Data, Assessment, and Review (SEDAR) Assessment Review Panel concluded red snapper fishing mortality rates are too high for both the directed fishery and shrimp fishery, and reductions in fishing mortality for both sectors would be needed to rebuild the stock.

Response to Assertions and Proposed Management Measures Set Forth in the Petition

NMFS disagrees with CCA's assertion that management has failed to take action to address the problem of shrimp trawl bycatch of red snapper. As new information and research have become available, NMFS and the Council have taken corrective action to improve BRD performance and reduce shrimp trawl bycatch. Changes in both fishing practices and gear characteristics have significantly reduced the overall performance of BRDs relative to bycatch reduction rates previously documented during field trials. NMFS recognizes the success of the rebuilding plan is heavily dependent on reductions in shrimp trawl bycatch and effort. Amendment 22 acknowledged additional reductions in bycatch may be required in the future if reductions are not adequate through technological improvements. The Council also specified a periodic review of the rebuilding plan in order to make appropriate adjustments in red snapper regulations when new information, such as the most recent stock assessment and BRD performance research, became available.

NMFS agrees with CCA's assertion that existing certified BRDs are now not achieving established reduction

standards and additional reductions in shrimp trawl bycatch are needed to rebuild the stock. The rebuilding plan calls for large reductions in shrimp effort to occur through technological means and reductions in shrimp effort. Current BRD observer studies indicate only a 12-percent reduction in red snapper bycatch is occurring, which is well below the reduction needed to rebuild the stock. However, as indicated in Amendment 22 to the Reef Fish FMP, reductions in shrimp trawl bycatch are occurring as a result of reduced fishing effort associated with adverse economic conditions in the shrimp fishery resulting from increased competition from shrimp imports and rising fuel costs. Future declines in shrimp effort are predicted for large shrimp vessels (greater than or equal to 60 ft (18.3 m) in length). Such declines are likely to increase the rate of red snapper stock rebuilding and reduce fishing related bycatch in the early years of the rebuilding plan, aside from any management actions to reduce harvest. Since 2002, an 18-percent decrease in shrimp effort has occurred. Shrimp effort has decreased by 26-percent since the late 1980s, resulting in lower fishing mortality rates on juvenile red snapper in more recent years.

Based on the most recent stock assessment, fishing mortality rates in all sectors of the fishery are too high, and the Council will need to consider reducing fishing mortality rates to rebuild the stock. As explained in the Agency Decision section of this notice, NMFS believes actions to revise the red snapper rebuilding plan and reduce shrimp trawl bycatch are best addressed through Council regulatory amendment and FMP amendment, rather than emergency rule. The Council directed staff during their August 2005 Council meeting to begin immediately working on a regulatory amendment to modify certification procedures and protocols for BRDs, including decertification of ineffective BRDs and certification of new BRDs capable of achieving necessary reductions in finfish bycatch. The Council also directed staff to begin developing a joint reef fish/shrimp plan amendment that revises the red snapper rebuilding plan and addresses bycatch in both the directed red snapper fishery and shrimp fishery. NMFS agrees many of the measures proposed by CCA to address shrimp trawl bycatch should be considered in the plan amendment.

NMFS and the Council have already begun to address effort limitation in the shrimp fishery and monitoring of shrimp bycatch. In May 2005, the Council approved Amendment 13 to the Shrimp FMP. This amendment, if

approved by NMFS, would establish a moratorium on shrimp licenses and allow for closer monitoring of the shrimp fishery in two ways. First, electronic logbook reporting, which tracks fishing effort (number of trips, length of trips, locations, etc.), would be required for commercial shrimp vessel permit holders. Second, the observer program would include bycatch reporting which will produce estimates of total annual finfish and invertebrate bycatch. The Council believes these actions will provide the best information to track effort and evaluate bycatch and modified BRD performance without unduly interfering with shrimp fishery operations. NMFS expects that Amendment 13, if approved, would be implemented early in 2006. The level of coverage for monitoring bycatch through the use of electronic logbooks and observers may vary with the availability of funding. Until such time as additional funding is available, management measures such as bycatch quotas would be impractical to consider for the shrimp fishery.

The Council previously considered area and seasonal closures for reducing finfish bycatch in Amendments 9 and 10 to the Shrimp FMP. The Council rejected these measures because they were deemed costly and ineffective, and research at the time indicated BRDs reduced bycatch at a lower cost. Current regulations include several seasonal and area closures throughout the Gulf of Mexico in which trawling is prohibited. Trawl gear is also precluded from numerous areas throughout the Gulf because of oil and gas platforms, hard bottom habitat, and artificial reefs. The intent of existing seasonal and area closures is to protect small shrimp and habitat and reduce user conflicts. These closures were not intended to reduce bycatch, although this is an indirect benefit of these management actions.

The Council considered a scoping document for Amendment 14 to the Shrimp FMP at their August 2005 meeting. The scoping document contained alternatives for further reducing shrimp bycatch, reducing shrimp effort, modifying bycatch reduction criteria, eliminating latent effort in the shrimp fishery, and requiring vessel monitoring systems aboard shrimp vessels. NMFS will continue to work closely with the Council to further develop a joint Shrimp and Reef Fish plan amendment evaluating these shrimp fishery bycatch alternatives, as well as alternatives for rebuilding the red snapper stock and reducing bycatch in the directed red snapper fishery.

The petition also proposes setting a firm target for bycatch reduction of between 60 and 80 percent of historic levels, with a time line established to achieve the target within the shortest period possible. NMFS believes the target bycatch reduction goal should be set based on the results of the most recent stock assessment, taking into account the time needed to rebuild the stock and the practicability of further reductions in shrimp trawl bycatch.

Response to Comments

NMFS received 7,630 form letters in favor of the petition to end overfishing of red snapper by minimizing shrimp trawl bycatch. NMFS received an additional 23 letters in response to the petition. Of those 23 letters, 12 commenters supported the petition, and 11 commenters urged the petition be rejected or denied. NMFS' responses to these comments are provided below.

Comment 1: A group of commenters stated the Federal government has failed to end overfishing of red snapper by the shrimp fishery despite legal requirements, and significant action is necessary to reduce bycatch and restore the red snapper stock.

Response: The 2005 red snapper stock assessment indicated red snapper were overfished and undergoing overfishing. NMFS agrees action is needed to reduce bycatch in both the shrimp fishery and the directed red snapper fishery. Despite previous actions by NMFS and the Council to improve BRD performance and reduce shrimp trawl bycatch of red snapper, as explained in the History of NMFS and Council Efforts to Reduce Bycatch in the Shrimp Fishery section of this document, overfishing has continued. Changes in both fishing practices and gear characteristics have significantly reduced the overall effectiveness of BRDs relative to the bycatch reduction rates documented during field trials. The Council recognized the need to address such changes during rebuilding by periodically reviewing the status of the stock to ensure the rebuilding plan is adequately meeting rebuilding goals. Should insufficient or unexpectedly rapid rebuilding progress occur, NMFS and the Council intend to make appropriate adjustments to regulations to address unanticipated developments in the red snapper and shrimp fisheries.

Comment 2: Eight commenters in favor of the petition stated the shrimp fishery has impacted the recreational fishery economically and hindered further economic gains the recreational sector could experience.

Response: NMFS recognizes bycatch increases the mortality of any species

over what would otherwise occur due to natural mortality and any directed fishery for that species. As such, this additional mortality reduces the potential harvest and economic activity associated with that species. This situation is not unique to shrimp trawl bycatch and recreational fisheries. In addition to requiring bycatch be reduced to the extent practicable, the Magnuson-Stevens Act requires management measures provide for the sustained participation of fishing communities. This requirement recognizes the sociocultural importance of fisheries and the impracticability of reducing all values associated with a resource to monetary terms. Thus, current regulations in the shrimp fishery have been developed to both minimize bycatch and maintain the fishing communities depending upon this fishery as well as other related fisheries.

Comment 3: Several commenters indicated the petition failed to address the recent decrease in shrimp effort and its effects on reducing red snapper bycatch. These commenters identified four reasons for reductions in shrimp effort: (1) The cap on the number of commercial shrimp licenses has decreased participation in the fishery to a huge degree; (2) the required use of TEDs and BRDs has made it more difficult for license holders to make a living; (3) fuel costs have increased drastically, and, (4) the amount of imported, farm-raised shrimp has been increasing and is unfairly driving down the price of domestic shrimp.

Response: NMFS agrees the petition did not address recent decreases in shrimp effort, nor the aforementioned reasons for that effort reduction. These reductions in effort have been factored into recent management actions for shrimp and red snapper, including Amendment 13 to the Shrimp FMP, Amendment 22 to the Reef Fish FMP, and the 2005 red snapper stock assessment. Although some individuals may dispute effort estimates, these estimates were thoroughly reviewed during the 2004–2005 SEDAR workshops for red snapper and are considered the best available scientific information. Analyses predict reductions in the number of large vessels (>60 ft (>18.3 m)), which primarily operate in offshore waters and are expected to encounter more red snapper than smaller vessels, will be the primary source of future reductions in shrimp trawl bycatch. Between 2002 and 2004, offshore shrimp effort was predicted to decline by 16 percent; actual reductions in shrimp effort during this time declined by 18 percent. Projections indicate effort for large

shrimp vessels will continue to decline significantly through 2011, ending at a point 34 percent less than effort levels in 2002.

The Council approved Amendment 13 to the Shrimp FMP at their May 2005 meeting. If approved by NMFS, this amendment will establish several management measures, including a moratorium on commercial shrimp permits. NMFS has yet to implement the cap on commercial shrimp licenses and, therefore, the cap has not reduced participation in the shrimp fishery to date.

The use of TEDs and BRDs has likely made it more difficult for some shrimpers to make a living. TEDs and BRDs not only reduce finfish and turtle bycatch, they also result in some shrimp loss, which economically impacts the profits of shrimpers. When the Council approved Amendment 9 to the Shrimp FMP in 1997, research indicated BRDs reduced bycatch at a lower cost than other management measures, such as seasonal and area closures. Recent NMFS observer data indicate many shrimpers have changed fishing practices and gear characteristics to reduce shrimp loss; as a result, BRD performance has decreased.

The declining profitability of the shrimp industry is attributed to lower prices, due to competition from imports, and to higher fuel prices, which increased 21–29 percent from 2002 to 2003. Fuel costs represent a significant portion of the industry's operating expenses, and fluctuations in fuel costs can significantly affect the industry's economic performance. Increases in shrimp imports have been the primary cause of the recent decline in U.S. shrimp prices. Recent surges in imports have been caused by increases in the production of foreign, farm-raised shrimp.

Comment 4: One commenter stated the petition was based on old information and new information is now available. The commenter stated the new information was incorporated into the new assessment, but was not acknowledged in the petition, and taking action would be imprudent until completion of the new assessment.

Response: NMFS concurs that it would be prudent to wait for the findings of the new assessment before taking action. A red snapper stock assessment was completed in 2005 and represents the best available science regarding the current status of the stock. NMFS believes additional management measures to achieve reductions in bycatch mortality should take into account the results of this stock assessment and would best be addressed

by the Council through regulatory amendment and development of a plan amendment. The Council discussed the results of the 2005 red snapper stock assessment at their August 2005 meeting and requested the NMFS Southeast Fisheries Science Center begin evaluating rebuilding scenarios for red snapper and the necessary shrimp trawl bycatch reductions associated with the scenarios.

Comment 5: Several commenters stated the impact of recreational fishing was not acknowledged in the petition, and this fishing was a huge factor in the red snapper decline.

Response: The petition acknowledges recovery of the red snapper stock is not based on bycatch reduction alone. However, the petition states the directed recreational and commercial fisheries have already adopted many management measures in an effort to rebuild the red snapper stock. Based on the most recent stock assessment, red snapper fishing mortality rates in both the directed fishery and the shrimp fishery are too high and each sector must share responsibility for rebuilding the stock.

Comment 6: One commenter stated the growth of offshore recreational fishing boats has had a huge impact on red snapper and all other reef fish species. Another commenter asserted recreational bag limits for red snapper are regularly exceeded with no penalties, and this was the primary problem with management of the stock.

Response: NMFS agrees the number of recreational fishing vessels and fishing effort have increased in recent years. Despite this increase in fishing effort and vessels, red snapper landings have been at or near the 4.47-million lb (2.03-million kg) quota. Recreational landings overages have occurred in some years, but landings have also been well below the quota during other years. Management measures imposed by the Council and NMFS, such as bag limits, closed seasons, size limits, and a moratorium on for-hire vessel permits, are intended to limit overall red snapper landings and effort. The U.S. Coast Guard, NMFS Law Enforcement, and state enforcement agencies enforce these regulations, and penalties exist if regulations are violated.

Comment 7: One commenter asserted the bycatch of undersized red snapper by recreational fishermen is substantial.

Response: NMFS agrees bycatch of undersized fish in the directed fishery should be addressed. The 2005 red snapper stock assessment used a range of release mortality rates for the directed commercial and recreational red snapper fisheries. These release

mortality rates ranged from 15 to 80 percent depending on depth and time fished. The Council has begun developing a plan amendment to address bycatch in both the directed red snapper fishery and shrimp fishery.

Comment 8: One commenter stated studies show the importance of protecting large spawners to ensure red snapper sustainability, and implied recreational fishing has a much greater effect on these large fish than commercial fishing, such as longlining.

Response: NMFS agrees it is important to protect mature red snapper. Red snapper mature as early as 2 years of age and 10–12 inches (25–30 cm) fork length. They do not reach peak reproductive productivity until approximately 15 to 20 years of age. Current fishing practices directly affect the reproductive potential of the stock because red snapper are primarily caught well below the age at maximum fecundity. The commercial longline fishery typically harvests older red snapper (mean age of 7–8 years), while the commercial and recreational handline fisheries harvest younger red snapper (mean age of 2 to 4 years). However, the commercial longline fishery accounts for only a small portion of the overall commercial harvest of red snapper (less than 4 percent of the overall commercial harvest).

Agency Decision

After considering the assertions and proposed management measures set forth in the CCA petition and all public comments, NMFS has determined the measures requested by the petition should not be addressed via emergency or interim rulemaking at this time. NMFS agrees bycatch mortality of red snapper in the Gulf shrimp fleet adversely affects red snapper and its ability to rebuild. NMFS believes it is important to address bycatch mortality of red snapper by the shrimp fleet, but this issue does not represent an emergency as defined in NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997). Overfishing of red snapper is not an unforeseen event and, therefore, does not constitute an emergency.

Interim measures can be useful to address recently discovered issues for which no long-term strategies have been devised. However, NMFS believes long-term measures are more appropriate than interim measures to address overfishing of red snapper. The Council and NMFS have established, and are in the process of implementing, a long-term rebuilding plan for red snapper to phase-out overfishing by 2009 or 2010 and rebuild the fishery by 2032, as

defined in the Magnuson-Stevens Act (§ 303(e)(4)). As anticipated in the rebuilding plan, implementation includes periodic adjustments based on new scientific information. The 2005 red snapper stock assessment indicates the level of reduction necessary to eliminate overfishing is dependent on the objectives and rebuilding scenario selected. The Council will need to evaluate those factors carefully prior to taking action to implement appropriate reductions to end overfishing and rebuild the stock.

Finally, emergency and interim regulations are not appropriate for addressing such actions as changes to BRDs, because these changes would require substantial time for gear development, manufacturing, and training and distribution for re-outfitting of shrimp nets. Emergency and interim measures can only be implemented for 180 days and can be extended for an additional 180 days if necessary conditions are met. It is likely that such measures would result in a regulatory lapse before longer-term measures could be implemented.

NMFS believes additional management measures to achieve reductions in bycatch mortality should take into account the results of the most recent red snapper stock assessment and would best be addressed through Council regulatory amendment and development of a plan amendment. The Council directed staff during their August 2005 Council meeting to begin immediately working on a regulatory amendment to modify certification procedures and protocols for BRDs, including decertification of ineffective BRDs and certification of new BRDs capable of achieving necessary reductions in finfish bycatch. This regulatory amendment is expected to be completed in mid-2006. The Council also directed staff to begin developing a joint reef fish and shrimp plan amendment that revises the red snapper rebuilding plan and addresses bycatch in both the directed red snapper fishery and shrimp fishery. This plan amendment is expected to be completed by late-2006. By addressing bycatch mortality, management measures, and the red snapper rebuilding plan in this way, the public will be afforded more opportunities to comment and participate in the rulemaking process, and long-term measures to address the issues can be implemented.

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

Dated: August 31, 2005.

Emily Menashes,

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 635

[I.D. 051603C]

RIN 0648-AQ65

Atlantic Highly Migratory Species; Amendments to the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish

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

ACTION: Cancelling and changing the location and time of certain public hearings.

SUMMARY: Due to the damage caused by Hurricane Katrina, NMFS is cancelling two public hearings on the draft consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and proposed rule that were scheduled for September 6 and September 8, 2005, in Orange Beach, AL, and New Orleans, LA, respectively. NMFS intends to reschedule the September 6 Orange Beach and September 8 New Orleans public hearings at a later date. In addition, NMFS has changed the location and time of the public hearing that was scheduled to be held in Fort Lauderdale, FL, on October 3, 2005, at the African American Arts and Cultural Center Research Library. The draft consolidated HMS FMP and the proposed rule describe a range of management measures that could impact fishermen and dealers for all HMS fisheries.

DATES: The Fort Lauderdale public hearing will still be held on Monday, October 3, 2005. However, the new time will be from 7 - 10 p.m. The hearings scheduled for September 6 and September 8, 2005, in Orange Beach, AL, and New Orleans, LA, have been cancelled and will be rescheduled at a later date.

ADDRESSES: The new location of the Fort Lauderdale public hearing will be the Broward County Main Library, 100 South Andrews Avenue, Fort Lauderdale, FL 33301.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Karyl Brewster-Geisz at (301) 713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The FMP for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and the FMP for Atlantic Billfish, finalized in 1988, are implemented by regulations at 50 CFR part 635.

On August 19, 2005 (70 FR 48804), NMFS published a proposed rule that, among other things, announced the availability of the draft consolidated HMS FMP. Included in this proposed rule was a list of 24 public hearings throughout September and October 2005. These hearings are scheduled for NMFS to receive comments from fishery participants and other members of the public regarding the proposed rule and draft HMS FMP. Due to the damage caused by Hurricane Katrina, NMFS is cancelling two public hearings that were scheduled for September 6 and September 8, 2005, in Orange Beach, AL, and New Orleans, LA, respectively. NMFS intends to reschedule the public hearings once the amount of damaged caused by Hurricane Katrina in the affected Gulf region has been assessed and the appropriate locations can be determined. NMFS may extend the comment period, if necessary, to ensure adequate opportunities for public comment by constituents in the affected Gulf region. Notification of the new dates and locations would be published in the **Federal Register**.

In addition, NMFS has changed the location and time of the public hearing that was scheduled to be held in Fort Lauderdale, FL, on October 3, 2005, at the African American Arts and Cultural Center Research Library (see **DATES** and **ADDRESSES**). This change was due to concerns raised by a constituent regarding public safety. NMFS verified these concerns with local law enforcement. The schedule for the other public hearings remains unchanged.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not