

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

[Docket No. 090224234-9270-01]

RIN 0648-AX68

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Reef Fish Longline Restriction

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule implements area closures applicable to the bottom longline component of the reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico, as requested by the Gulf of Mexico Fishery Management Council (Council), to reduce incidental take and mortality of sea turtles.

DATES: This rule is effective May 18, 2009 through October 28, 2009. Comments must be received no later than 5:00 p.m., eastern time, on June 1, 2009.

ADDRESSES: You may submit comments on the proposed rule, identified by "0648-AX68" by any 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; Attention: Cynthia Meyer.
- Mail: Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.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 "NOAA-NMFS-2009-0072" in the keyword search, 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). You may submit

attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Requests for copies of documents supporting this rule may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT:

Cynthia Meyer, telephone: 727-551-5784, fax: 727-824-5308, e-mail: cynthia.meyer@noaa.gov.

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

NMFS takes this action in accordance with both the Endangered Species Act (ESA) and national standard 9 of the Magnuson-Stevens Act. ESA requires the Federal government to protect and conserve species and populations that are endangered, or threatened with extinction, and to conserve the ecosystems on which these species depend. National standard 9 under the Magnuson-Stevens Act requires that conservation and management measures, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Results from a recent Southeast Fisheries Science Center observer analysis indicate the number of sea turtle takes authorized in the 2005 biological opinion on the bottom longline component of the reef fish fishery in the Gulf of Mexico has been exceeded. In addition, this component of the reef fish fishery operates primarily off the west Florida shelf, which is an important sea turtle foraging habitat. Individual sea turtles incidentally caught by the longline component of the fishery include sexually immature juveniles and mature adult loggerhead sea turtles that have high reproductive potential. A recent scientific study suggested the observed decline in the annual counts of loggerhead sea turtle nests in peninsular Florida can best be explained by a decline in the number of adult female loggerheads in the population. The biological opinion being developed by NMFS in light of this new information could result in a jeopardy determination for loggerhead sea turtles unless action

is taken to reduce the fishery's impact on this threatened species.

Based on this information, the Council and NMFS are considering long-term measures to reduce bycatch of sea turtles in the eastern Gulf of Mexico bottom longline component of the reef fish fishery in Amendment 31 to the FMP. These measures are needed to provide protection for loggerhead sea turtles in compliance with the ESA and to reduce sea turtle bycatch and bycatch mortality in compliance with national standard 9 of the Magnuson-Stevens Act. While the Council is considering long-term measures to reduce sea turtle bycatch, short-term action is needed to reduce sea turtle bycatch. Therefore, the Council requested that NMFS take emergency action to achieve these short-term reductions.

Management Measures Established by this Temporary Rule

Consistent with the Council's request, as well as with ESA and Magnuson-Stevens Act requirements, this rule will prohibit the use of bottom longline gear to harvest reef fish east of 85°30' W longitude in the portion of the EEZ shoreward of the coordinates established to approximate a line following the 50-fathom (91.4-m) contour as long as the 2009 deep-water grouper and tilefish quotas are unfilled. Once the quotas have been filled, the use of bottom longline gear to harvest reef fish in water of all depths east of 85°30' W. longitude will be prohibited.

Future Action

NMFS finds that this emergency rule is necessary to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery in the Gulf of Mexico EEZ while the Council completes Amendment 31 to the FMP. NMFS issues this emergency rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. NMFS has reinitiated consultation of the reef fish fishery under Section 7 of the ESA, and the biological opinion is expected to be completed during the closure established by this rule. Based on the information presented in the biological opinion, and the Council's proposed long-term actions, NMFS may determine that less restrictive measures would suffice to adequately reduce turtle takes by the longline component of the reef fish fishery. If so, NMFS may rescind the closure before the 180-day effective period of this emergency rule has been reached, and potentially implement less restrictive measures.

This emergency rule may be extended for up to an additional 186 days, provided that the public has had an opportunity to comment on the rule and provided that the Council is actively preparing a plan amendment or proposed regulations to address this emergency on a permanent basis. Public comments on this emergency rule are invited and will be considered in determining whether to maintain or extend this rule to address the incidental take and mortality of sea turtles in the Gulf of Mexico. The Council is preparing an FMP amendment to address this issue on a permanent basis which, if approved, would be implemented through notice and comment rulemaking.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery in the Gulf of Mexico EEZ and is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for public comment. Prior notice and opportunity for public comment would be contrary to the public interest, as delaying action to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery would increase the likelihood of additional sea turtle mortality in excess of that allowed under the incidental take statement established under the ESA.

For the same reasons, the AA finds good cause to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(3). However, the effective date of this rule will be delayed until 15 days after the date of publication in the **Federal Register**. A typical bottom longline fishing trip lasts approximately 2 weeks. Advance preparation for such a trip often takes a couple of days for purchasing and loading necessary provisions and involves substantial expenditures. Immediate, or nearly immediate, implementation of this rule would be very disruptive of trips for which advance preparations and expenses had already occurred or for trips that had already been initiated and provisioned based on the expectation of a full 2-week trip. A 15-day delay will provide adequate time to inform the bottom longline component of the Gulf

of Mexico reef fish fishery of the impending restrictions and allow them to plan and adjust their fishing activities accordingly.

Because prior notice and opportunity for public comment are not required 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.

List of Subjects in 50 CFR Part 622

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

Dated: April 28, 2009.

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.*

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

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(q) *Prohibitions applicable to bottom longline fishing for Gulf reef fish.* (1) Bottom longlining for Gulf reef fish is prohibited in the portion of the Gulf EEZ east of 85°30' W. long. that is shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°58.5'	85°30.0'
B	28°42.5'	85°05.0'
C	28°12.5'	84°50.0'
D	27°52.0'	84°30.0'
E	27°28.0'	84°19.0'
F	26°28.5'	83°50.0'
G	25°30.0'	83°44.5'
H	25°04.0'	83°44.5'
I	24°48.0'	83°54.4'
J	24°39.5'	83°41.0'
K	24°28.5'	83°14.5'
L	24°25.0'	83°00.0'

(2) If both the commercial deep-water grouper and tilefish components of the Gulf reef fish fishery are closed, bottom longlining for Gulf reef fish is prohibited in all waters of the Gulf EEZ east of 85°30' W. long.

(3) A vessel with bottom longline gear on board or that is using bottom longline gear to fish for species other

than Gulf reef fish may not possess Gulf reef fish within the prohibited areas specified in paragraphs (q)(1) of this section or within the prohibited area specified in paragraph (q)(2) of this section when that prohibition is applicable, unless the bottom longline gear is appropriately stowed. For the purposes of paragraph (q) of this section, appropriately stowed means that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks cannot be baited; and all buoys must be disconnected from the gear but may remain on deck.

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[FR Doc. E9-10042 Filed 4-28-09; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206149-9658-02]

RIN 0648-AX57

Fisheries of the Northeastern United States; 2009 Specifications for the Spiny Dogfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS announces specifications for the spiny dogfish fishery for the 2009 fishing year (FY) (May 1, 2009, through April 30, 2010), and modifies existing management measures. NMFS is implementing a spiny dogfish quota of 12 million lb (5,443.11 mt) for FY 2009, and a possession limit of 3,000 lb (1.36 mt).

DATES: The rule is effective May 1, 2009. The specifications are effective May 1, 2009 through April 30, 2010.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is