

Classification

This action is required by 50 CFR 300.223(d) and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator for Fisheries finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action, as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary as NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria for implementing the catch retention requirement (proposed rule published at 74 FR 26160, June 1, 2009, and final rule published at 74 FR 38544, August 4, 2009), and all that remains is to notify the public of the date of applicability of the requirement. In addition, prior notice and comment would be contrary to the public interest because it would unnecessarily delay implementation of the catch retention requirement, an international obligation of the United States under the Convention, after a determination that there is a sufficient number of observers for placement aboard purse seine vessels of WCPFC members.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: May 7, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 622, 635, 640, and 654**

[Docket No. 100510220-0221-01]

RIN 0648-AY90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Emergency Fisheries Closures in the Southeast Region Due to the Deepwater Horizon Oil Spill; Amendment 2

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

ACTION: Emergency rule; amendment; request for comments.

SUMMARY: NMFS issues this emergency rule to close portions of the Gulf of

Mexico (Gulf), South Atlantic, and Caribbean exclusive economic zones (Southeast EEZ) to all fishing as necessary when new information becomes available, to respond to the evolving nature of the Deepwater Horizon oil spill. The closed portions of the Southeast EEZ will be updated on a regular basis and announced to the public via NOAA Weather Radio, fishery bulletin, and NOAA Web site updates. The updated closed area may also be obtained by calling the NMFS Southeast Regional Office, Sustainable Fisheries Division at 727-824-5305. This rule replaces the existing closure rule, which became effective May 7, 2010, and will remain in effect until terminated by subsequent rulemaking, which will occur once the existing emergency conditions from the oil spill no longer exist. Fish and shellfish in oil affected waters may be contaminated with levels of hydrocarbons above baseline levels. The U.S. Food and Drug Administration (FDA) considers such seafood to be adulterated. The intent of this emergency rule is to prohibit the harvest of adulterated seafood and for public safety.

DATES: This rule is effective May 11, 2010. Comments may be submitted through June 10, 2010.

ADDRESSES: You may submit comments on this rule, identified by "0648-AY90" 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: Anik Clemens.
- **Mail:** Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period. 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-2010-0103" 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.

Copies of the environmental assessment, which includes a finding of no significant impact, may be obtained from Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701-5505; telephone: 727-824-5305; e-mail: cynthia.meyer@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, telephone: 727-824-5305, fax: 727-824-5308, e-mail: anik.clemens@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides the legal authority for the promulgation of emergency regulations under section 305(c).

Background

NMFS responded to the April 20, 2010 Deepwater Horizon oil spill by closing a portion of the Gulf EEZ to all fishing through an emergency rule effective May 2, 2010 (75 FR 24822, May 6, 2010). The closure covered an area of the Gulf approximately 6,817 square miles (17,655 square km), or 3 percent of the total area of the Gulf EEZ. Oil continued to leak from the Deepwater Horizon incident at a rate of approximately 5,000 barrels (210,000 gallons, or 794,936.5 liters) per day. Due to the evolving nature of the oil spill, NMFS revised the closed area in a second emergency rule that became effective May 7, 2010 and will publish May 12, 2010. This second emergency rule closed an area of the Gulf approximately 10,807 square miles (27,989 square km), or 4.5 percent of the total area of the Gulf EEZ, therefore, 95.5 percent of the Gulf remains open.

Need for This Emergency Rule

The oil spill continues to shift locations in the Gulf of Mexico and could reach South Atlantic and/or Caribbean Federal waters. Wind speed and direction, currents, waves, and other weather patterns lead to changes in oil location. As the weather conditions controlling the movement of the oil change, the oil could move in directions not initially predicted. This emergency rule allows NMFS to make more timely revisions to the area closed to all fishing. This will become necessary as new information on the location of the Deepwater Horizon oil spill becomes available. Continuing to follow the process of revising the closed area through publication of successive emergency rules does not allow for timely modification of the closure and

could lead to possible harvest of adulterated seafood products from an area where oil is actually present. Sale of adulterated seafood is not in the public interest. This rule will remain in effect until terminated by subsequent rulemaking, which will occur once the existing emergency conditions from the oil spill no longer exist.

Revising the Closed Area

NMFS will revise the closed area to all fishing in the Southeast EEZ based on the current location of the oil spill. Wind speed and direction, currents, waves, and other weather patterns lead to changes in oil location. Closed areas may be reopened if NMFS has determined that oil has never been in that area. Closed areas may also be reopened if NMFS has determined that fish and other marine species located in that area have returned to their baseline levels of hydrocarbons. NMFS will announce the revised closed area via NOAA Weather Radio, fishery bulletin, and NOAA Web site updates. The updated closed area may also be obtained by calling the NMFS Southeast Regional Office, Sustainable Fisheries Division at 727-824-5305. In order to give fishermen enough time to come into compliance with the revised closed area, NMFS will announce the revised closed area daily at 12 noon, eastern time (11 a.m. central time). The revised closed area will become effective at 6 p.m. eastern time (5 p.m. central time). If no changes are made to the closed area on a given day, that will be announced as well. To obtain the coordinates of the revised closed area, go to the following Web site: <http://sero.nmfs.noaa.gov>, or call the NMFS Southeast Regional Office, Sustainable Fisheries Division at 727-824-5305. The Sustainable Fisheries Division After-Hours message includes the updated coordinates of the closure.

NMFS continues to assess the impacts this oil spill is having on the fishing industry, as well as on the fish and other marine species that inhabit these waters. Fish and shellfish in oil affected waters may be contaminated with levels of hydrocarbons above baseline levels. The FDA considers such seafood to be adulterated, as defined under § 402(a) of the Food, Drug, and Cosmetic Act of 1938. The intent of this emergency rule is to prohibit the harvest of adulterated seafood.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c).

This rulemaking is a “significant regulatory action” under section 3(f) of Executive Order 12866. The Department of Commerce has notified the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6(a)(3)(D) of the Executive Order, and OMB/OIRA agrees, that NOAA is promulgating this action in an emergency situation and that normal Executive Order review is not practicable at this time. For this reason, OMB/OIRA has not reviewed this notice under EO 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and opportunity for public comment would be impracticable and contrary to the public interest, as delaying action constitutes a public safety concern. NMFS is implementing this closure in response to the oil spill to help prevent any potential injuries to fishermen in the area. Any delay of implementation of this fisheries closure could constitute unsafe fishing conditions for the fishing industry. In addition, any delay would pose a clear risk of the lawful harvest of adulterated product, which is not in the public interest. Thus, the AA finds good cause to waive prior notice and the opportunity for public comment.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this rule under 5 U.S.C. 553(d)(3).

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

50 CFR Part 622

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

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Imports, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

50 CFR Part 654

Fisheries, Fishing.

Dated: May 11, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 622, 635, 640, and 654 are 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 § 622.7, paragraph (jj) is added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(jj) Harvest a Caribbean spiny lobster, effective May 11, 2010, in the portion of the Caribbean EEZ designated in § 622.33(c), due to the Deepwater Horizon oil spill.

■ 3. In § 622.33, paragraph (c) is added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

* * * * *

(c) *Caribbean EEZ area closure related to Deepwater Horizon oil spill.* Effective [May 11, 2010, all fishing is prohibited in the portion of the Caribbean EEZ identified in the map shown on the NMFS Web site: http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.

■ 4. In § 622.34, paragraph (o) is removed and reserved and paragraph (n) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(n) *Gulf EEZ area closure related to Deepwater Horizon oil spill.* Effective [May 11, 2010, all fishing is prohibited in the portion of the Gulf EEZ identified in the map shown on the NMFS Web site: http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.

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■ 5. In § 622.35, paragraph (m) is added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

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(m) *Atlantic EEZ area closure related to Deepwater Horizon oil spill.* Effective May 11, 2010, all fishing is prohibited in the portion of the South Atlantic EEZ identified in the map shown on the NMFS Web site: http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 6. The authority citation for part 635 continues to read as follows:

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

■ 7. In § 635.21, paragraph (a)(4)(vi) is removed and reserved and paragraph (a)(4)(vii) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(4) * * *

(vii) *Caribbean, Gulf, and South Atlantic EEZ area closures related to Deepwater Horizon oil spill.* Effective May 11, 2010, no vessel issued, or required to be issued, a permit under this part, may fish or deploy any type of fishing gear in the areas designated at §§ 622.33(c), 622.34(n), or 622.35(m) of this chapter.

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PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

■ 8. The authority citation for part 640 continues to read as follows:

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

■ 9. In § 640.7, paragraph (x) is added to read as follows:

§ 640.7 Prohibitions.

* * * * *

(x) Harvest a spiny lobster, effective May 11, 2010, in the portion of the Gulf or South Atlantic EEZ designated in § 622.34(n) or § 622.35(m) of this chapter, respectively, due to the Deepwater Horizon oil spill.

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

■ 10. The authority citation for part 654 continues to read as follows:

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

■ 11. In § 654.7, paragraph (r) is removed and reserved and paragraph(s) is added to read as follows:

§ 654.7 Prohibitions.

* * * * *

(s) Pull or tend a stone crab trap, effective May 11, 2010, in the portion of the Gulf EEZ designated in § 622.34(n) of this chapter, due to the Deepwater Horizon oil spill.

[FR Doc. 2010-11601 Filed 5-11-10; 4:15 pm]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 100105009-0167-02]

RIN 0648-AY51

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fisheries; 2010 Atlantic Deep-Sea Red Crab Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2010 Atlantic deep-sea red crab fishery, including a target total allowable catch (TAC) and a fleet-wide days-at-sea (DAS) allocation. The intent of this rulemaking is to specify the target TAC and other management measures in order to manage the red crab resource for fishing year (FY) 2010.

DATES: This rule is effective on June 14, 2010.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The specifications document is also accessible via the Internet at <http://www.nefmc.org>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:**Background**

The Red Crab FMP includes a specification process that requires the New England Fishery Management Council (Council) to recommend, on a

triennial basis, a target TAC and a fleet DAS allocation that is consistent with that target TAC. In FY 2009, NMFS published a temporary emergency rule to modify the 2009 target TAC and fleet DAS to be consistent with the recommendations of the Data Poor Stocks Working Group and Review Panel (Working Group). The Working Group recommended a reduction in the maximum sustainable yield (MSY) to 3.75-4.19 million lb (1,700-1,900 mt). In keeping with the FMP in setting the target TAC at 95 percent of MSY, NMFS implemented a target TAC of 3.56 million lb (1,615 mt), and reduced the fleet DAS allocation from 780 DAS to 582 DAS. The fleet DAS allocation is divided equally among the vessels active in the fishery, which can vary from year to year. For FY 2009, the allocation was initially divided among four vessels; however, NMFS allowed one of the four vessels to opt out of the fishery for the FY and reallocated the fleet DAS to the remaining three vessels. It is expected that four vessels will be active in the red crab fishery in FY 2010. The Council has requested waiving the 6-month notification requirement for opting out of the red crab fishery for FY 2010.

In September 2009, the Council's Scientific and Statistical Committee (SSC) accepted the Working Group's recommendation that MSY for red crab should be set within the range 3.75-4.19 million lb (1,700-1,900 mt), and recommended that the interim acceptable biological catch (ABC) be set commensurate with recent catch. The SSC determined recent catch to be the amount of red crab landed in FY 2007, which was 2.83 million lb (1,284 mt). The landings in FY 2007 were the lowest since the implementation of the FMP in 2002. Despite the recommendation from the SSC that the target TAC not exceed an ABC of 2.83 million lb (1,284 mt), the Council recommended a target TAC and fleet DAS allocation equal to the 2009 emergency rule, 3.56 million lb (1,615 mt) and 582 DAS, respectively. The Council based its target TAC on the MSY advice from the Working Group, rather than that recommended by the SSC, because the Council considered the advice of the Working Group to provide an acceptably low risk of avoiding overfishing. The Council further requested the SSC to reconsider its recommendation for red crab.

In response to this request from the Council to reconsider its recommendation, the SSC met on March 16-17, 2010, and determined that the interim ABC for red crab should be revised. The SSC has determined that