

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110729451-1413-02]

RIN 0648-BB12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Emergency Rule To Increase the Recreational Quota for Red Snapper and Suspend the Recreational Red Snapper Closure Date

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

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to increase the recreational quota for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2011 fishing season and suspend the October 1 closure date, as requested by the Gulf of Mexico Fishery Management Council (Council). At its May 2011 meeting, the Council's Science and Statistical Committee (SSC) recommended that the red snapper total allowable catch (TAC) be increased by 345,000 lb (156,489 kg). At its June 2011 meeting, the Council requested that NMFS publish an emergency rule to assign the entire 345,000 lb (156,489 kg) of additional TAC to the recreational sector and suspend the October 1 closure date of the recreational fishing season. If NMFS determines, after reviewing the data, that the recreational red snapper quota was not reached by the July 19, 2011, projected closure date, NMFS will publish a subsequent rule in the **Federal Register** to reopen red snapper harvest for a limited time period during the 2011 fishing season. The intent of this rulemaking is to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: This emergency rule is effective September 12, 2011, through December 31, 2011.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which include a supplemental environmental assessment, may be obtained from the Southeast Regional Office Web site at <http://sero.nfms.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: Cynthia.Meyer@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery 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 through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1355(c)).

This emergency rule increases the recreational quota for red snapper in the Gulf reef fish fishery to 3.866 million lb (1.754 million kg), based on the increased TAC recommended by the SSC. On May 19, 2011, the SSC recommended increasing the red snapper acceptable biological catch (ABC) to 7.530 million lb (3.416 million kg) from 7.185 million lb (3.259 million kg), which was the ABC recommended by the SSC after the 2009 update assessment was conducted through the Southeast Data Assessment and Review process. The Southeast Fisheries Science Center (SEFSC) reran the 2009 update assessment in May 2011 using updated data. The 2009 update assessment had used projected landings data from 2010. The 2011 rerun of the 2009 update assessment incorporated finalized landings data from 2009 and 2010. The SSC identified a new overfishing limit (OFL) for red snapper based on the updated landings data. The corresponding ABC for red snapper, calculated as 75 percent of the OFL, is 7.530 million lb (3.416 million kg). This ABC was also recommended as the new TAC, an increase of 345,000 lb (156,489 kg). During 2010, the recreational sector harvested only 66 percent of its quota, whereas the commercial sector harvested 96 percent of its quota. Because of the greater economic impacts incurred by the recreational sector in 2010, at the Council's June meeting, the Council requested that NMFS develop an emergency rule that would assign the entire 345,000 lb (156,489 kg) of increased TAC to the recreational sector for the 2011 fishing season and suspend the October 1 closure date.

The recreational red snapper fishing season opens each year on June 1 and officially closes at 12:01 a.m., on October 1 (in accordance with regulations at 50 CFR 622.34(m)), unless the quota is met before this date, in which case NMFS publishes a rule in the **Federal Register** announcing an earlier closure date. Pursuant to 50 CFR 622.43(c), if subsequent data indicate that the quota was not reached, NMFS may reopen the fishery to provide an

opportunity for the quota to be reached, but must do so prior to October 1.

This year NMFS announced the current closure date on April 29, 2011 (76 FR 23911), through a final rule that adjusted the commercial and recreational quotas for red snapper. The closure date for the recreational red snapper season of 12:01 a.m., local time, July 19, 2011, was based on projections of when the recreational red snapper quota of 3.521 million lb (1.597 million kg), also implemented through that final rule, would be met. NMFS will review the landings data in late August 2011 to determine if the 2011 recreational red snapper quota was met. If NMFS determines that the 2011 recreational red snapper quota, plus the additional quota of 345,000 lb (156,489 kg), was not met by the July 19, 2011, closure date, NMFS will publish a subsequent rule in the **Federal Register** announcing a reopening of the red snapper recreational season for a limited time period. A reopening could occur after September 30, 2011, but before December 31, 2011.

Need for This Emergency Rule

At its June 2011 meeting, the Council requested that NMFS promulgate emergency regulations to increase the recreational quota for red snapper for the 2011 fishing season and suspend the 12:01 a.m., October 1 season closure date to permit a later reopening in order to achieve the optimum yield for the fishery, thereby maximizing the social and economic benefits for recreational red snapper fishermen. The "Policy Guidelines for the Use of Emergency Rules" (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists.

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

NMFS is promulgating these emergency regulations under these three criteria. Under the first criteria for an emergency rule, the recently discovered circumstance is the rerun of the 2009 update assessment for red snapper, conducted by the SEFSC in May 2011. This rerun updated the 2009 assessment using more recent data, *i.e.* the finalized 2009 and 2010 landings data. Based on

the finalized landings data it was determined that the TAC for red snapper could be increased.

Under the second criteria for an emergency rule, without implementation of this emergency rule, the recreational red snapper component of the Gulf reef fish fishery is at risk of not achieving the OY for the fishery, which is the goal of National Standard 1 under the Magnuson-Stevens Act (16 U.S.C. 1851(a)(1)). National Standard 1 states that, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry."

Under the third criteria for an emergency rule, the immediate benefit of increasing the recreational quota for red snapper outweighs the value of advance notice and public comment. This rule would allow the recreational red snapper component of the fishery to harvest an additional 345,000 lb (156,489 kg) of quota, which could potentially lengthen the recreational red snapper season if NMFS determines the recreational quota was not met prior to the July 19, 2011 closure date.

Providing advance notice and the opportunity for public comment on this rulemaking would likely delay reopening the fishery early enough or long enough to provide recreational red snapper fishermen the opportunity to achieve OY for the fishery, thus foregoing social and economic benefits for recreational red snapper fishermen. First, under the current framework mechanism any increase in the red snapper TAC must occur in advance of a subsequent rule to reopen the fishery. Delaying this rule would delay reopening the fishery after data on actual harvest become available because there is insufficient time to complete two rulemakings involving notice and comment within a time that would allow harvest of the quota. Because of the increasing likelihood for lost fishing days due to inclement weather later in the calendar year, it would be critical to reopen the fishery as early as possible. Second, the October 1 season closure date for the recreational fishing season currently precludes NMFS from reopening the recreational sector past September 30. Suspension of the October 1 date also must occur prior to any subsequent rule to reopen the

fishery and delay would similarly affect the opportunity to achieve OY.

Measures Contained in this Emergency Rule

This emergency rule will increase the recreational quota to 3.866 million lb (1.754 million kg) and suspend the October 1 closure date of the recreational fishing season. Also, if NMFS determines the recreational quota is not met by the July 19, 2011, closure date, the Assistant Administrator will file a subsequent rule with the Office of the Federal Register to announce a reopening of the recreational red snapper season for a limited time period during the 2011 fishing season.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to achieve the optimum yield for the red snapper component of the reef fish fishery in the Gulf 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 Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Providing prior notice and the opportunity for public comment would be contrary to the public interest because delaying suspension of the October 1 closure date of the recreational fishing season would impede NMFS from reopening the recreational sector after September 30. That, in turn, would result in recreational red snapper fishermen not having the opportunity to achieve OY for the fishery, thus foregoing social and economic benefits for recreational red snapper fishermen. Recreational red snapper data from the 2011 fishing season will not be available until late August, 2011. Therefore, NMFS will not be able to determine if the recreational sector may reopen until sometime in September. Therefore, a reopening of the recreational sector would not be able to occur until after October 1. This emergency rule will allow NMFS to reopen the recreational sector after October 1, and before December 31, 2011, if NMFS determines that the recreational quota was not reached by

the July 19, 2011 closure date. This will give recreational red snapper fishermen the opportunity to achieve OY for the fishery, thus reaching the goal of National Standard 1 of the Magnuson-Stevens Act.

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: August 9, 2011.

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 (m) is suspended and paragraph (w) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(w) *Closure of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

■ 3. In § 622.42, paragraph (a)(2)(i) is suspended and paragraph (a)(2)(iii) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(2) * * *

(iii) *Recreational quota for red snapper.* The recreational quota for red snapper is 3.866 million lb (1.754 million kg), round weight.

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