

predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. All information considered will be made part of the public record for the decision. The affected individual may request a determination by notifying the designated official—

(i) Within a reasonable time before the Council meeting at which the Council decision will be made; or

(ii) During a Council meeting before a Council vote on the decision.

(2) The designated official may initiate a determination on the basis of—

(i) His or her knowledge of the fishery and the financial interests disclosed by an affected individual; or

(ii) Written and signed information received within a reasonable time before a Council meeting or, if the issue could not have been anticipated before the meeting, during a Council meeting before a Council vote on the decision.

(3) At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information.

(4) If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. However, a reversal of that determination under paragraph (g) of this section may not be treated as cause for invalidation or reconsideration of the Council's decision.

(g) *Review of determinations.* (1) Any Council member may file a written request to the NOAA General Counsel for review of the designated official's determination. A request for review must be received within 10 days of the determination.

(2) A request must include a full statement in support of the review, including a concise statement as to why the Council's decision did or did not have a significantly disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery, and why the designated official's determination should be reversed.

(3) If the request for review is from a Council member other than the affected individual whose vote is at issue, the

requester must provide a copy of the request to the affected individual at the same time it is submitted to the NOAA General Counsel. The affected individual may submit a response to the NOAA General Counsel within 10 days from the date of his/her receipt of the request for review.

(4) The NOAA General Counsel must complete the review and issue a decision within 30 days from the date of receipt of the request for review. The NOAA General Counsel will limit the review to the record before the designated official at the time of the determination, the request, and any response.

(h) *Exemption from other statutes.* The provisions of 18 U.S.C. 208, regarding conflicts of interest, do not apply to an affected individual who is in compliance with the requirements of this section for filing a financial disclosure report.

(i) *Violations and penalties.* It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by this section, or to knowingly vote on a Council decision in violation of this section. In addition to the penalties applicable under § 600.735, a violation of this provision may result in removal of the affected individual from Council membership.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 970730185-7185-01; I.D. 070797B]

RIN 0648-AJ13

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement the provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish

Resources of the Gulf of Mexico (FMP). For the red snapper fishery in the Gulf of Mexico Exclusive Economic Zone (EEZ), the regulatory amendment would: Change the opening date for the 1997 fall commercial fishing season from September 15 to September 2; restrict the harvest of red snapper during the 1997 fall commercial season to an initial period of September 2 to September 15 and, thereafter, to a monthly period from the first to the 15th of each month until the commercial fishery is closed (all openings and closings would be at noon on the date indicated); establish a recreational fishery quota; and authorize the Regional Administrator, Southeast Region, NMFS, to close the recreational fishery for red snapper in the EEZ when the recreational quota is reached or is projected to be reached. The intended effect of this proposed rule is to maximize the economic benefits from the red snapper resource within the constraints of the rebuilding program for this overfished resource and to comply with a requirement of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that separate recreational and commercial fishing quotas be established for Gulf red snapper that result in fishery closures when quotas are taken.

**DATES:** Written comments must be received on or before August 22, 1997.

**ADDRESSES:** Comments on the proposed rule must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and an addendum, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

The Council has proposed adjusted management measures (a regulatory amendment) for the Gulf red snapper fishery for NMFS' review, approval, and implementation. These measures were developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in

total allowable catch and related measures for the red snapper fishery (framework procedure). The proposed rule would implement the measures contained in the Council's regulatory amendment.

#### **Red Snapper Total Allowable Catch (TAC)**

The Council proposed no change to the current red snapper TAC of 9.12 million lb (m lb) (4.14 million kg (4.14 m kg)). This TAC is consistent with the provisions of the red snapper stock rebuilding program, provided: That Gulf shrimping effort, which results in the mortality of juvenile red snapper, remains relatively constant; and that a minimum of an additional 33 percent reduction in the mortality of juvenile red snapper in shrimp trawl bycatch is achieved in 1997 followed by a 44 percent reduction each year thereafter. The Council has addressed this bycatch reduction objective in Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico that would, if approved and implemented, require bycatch reduction devices in virtually all shrimp trawls used in the EEZ. However, given the earliest possible implementation time for Amendment 9, assuming its approval by NMFS, it is unlikely that the necessary 33 percent additional bycatch reduction for 1997 will be achieved. The Council and NMFS will have to consider necessary and appropriate management actions in subsequent years to ensure that the current red snapper stock rebuilding program is not compromised (e.g., appropriate adjustments in the red snapper TAC).

#### **Proposed Management Measures Associated with Red Snapper TAC**

The Council proposes that the 1997 fall commercial red snapper season begin on September 2, instead of September 15, to allow the fishery to begin at a time with traditionally better weather, thereby minimizing potential adverse impacts on fishing operations, particularly those of smaller vessels. September 2 was chosen instead of an earlier date to avoid recreational/commercial fishery conflicts during the Labor Day weekend when there is customarily a greater than usual number of weekend recreational fishery participants. Opening and closing the 1997 commercial season during daylight hours (noon instead of 12:01 a.m., local time) is expected to aid law enforcement activities and improve fishermen's compliance with regulations. The Council believes that allowing commercial harvest only during the first

15 days of each month would help to extend the fishing season and thereby provide market benefits outweighing the increased administrative costs and short periods of derby-style fishing associated with the additional fishery openings and closings.

Section 407(d) of the Magnuson-Stevens Act requires that the FMP establish a red snapper quota for the recreational fishery that, when reached, results in a prohibition on the retention of red snapper caught during recreational fishing. The proposed rule would establish a recreational quota of 4.47 m lb (2.03 m kg), the same amount as the current recreational allocation under the TAC. The proposed mechanism for future closure of the recreational red snapper fishery upon reaching its quota complies with section 407(d). This fishery closure provision should avoid a recreational fishery harvest in excess of its quota and thereby contribute to recovery of the overfished red snapper resource.

#### **Classification**

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's regulatory impact review (RIR) that assesses the economic impacts of the management measures proposed in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The RIR indicates that the provision for closure of the recreational fishery for red snapper when its quota is taken may have adverse economic effects, although not significant for purposes of the Regulatory Flexibility Act (RFA), on a portion of the firms that own and operate fishing vessels for reef fish on a for-hire basis (charter vessels and headboats). All such firms are considered small entities for purposes of the RFA. If a closure of the recreational fishery for red snapper occurs, these firms may experience revenue losses since customer demand in the for-hire sector of the recreational fishery is based significantly upon the expectation of catching and retaining red snapper. During a closure of the red snapper recreational fishery, some customers may not be willing to forgo the catch of red snapper in favor of other species that might be caught on a given vessel and trip. The possible effects of a fishery closure include a reduction in the number of customers, a reduction in the price that may be charged for a trip, and the need for vessels

to move to different fishing locations that offer an acceptable level of substitute species.

The for-hire sector of the recreational reef fish fishery includes an estimated 920 small entities—838 charter fishing vessels and 82 headboat vessels. Of these entities, 26 headboats operating in Texas and Louisiana (about 2.6 percent of the total number of for-hire vessels) are heavily dependent on red snapper. Under a closed red snapper recreational fishery, these particular entities may incur significant negative economic impacts if there are no reasonable substitute species for their customers to catch and retain. Only a very small fraction of these vessels (less than 2 percent), if any, would be expected to cease business operations as a result of a red snapper fishery closure. There will always be some period when the recreational fishery for red snapper is open, substitute species may be sufficiently attractive to customers to maintain business operations during the red snapper closure, and some vessels may be able to move their red snapper fishing operations to open areas such as the South Atlantic. The remaining 56 headboats and all the charter vessels are less dependent on red snapper catches because of the availability of other species or because red snapper do not occur in their fishing areas. In summary, a recreational red snapper fishery closure would affect only about 3 percent or less of the for-hire small businesses to a significant degree.

It is not expected that any of the other agency criteria for determining significant impacts for purposes of the RFA would be met for small entities engaged in the recreational red snapper fishery. In conclusion, a substantial number of the for-hire vessels would not be significantly affected by the provision for a closure of the red snapper recreational fishery.

Regarding the commercial red snapper fishery, the proposal to open the fishing season approximately 15 days/month consecutively and then close the season for the balance of the month is expected to have a negative effect on revenues for the estimated 1,818 small entities engaged in this fishery. However, since only 28 percent of the annual commercial quota is available for the fall season, prices would have to fall more than 18 percent if annual gross revenues were to fall by 5 percent. Price changes of this magnitude are not expected. Therefore, changes in annual gross revenues are not expected to reach the 5 percent threshold for significance. No new annual compliance costs or significant additional capital costs are associated with the rule and less than 2 percent, if any, of the small entities are expected to cease business operations. It is not expected that any of the other agency criteria for significance would be met for small businesses engaged in the commercial red snapper fishery.

As a result, a regulatory flexibility analysis was not prepared.

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

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

Dated: July 30, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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 (l) is revised to read as follows:

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

\* \* \* \* \*

(l) *1997 closures of the commercial fishery for red snapper.* During 1997, the possession of red snapper in or from the Gulf EEZ and on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1), from noon on September 15 to noon on October 1, and thereafter from noon on the 15th of each month to noon on the first of each

succeeding month until the commercial red snapper season is closed in accordance with § 622.43(a)(1). All times are local times.

3. In § 622.42, paragraph (a) is revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(a) *Gulf reef fish*—(1) *Commercial quotas.* The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(i) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned in 1997 as follows:

(A) 3.06 million lb (1.39 million kg) available February 1, 1997.

(B) The remainder available at noon on September 2, 1997, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined—1.60 million lb (0.73 million kg), round weight.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined—9.80 million lb (4.45 million kg), round weight.

(2) *Recreational quota for red snapper.* The following quota applies to persons who harvest red snapper other

than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section—4.47 million lb (2.03 million kg), round weight.

\* \* \* \* \*

4. In § 622.43, paragraph (a)(1) is revised to read as follows:

**§ 622.43 Closures.**

(a) \* \* \*

(1) *Gulf reef fish*—(i) *Commercial quotas.* The bag and possession limits specified in § 622.39(b) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero under paragraph (a)(1)(ii) of this section.

(ii) *Recreational quota for red snapper.* The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

\* \* \* \* \*

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