

(iii) Deny that the conduct constitutes a violation and when necessary direct the mode of further performance; or

(iv) In the event the notice is inadequate to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished by the Contractor and the date thereafter by which the Government will respond.

[(End of Clause)]

Dated: May 14, 1999.

Betty L. Bailey,

Director, Office of Acquisition Management.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990527145-9145-01; I.D. 052199B]

RIN 0648-AM71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Minimum Size Limit

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

ACTION: Emergency interim rule; request for comments and a notice of closure.

SUMMARY: NMFS issues an emergency interim rule to increase the minimum size limit for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit, as requested by the Gulf of Mexico Fishery Management Council (Council). In addition, NMFS closes the recreational red snapper fishery in the EEZ of the Gulf of Mexico effective 12:01 a.m., local time, August 29, 1999. The intended effect of the increase in the minimum size limit is to reduce the rate of harvest, and, thereby, extend the season for the recreational red snapper fishery. NMFS believes that an extended season will increase social and economic benefits from the red snapper fishery.

DATES: This rule is effective June 4, 1999 through 12:01 a.m., local time, August 29, 1999. The closure of the recreational fishery for red snapper in the EEZ of the Gulf of Mexico is effective 12:01 a.m., local time, August 29, 1999, through December 31, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed

to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, 727-570-5305.

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.

The 1996 revisions of the Magnuson-Stevens Act require NMFS to close the Gulf of Mexico recreational red snapper fishery when the recreational quota (currently 4.47 million lb)(2.03 million kg) is caught. The recreational fishery was closed on November 27 in 1997 and on September 29 in 1998. Under the existing 4-fish bag limit and 15-inch (38.1-cm) minimum size limit, NMFS, using the length-based simulation model (LSIM), projects that the 1999 quota will be caught on August 4, 1999. Consequently, under the existing bag and minimum size limits, the fishery would close at 12:01 a.m. on August 5, 1999. The Council has requested an emergency increase in the minimum size limit to reduce catch rates and extend the recreational season. The Council's request is based on testimony by representatives of the for-hire industry who believe that an extension of the season would benefit the industry. The industry, using the LSIM, specifically requested that the season be extended through August 28 by increasing the minimum size limit to 18 inches. Further, the industry specifically requested no decrease in the bag limit or increase in the minimum size limit beyond 18 inches due to a belief that such measures would significantly reduce the number of recreational fishing trips on for-hire vessels.

The Council considered several options for extending the season, including various reductions in the bag limit and various increases in the minimum size limit. However, after reviewing the LSIM analysis, the Council ultimately recommended an 18-inch (45.7-cm) size limit as the best alternative for extending the season, the means most acceptable to industry for extending the season through August 28, and a measure supported by many red snapper recreational fishermen who have agreed to comply voluntarily with

an 18 inch size limit starting on June 1 until an emergency rule can be implemented.

Using the LSIM, NMFS projects that with implementation of an 18-inch (45.7-cm) minimum size limit in early June, implementation of the proposed specifications currently under review that would establish a zero-fish bag limit for captain and crew, and voluntary compliance by many fishermen starting on June 1, the quota will be caught on or about August 28, 1999. This action will have negligible biological effects on the Gulf red snapper stock and will not adversely affect the current rebuilding schedule for this overfished stock.

Accordingly, NMFS is increasing the minimum size limit to 18-inches (45.7 cm) effective on June 4, 1999 through 12:01 a.m., local time, on August 29, 1999. The Gulf of Mexico recreational red snapper fishery will close at 12:01 a.m., local time, on August 29, 1999, and remain closed through December 31, 1999.

Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recent, unforeseen events, or recently discovered circumstances. Also, it realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The Council, at its May 10-13, 1999, meeting, learned that if no action was taken, the projected closing date for the 1999 recreational red snapper season is August 5. This closure would result in roughly a 5-month closed season for the remainder of 1999. When combined with the proposed January-February closure from the red snapper regulatory amendment, the recreational red snapper fishery has the potential to be closed for nearly 7 consecutive months. For this action to be effective in reducing the rate of harvest, extending the fishing season, and preventing some of the potential economic hardships and disruptions to the recreational red snapper fishery, it should be implemented in early June. To be effective by then, an emergency interim rule is needed.

Immediate Benefits

A closure of the recreational fishing season for 5, or possibly 7 months, is a

substantial foregone economic opportunity. This closure could conceivably disrupt not only charter and headboat operators, but the entire coastal tourist industry, as well as recreational fishermen who arrange fishing vacations months in advance. Such a lengthy closure could cause some charter and tourist-related businesses to cease operations permanently. The shortened season has the potential for adverse social impacts on communities dependent on recreational for-hire vessels. The loss of recreational fishing-related employment opportunities during the closure affects not only the vessel operators, but also deckhands, marinas, and such tourist-related businesses as hotels and restaurants. Due to the uncertainty over whether the recreational red snapper season will be open, potential fishers may decide not to plan a fishing vacation along the Gulf coast. Thus, the minimum size limit increase, and the resulting extended season, has immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to minimize significant adverse social and economic impacts that would occur with an earlier closure of the recreational fishery for red snapper. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be significant for purposes of E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule, which is summarized as follows.

Assuming that anglers do not cancel their fishing trips in response to the increase to an 18-inch (45.7-cm) minimum size limit and that anglers are not able to replace previously legal smaller fish with fish 18 inches (45.7 cm) or longer, and compatible regulations are in effect in state waters by July 15, 1999, this emergency interim rule will allow approximately 24 additional fishing days in August, producing a projected closure at 12:01 a.m., local time, August 29, 1999. These additional fishing days will allow an additional 56,000 angler trips to harvest red snapper, of which 29,000 (53 percent) are for-hire angler trips. These additional trips equal a 14-percent

increase in red snapper angler effort over the status quo level of effort.

The regulatory changes proposed by this rule would be applicable to angling activities in the EEZ. Typically, regulations in state jurisdictional waters are adjusted to match those of the EEZ in order to simplify the regulatory environment and to achieve the maximum benefit of the measures. Due to the differing procedural requirements each state must undertake in order to implement new fishery management regulations, however, it may not be possible for all states to adopt compatible regulations under the time frame established by this rule. Thus, it is possible that the red snapper recreational fishery could continue to operate in some areas under a 15-inch (38.1-cm) minimum size limit for some portion of June through the remaining open season.

The legal minimum size limit for red snapper has been 15 inches (38.1 cm), total length, since the beginning of the 1995 fishing season. From 1995 through 1998, approximately 80 percent of the red snapper harvested by charter and private/rental boats combined were under 18 inches (45.7 cm) (individually, 82 percent for charter boats and 70 percent for private/rental boats), while 66 percent of headboat red snapper have been under 18 inches (45.7 cm). These rates are likely influenced to some degree by responsible angling through cessation of effort once the bag limit has been achieved, i.e., no highgrading. However, 75 percent of charter and private/rental anglers who caught red snapper, landed fewer than the 5-fish bag limit during 1995-97, while 56 percent landed fewer than the 4-fish bag limit in 1998. This strongly suggests that the 15-inch (38.1-cm) minimum size limit is effective in restricting harvest and that increasing the minimum size limit to 18 inches (45.7 cm) will further restrict it.

With a 15-inch (38.1 cm) minimum size limit, approximately 165,000 red snapper angler trips would be expected to occur from June 1 through August 4. It is likely that some anglers will cancel their trips because of the minimum size increase given their inability to catch the bag limit under the less restrictive 15-inch (38.1 cm) size limit. However, what portion of the trips will be canceled is unknown. Given that some trips will be canceled, the full benefits in terms of additional trips of extending the season are not likely to materialize. Further, the inability to monitor precisely the in-season harvest, to determine the reductions in harvest rate due to trip cancellation, means that the

season cannot be further lengthened in response to any reduced harvest rate.

Further loss in fishing benefits will accrue as a result of this rule to those anglers who, while continuing to fish for red snapper, are no longer able to harvest previously legal fish and thus have lower quality or less successful fishing trips. Additionally, anglers who continue to fish but switch their efforts to other species will also experience a loss in fishing benefits since it can be assumed that their previous choice of red snapper was due to higher perceived benefits associated with that species.

Insufficient data exist at this time with which to estimate the rates of trip cancellation or target substitution, the changes in value associated with additional or reduced quality red snapper trips, or the changes in value associated with substitute target trips. To the degree that the number of trips gained exceeds the number canceled, however, the for-hire businesses will experience an increase in producer surplus (profits). With respect to the recreational angler, however, while it is assumed that the value gained associated with any additional trip taken, regardless of the fishing quality received, exceeds the loss in value associated with a reduced quality or substitute target fishing trip, it is not possible to determine whether total trips gained will exceed the total trips canceled or whether the combined value (consumer surplus) of trips gained will exceed that lost across all lower quality trips. Thus, fishery-wide, considering total economic value in the form of both consumer and producer surplus, it is not possible to estimate the net economic effect of this rule. However, based on testimony by for-hire industry representatives requesting the minimum size increase to 18 inches to extend the season through August 28, the Council and NMFS assume that the net economic impact will be positive.

This emergency interim rule does not create additional reporting, recordkeeping or other compliance requirements. Accordingly, there are no cost increases that can be ascribed to compliance requirements.

Copies of the economic evaluation are available (see ADDRESSES).

If action were not taken to increase the red snapper minimum size limit from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit, the recreational fishery would be expected to close earlier in the fishing season and at a time that would forfeit some of the prime red snapper recreational fishing opportunities. This would result in unnecessary adverse impacts on those entities dependent on

the red snapper recreational fishery, including the associated fishing communities. An increase in the minimum size limit is expected to slow the rate of harvest, extend the fishing season, and allow recreational fishers to harvest the available quota during the period, which should increase social and economic benefits for the year. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest. For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. NMFS will advise the affected public of the effective date of this rule through timely distribution of

news releases and immediate broadcasts over NOAA weather radio.

Because prior notice and an opportunity for public comment are not required to be provided 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: June 3, 1999.

Andrew A. Rosenberg,

*Deputy Assistant Administrator for Fisheries,
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 § 622.37, paragraph (d)(3) is suspended and paragraph (d)(7) is added to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(d) * * *

(7) Red snapper—18 inches (45.7 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(vi) and 15 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

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