makes and models, and that deactivation is cheaper than switches.

NHTSA's decision to impose more stringent criteria on air bag deactivation is reasonable, given the permanent nature of deactivation. Deactivation renders an air bag unavailable to help anyone in a crash. In contrast, the on-off switch allows a driver to turn the air bag on or off, depending on the risk faced by the individual seated in front of the air bag. This flexibility is important in the case of a vehicle whose users include a mix of people at risk and people not at risk. For example, one member of a couple may have a medical condition which prevents him or her from achieving a 10-inch distance from the air bag, while the other can achieve that distance. Likewise, a family may only have to transport children in the front seat on rare instances, such as when they have to transport a neighbor's child and they have insufficient room in the back seat for all of the children. The presence of an on-off switch would make that air bag available to every individual who is not at risk while the air bag could be turned off for those at risk. In contrast, deactivation renders an air bag unavailable to everyone, regardless of risk.

While deactivation may be cheaper than an on-off switch, cost was not the agency's main consideration. Safety was the overriding factor. Further, since the cost of both deactivation and on-off switches is ultimately market-based, NHTSA cannot assess the differences in cost with any specificity. NHTSA believes that its estimation of on-off switch cost should not be an overwhelming deterrent to anyone who needs a switch. Cost concerns aside, one is significantly more likely to find a company willing to install an on-off switch than deactivate an air bag. Liability concerns on the part of dealers and repair businesses have rendered permanent deactivation more difficult to get performed than installation of a switch. As for petitioner's claim that deactivation more certainly turns off an air bag than an on-off switch does, manufacturers, dealers and repair businesses have every incentive to produce and install a safe switch since the final rule does not waive civil liability for defective switches or negligent installation.

Further, the agency notes that there are potential risks associated with deactivation. Labels can be removed, either purposely or inadvertently. An occupant expecting air bag protection may unexpectedly find that he or she has none in a crash. Many deactivated air bags will likely not be reactivated prior to resale since there is no incentive to reactivate, and since NHTSA does not have the authority to require reactivation. Consequently, any decision to reactivate, as well as to inform a potential secondary purchaser of the air bag's inoperable status, will depend entirely on the good will of the vehicle's owner.

Depowered and Advanced Air Bag Systems

Petitioners argued that deactivation or on-off switches should remain available to owners of vehicles with depowered air bags and advanced air bags. Under the final rule, on-off switches will be available for vehicles with depowered air bags. As the agency stated in the final rule:

> As to depowered air bags, NHTSA anticipates that they will pose less of a risk of serious air bag injuries than current air bags. However, the agency will wait and accumulate data on depowered air bags before making a final decision on this issue. The agency may revisit this issue in a future rulemaking if data indicate that cutoff switches are not appropriate in vehicles with depowered air bags. For the present, the exemption will apply to vehicles with depowered air bags.

As to advanced air bags, NHTSA did not decide in the final rule whether retrofit on-off switches would be permitted for vehicles with those air bags. The agency did say that it continued to believe, based on safety considerations, that it should prohibit dealers and repair businesses from retrofitting advanced air bag vehicles with cutoff switches. However, since advanced air bags were not expected for several years, there was no immediate need to make a decision. The agency said that it would address this issue in its proposal on advanced air bags.

Process for Receiving Authorization To Have an On-Off Switch Installed

Petitioners argued that the actual number of eligible individuals who will be able to have an on-off switch installed is too low because of the authorization process established by the agency. The agency disagrees. NHTSA defined the eligible risk groups to avoid the need for ad hoc decision making and to expedite the authorization process. The amount of time necessary to read the information brochure and fill out the request form (approximately 30 minutes) is nominal when compared to the significant safety benefit at issue. Likewise, the amount of time required to process a request, currently one or two days, is reasonable, given the benefit that air bags provide to the vast majority of the general public. Further, NHTSA's streamlined process minimizes the amount of time that an at-risk individual must wait before receiving authorization to have an on-off switch installed.

Request for Reconsideration

Based on the foregoing, NHTSA is denying petitioners' request that on-off switches be available on request and without certification of membership in a risk group. As noted above, the risk of serious injury or death is small and the benefit of air bags is large. NHTSA will continue to require vehicle owners to submit the completed on-off switch request forms to the agency for processing. Petitioners' request that the agency allow deactivation on request is likewise denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: August 20, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–22832 Filed 8–26–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980818222-8222-01; I.D. 081898A]

RIN 0648–AL61

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

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

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

SUMMARY: This emergency interim rule releases the remaining 1998 recreational and commercial quota reserves for Gulf of Mexico red snapper. In so doing, it supersedes certain provisions of the interim rule that was published in the **Federal Register** on April 14, 1998. In addition, NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico, effective 12:01 a.m., local time, September 30, 1998, through December 31, 1998. The intended effects are to

avoid unnecessary restrictions and associated adverse economic and social impacts, to make the appropriate quotas available to the recreational and commercial sectors consistent with the best available scientific information, and to protect the red snapper resource.

DATES: This rule is effective August 27, 1998 through February 24, 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, September 30, 1998, through December 31, 1998.

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: Robert Sadler, 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 Gulf of Mexico Fishery Management Council (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.

Total Allowable Catch (TAC)

In February 1998, the Council submitted a regulatory amendment to the FMP which proposed to maintain the red snapper TAC at 9.12 million lb (4.14 million kg). The Council based its decision, in part, on an assumed bycatch reduction in mortality of at least 60 percent for juvenile red snapper, phased in over a 3-year period, and updated bycatch reduction device (BRD) performance information which showed that bycatch reduction levels of 59 percent and above were achievable with fisheye BRDs. Previous assumptions involved reduction levels closer to 50 percent based on advice from NMFS gear specialists. At the higher bycatch reduction level, model projections demonstrated that the target 20 percent SPR could be achieved by 2019 while maintaining TAC at 9.12 million lb (4.14 million kg). At the time the Council issued its regulatory amendment, the requirement for BRDs had not been implemented. The requirement for BRDs, however, was implemented May 14, 1998, (63 FR 18139, April 14, 1998).

On April 14, 1998, NMFS published an interim rule (63 FR 18144) which left the 9.12 million-lb (4.14 million-kg) TAC for 1998 unchanged, but held 3.12 million lb (1.42 million kg) in reserve. The reserve was to be released on September 1, 1998, if a research study conducted during the summer of 1998 was able to demonstrate that BRDs could achieve reduction levels above 50 percent. This interim rule was followed by two additional interim rules (63 FR 27499, May 19, 1998 and 63 FR 27485, May 19, 1998). The first of these certified two new BRDs. The second implemented data collection requirements, including mandatory observers, logbooks, and vessel monitoring systems, for the Gulf shrimp fleet.

Under the latter rule, NMFS began a research study to evaluate BRD performance under commercial operational conditions. Preliminary results from the 1998 summer study indicated that juvenile red snapper bycatch in shrimp trawls has been reduced. However, the analyses of these data conducted to date do not warrant release of any of the reserve red snapper TAC in accordance with the interim rule.

However, NMFS believes that adjusted bycatch reduction levels of about 55 percent are achievable within approximately 2 years. Prior BRD test results where the BRDs were installed by gear specialists and the vessel captains were briefed on how to optimize the performance of the BRD resulted in unadjusted reduction levels of 59 to 71 percent for the more commonly used fisheye BRDs. Adjustments for compliance, mortality, and lack of compatible state regulation (based on 1998 study results) would still provide for bycatch reductions at or above 55 percent. BRD compliance levels in Federal waters can be expected to reach about 97 percent within approximately 2 years based on NMFS' experience with improvement in compliance rates for turtle excluder devices. The predation mortality of fisheye and Jones-Davis BRDs was approximately 1.5 and 20 percent, respectively. Even higher reduction levels may be possible, especially if BRD requirements are used in combination with other management measures such as those recommended by the 1997 science and management peer review (fleet or vessel bycatch quotas and/or selected area closures to shrimping).

Effect of National Standard Guidelines

Revised national standard guidelines were published on May 1, 1998 (63 FR 24212), which specifically affect red snapper management in the Gulf of Mexico. In particular, the guidelines call for a change in the definitions of ''overfishing,'' ''overfished,'' ''optimum yield (OY),'' and a change in recovery schedules. Gulf red snapper are considered overfished, but recovering.

While the Gulf Council has not yet specified a revised Maximum Sustainable Yield (MSY), OY, or recovery period for red snapper, according to a letter from the Council Chair dated August 5, 1998, NMFS anticipates that the Council will recommend 30–percent spawning potential ration (SPR) for MSY and the maximum recovery period allowed by the guidelines to prevent unnecessary economic and social hardships on the directed red snapper fisheries and fishing communities in the Gulf of Mexico.

SPR projections modeled by NMFS show that a target SPR level of 30 percent could be achieved within the rebuilding period allowed by the guidelines, if management measures, including BRDs, phase-in a reduction of juvenile red snapper bycatch mortality by 55 percent within 2 years and up to 60 percent during the recovery period. However, landings cannot exceed TAC (9.12 million lb (4.14 million kg)). NMFS encourages the Council to evaluate other management measures to reduce red snapper bycatch, if needed, to reach the bycatch reduction level necessary to maintain the current 9.12 million-lb (4.14 million-kg) TAC.

Release of the 1998 Red Snapper Reserve TAC

NMFS believes that immediate release of the remainder of the 3.12 million-lb (1.42 million-kg) 1998 red snapper reserve TAC is warranted, based on advice from NMFS gear specialists; preliminary results from studies and analyses designed to quantify effects of BRD compliance, BRD release mortalities, and the lack of compatible state BRD regulations; and the revised national standard guidelines. NMFS believes that without this release severe economic and social hardships would occur in the red snapper commercial and recreational fisheries, and in the communities that depend on these fisheries. Potential commercial losses are estimated as a short-term revenue loss of $2.7 million and a profit loss of $1.4 million. The degree to which red snapper anglers will cancel trips or target alternative species in response to closures is not known. Potentially, 27 percent of recreational trips may be canceled. These hardships should be minimized with a release of the remaining TAC reserve.

Therefore, this emergency interim rule supersedes the TAC provisions of the April 14, 1998, interim rule and

releases the remaining recreational quota reserve effective August 27, 1998 and releases the remaining commercial quota reserve of 1.53 million lb (0.69 million kg) effective at noon, local time, on September 1, 1998. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 15th of each month, until the applicable commercial quota is reached, as determined by near real-time monitoring of landings at the dealer level. When the commercial quota is reached or is projected to be reached, notification of the commercial closure will be published in the **Federal Register**.

Closure of the Recreational Red Snapper Fishery

Under 50 CFR 622.43, NMFS is required to close the Gulf red snapper recreational fishery when the available quota is reached, or is projected to be reached. Because of the large number of recreational anglers and the geographical diversity of access sites, the procedures that are used to monitor a quota for recreational fishing are fundamentally different from the procedures used to monitor quotas for commercial fishing. For commercial fishing, the catch is unloaded and recorded as part of the buying/selling transaction, and a physical record is kept of the transaction. In contrast, all catches by recreational anglers cannot be recorded and statistical techniques have to be used to estimate the catches from this sector of the fishery.

For the Gulf of Mexico, three sources of data are used to estimate recreational red snapper landings: NMFS Marine Recreational Fishery Statistical Survey (MRFSS), NMFS Headboat Survey, and the Texas Recreational Fishery Survey. Data from these surveys are used in models to project landings. In 1997, NMFS used a model based on average landings from the previous few years adjusted by data from the current year MRFSS and headboat survey estimates. This model has now been significantly upgraded and expanded to incorporate age structure and recruitment information. NMFS believes that the landing projections based on the upgraded model (length-based simulation model (LSIM)), with some consideration given to current year conditions, represents the best available scientific information for estimating when the red snapper fishery should be closed.

Based on the LSIM model, NMFS projects that the available recreational quota of 4.47 million lb (2.03 million kg) for red snapper will be reached by September 29, 1998. Accordingly, the recreational fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, September 30, 1998, through December 31, 1998. During the closure, the bag and possession limit is zero for all red snapper harvested in or from the EEZ in the Gulf of Mexico, and for all permitted reef fish vessels without regard to where the red snapper were caught.

Compliance With NMFS Guidelines for Emergency Rules

This emergency rule meets NMFS policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) 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

NMFS expects that recovery of red snapper to 30 percent SPR (assumed proxy for MSY) can be achieved within the recovery period allowed by the recently published national standard guidelines at adjusted bycatch reduction levels of 55–60 percent. The current target recovery SPR level is 20 percent by 2019. Additionally, BRD research, coupled with advice from NMFS gear experts, indicates that a 55–60 percent adjusted level of bycatch mortality reduction for juvenile red snapper is a reasonable expectation.

Serious Management Problems in the Fishery

Without this emergency rule, the directed commercial red snapper fishery would not be allowed to open on September 1, 1998, and the recreational fishery would have to be closed immediately in Federal waters. However, these actions appear unnecessary to rebuild the red snapper stock under the revised national standard guidelines. Failure to open the commercial fishery and immediate closure of the recreational fishery would have serious adverse economic impacts on the commercial and recreational fisheries, and the fishing communities they support. Potential commercial losses are estimated as a short-term revenue loss of $2.7 million and a profit loss of $1.4 million. The degree to which red snapper anglers will cancel trips or target alternative species in response to closures is not known. Potentially, 27 percent of recreational trips may be canceled. In addition, early announcement of the recreational closure date will facilitate angler planning.

Immediate Benefits

The immediate benefits of the emergency rule greatly outweigh the value of prior notice and opportunity for public comment, which would occur under normal rulemaking. This rule relieves restrictions on those individuals and fishing communities dependent on the Gulf red snapper fishery in a manner that is consistent with the national standard guidelines, the Magnuson-Stevens Act, and other applicable law.

The NMFS Southeast Fisheries Science Center has determined that this emergency interim rule is based on the best available scientific information.

NMFS finds that the timely regulatory action provided by this emergency interim rule is critical to avoiding unnecessary adverse economic and social impacts on participants and fishing communities dependent on the red snapper fishery in the Gulf of Mexico. NMFS issues this emergency interim rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to make the appropriate quotas of red snapper in the Gulf of Mexico available to the recreational and commercial fisheries and to avoid unnecessary restrictions. 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 not significant for purposes of E.O. 12866.

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.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule that is summarized as follows. This emergency rule releases the remainder of the 3.12 million lb (1.42 million kg) of TAC that was previously reserved, thereby increasing both commercial and recreational fishing values. In the case of the commercial fishery, the additional quota reserve released would have been 1.59 million lb (0.72 million kg), but this poundage had to be

decreased by 0.06 million lb (0.03 million kg) because of a slight quota overrun during the initial commercial season. The resulting increase of 1.53 million lb (0.69 million kg) in the commercial quota translates into increased revenues for the 1998 fishing year of $2.7 million and increased profits of $1.4 million. For the recreational fishery, the release of the additional quota reserve means that the recreational fishery will be able to take 34,000 additional red snapper fishing trips in 1998. The increased number of trips will occur because a recreational closure for the period September-December means that 126,000 trips would be foregone, while only 92,000 trips will be foregone when the quota reserve is released and the fishery closed for the shorter October-December period. Although there is not enough information to translate the increased number of trips into increased value in dollar terms, there is no question that there will be increased satisfaction and consumer surplus for private recreational fishermen and increased revenues and profits for charterboat and headboat operators. One way of viewing the change in value is to note that the increase of 34,000 trips for September means that losses would approach 27 percent for the balance of 1998 if the quota reserve was not released. It is noted that the actual loss would be somewhat less than 27 percent because some of the trips would target alternative species.

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

A delay in releasing the available quota reserves, consistent with the best scientific information available, would result in severe and unnecessary adverse impacts on all entities dependent on the red snapper fishery in the Gulf of Mexico, including the recreational and commercial fisheries and the associated fishing communities. Accordingly, pursuant to 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. Pursuant to 5 U.S.C. 553(d)(1), a delay in the effective date of this rule is unnecessary because this rule relieves restrictions on the regulated participants in this fishery.

List of Subjects in 50 CFR Part 622

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

Dated: August 21, 1998.

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.*

§ 622.42 [Amended]

2. In § 622.42, the suspension of paragraph (a) is lifted; paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) are further amended by revising the respective references to § 622.34(l) to read § 622.34(m); and paragraph (g) is removed.

[FR Doc. 98–22943 Filed 8–21–98; 4:34 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971107264–8001–02; I.D. 082098A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Directed Fishery for Illex Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Illex* squid in the exclusive economic zone (EEZ) has been harvested. Vessels issued a Federal permit to harvest *Illex* squid may not retain or land more than 5,000 lb (2.27 mt) for the remainder of the fishing year.

DATES: Effective 0001 hours, August 28, 1998, through 2400 hours, December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: Regulations governing the *Illex* squid fishery are found at 50 CFR part 648. The regulations require specifications for initial annual amounts of the initial optimum yield as well as the amounts for allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 1998 specification of DAH for *Illex* squid was set at 19,000 mt (63 FR 1773, January 12, 1998). Section 648.22 requires that when the Regional Administrator, Northeast Region, NMFS, projects that 95 percent of the DAH for *Illex* squid has been attained, the Assistant Administrator for Fisheries, NMFS (AA), shall close the directed fishery in the EEZ. The AA is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Illex* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Acting Regional Administrator has determined, based on vessel and dealer logbook data, that at least 18,050 mt or 95 percent of the DAH for *Illex* squid, has been harvested. Therefore, effective 0001 hours, August 28, 1998, the directed fishery for *Illex* squid is closed. After August 28, 1998, vessels issued Federal permits for *Illex* squid may not retain or land more than 5,000 lb (2.27 mt) per trip for the remainder of the year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: August 21, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–23014 Filed 8–24–98; 3:31 pm]

BILLING CODE 3510–22–F