

Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours January 31, 2008, through 2400 hours February 14, 2008, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

#### Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial

lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism

Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: January 23, 2008.

**John Oliver,**

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

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 0612243157-7799-07]

**RIN 0648-AT87**

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery and Shrimp Fishery of the Gulf of Mexico; Amendment 27/14

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement joint Amendment 27 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Amendment 14 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP)(Amendment 27/14) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule reduces the commercial and recreational quotas for red snapper, reduces the commercial minimum size limit for red snapper, reduces the recreational bag limit for red snapper, prohibits the retention of red snapper under the bag limit for the captain and crew of a vessel operating as a charter vessel or headboat, establishes a red snapper recreational season that is open from June 1 through September 30 each year, requires the use of non-stainless steel circle hooks when using natural baits to fish for Gulf reef fish, requires the use of venting tools and dehooking devices when participating in the commercial or recreational reef fish fisheries, and consistent with the Amendment's framework procedure, provides for

implementing seasonal closures of the Gulf shrimp fishery to reduce red snapper bycatch based upon the 74 percent bycatch reduction target established in this final rule. In addition, this final rule establishes a framework procedure to adjust the target effort level and any necessary closures for the Gulf shrimp fishery. The measures contained in this final rule are intended to establish a revised red snapper rebuilding plan and to end overfishing of the red snapper resource in the Gulf of Mexico.

**DATES:** This final rule is effective February 28, 2008, except for § 622.41(m) which is effective June 1, 2008.

**ADDRESSES:** Copies of the Final Supplemental Environmental Impact Statement (FSEIS), the Final Regulatory Flexibility Analysis (FRFA), and the Record of Decision (ROD) may be obtained from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, telephone 727-824-5305; fax 727-824-5308; e-mail [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish and shrimp fisheries of the Gulf of Mexico are managed under their respective FMPs (Reef Fish FMP and Shrimp FMP). The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 26, 2007, NMFS published a notice of availability of Amendment 27/14 and requested public comments (72 FR 41046). On October 23, 2007, NMFS published the proposed rule to implement Amendment 27/14 and requested public comments (72 FR 59989). NMFS partially approved Amendment 27/14 on October 19, 2007. The rationale for the measures in Amendment 27/14 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

#### **Partial Disapproval of Amendment 27/14**

NMFS disapproved the proposed management measure that would have assumed a 10-percent reduction in post-hurricane recreational fishing effort and landings as it related to total allowable catch (TAC) levels and associated management measures. NMFS determined that a 10-percent reduction in recreational fishing effort and

landings was not based on the best scientific information available as required by national standard 2 of the Magnuson-Stevens Act, and was inconsistent with Council's stated objective to reduce fishing mortality and rebuild the red snapper stock. As a result of this disapproval, this final rule establishes a red snapper recreational season that remains open from June 1 through September 30 each year rather than the May 1 through October 15 season that would have resulted if the assumption of a 10-percent reduction in recreational fishing effort and landings had been approved.

#### **Delayed Effectiveness for Requirement of Circle Hooks, Dehooking Devices, and Venting Tools**

NMFS is delaying, until June 1, 2008, the effectiveness of the requirements in § 622.41(m) to use non-stainless steel circle hooks when using natural baits to fish for Gulf reef fish and to use dehooking devices and venting tools when fishing for Gulf reef fish in the Gulf exclusive economic zone (EEZ). This delay in effectiveness will provide additional time for manufacturers and retail outlets to prepare for the demand for these newly required products and will provide more time for commercial and recreational fishers to comply with these new gear requirements.

#### **Comments and Responses**

Following are the public comments received on Amendment 27/14 and on the proposed rule along with NMFS' responses to those comments.

*Comment 1:* Fishing conditions have improved, especially in the northeastern Gulf of Mexico, and there is no need to institute reductions in TAC, the bag limit, or the recreational season. In addition, artificial reefs and reductions in shrimp trawl effort have improved red snapper fishing.

*Response:* The red snapper stock assessment evaluated the status of the population both east and west of the Mississippi River delta. The assessment found the eastern portion of the population to be in better condition than the western portion, and that stock condition was improving. This increase in population abundance is likely the reason fishermen are seeing an improvement in fishing conditions. However, the red snapper population in both the eastern and western Gulf of Mexico is still considered overfished and undergoing overfishing; therefore, management measures are needed to allow the stock to rebuild by 2032.

Based on the red snapper rebuilding plan adopted by the Council in 2005, overfishing must end between 2009 and

2010. Ending overfishing and recovery of the red snapper population is contingent on reducing mortality in both the directed commercial and recreational fisheries and bycatch in the shrimp trawl fishery. More restrictive management measures are needed across all of these fisheries to constrain harvest and bycatch mortality.

The reduction in the directed fishery's TAC accounts for decreases in shrimp trawl effort. These decreases in shrimp trawl effort are expected to improve survival of juvenile red snapper. However, as mentioned above, fishing mortality in the directed fishery must also be reduced to rebuild red snapper.

Artificial reefs are known to improve recreational fishing opportunities for red snapper, and may increase red snapper productivity. Conversely, artificial reefs serve as fish attracting devices and, therefore, increase fishing mortality. Artificial reefs were discussed as one of several possible mechanisms to account for high stock recruitment during the Southeast Data, Assessment, and Review (SEDAR) process. Regardless, recreational fishing mortality is still higher than needed to rebuild the population and manage it at sustainable levels.

*Comment 2:* High fuel prices and the after-effects of the 2005 hurricanes have reduced charter fishing operations and private recreational fishing effort, and, thus, little or no further action needs to be taken to constrain recreational red snapper harvest. Data used to analyze recent trends in effort and landings are questionable. Differences in regulations between state and Federal waters may have influenced the 2007 Marine Recreational Fisheries Statistical Survey (MRFSS) landings data, particularly with how anglers report where fish were harvested, causing an artificial spike in red snapper landings.

*Response:* The 2005 hurricane season was the busiest and costliest on record, resulting in significant physical and economic damage to coastal communities. In revising the red snapper rebuilding plan and developing management measures to constrain directed harvest, the Council selected as their preferred alternative the assumption of a continuing 10-percent reduction in post-hurricane directed fishing effort, even though the Council's Science and Statistical Committee (SSC) did not support the assumption that there would be a continuing reduction in fishing effort.

Similarly, the Southeast Fisheries Science Center (SEFSC) concluded the available data do not support the assumption of a 10-percent reduction in overall effort in the directed fishery

following the 2005 hurricane season. The SEFSC based this determination on weighted 2006 effort levels, which were about 99 percent of the 2000–2004 average effort levels. The SEFSC indicated mixed changes occurred in recreational effort showing reductions in some sectors (particularly private vessels), but increases in other sectors (charter vessel and headboat). Increases in red snapper fishing efficiencies and landings, particularly off western Florida and Louisiana between 2005 and 2006 were also observed. The SEFSC also noted a fluctuating, but gradually increasing, trend in recreational effort commensurate with increases in the population. Given that private effort in state waters and for-hire effort in Federal waters are increasing, it is unlikely private effort in Federal waters will remain at current levels.

Preliminary MRFSS data through October 2007 indicate landings exceeded the 2007 recreational quota of 3.185 million lb (1.445 million kg), even under a reduced red snapper bag limit in Federal waters of two fish. Preliminary 2007 MRFSS landings were similar to or higher than landings in previous years during comparable time periods. There is no indication effort has been reduced to a point that would prevent recreational anglers from meeting or exceeding the annual quota (See also the response to Comment 3 regarding trip information). Even if these preliminary MRFSS landings are overestimated, recreational red snapper landings are likely to exceed the specified 2007 quota given that headboat red snapper landings and Texas Parks and Wildlife private and charter landings are not included in the preliminary 2007 landings estimate.

*Comment 3:* Economic impacts of the recreational quota reductions and associated measures on the charter industry and associated businesses and communities are underestimated.

*Response:* Best available survey and modeling results indicate that relatively few trip cancellations are expected to occur as a result of this action. Most survey respondents indicated that when faced with a reduced or zero red snapper bag limit, they would either continue fishing for red snapper or fish for another species. Fishing for other species may generate distributional effects (i.e., the trips may occur from different ports, modes, or seasons, resulting in one port or entity or season losing business while another gains). These distributional effects, however, cannot be predicted with current data.

Preliminary data through August 2007 do not support claims of widespread reductions in charter business as a

result of the interim measures reducing the recreational quota and bag limit. Because the recreational red snapper fishery in Federal waters did not open until late April, data for May through August 2007 were examined. During this period, approximately 461,000 trips were taken by recreational anglers on charterboats in the Gulf from Florida through Louisiana (data for Texas are not collected in the same data program and are not available). This compares to an average of approximately 403,000 angler trips on average per year for the previous 3 years, 2004 through 2006. Omitting 2006 data on the assumption that effort in that year was reduced due to lingering effects of the 2005 hurricanes, the annual average for 2004 through 2005 was only slightly greater at approximately 405,000 angler trips. Thus, while available data cannot address claims of severe economic losses by individual entities, preliminary 2007 data do not support contentions of widespread industry harm. Consistent with the projections, while effort may have shifted to other species or other charter businesses, widespread loss of effort as a result of the interim quota and bag limit reduction is not apparent. Although the management measures in the final rule are more restrictive than the interim measures, widespread effort declines are similarly not expected.

*Comment 4:* A total mortality limit should be set for both commercial and recreational red snapper fisheries. This limit would include all fish killed for each sector. A sector that can reduce dead discards would see a commensurate increase in allowed landings.

*Response:* Establishing a total mortality limit was not considered in Amendment 27/14. While this concept would provide incentives for the respective fisheries to minimize dead discards, better estimates of discard mortality are needed. Only a short time series of commercial discard data was available for the most recent red snapper stock assessment and the data workshop panel believed recreational discards were much higher than estimated by MRFSS. For these reasons, available recreational and commercial discard data were not used in the assessment. Instead, discards were assumed to be due to the minimum size limit and were estimated from the predicted length composition of the catch. Because currently the only estimates of dead discards are produced from assessment model projections, it is not possible at this time to monitor total mortality limits on a real-time basis.

*Comment 5:* Greater reductions in discard mortality in the commercial and recreational directed fisheries are needed to maximize both short-term and long-term yields.

*Response:* Reductions in red snapper regulatory discards are needed in all sectors of the directed red snapper fishery for the stock to recover over the long term and to reduce overfishing in the short term. If a 74-percent reduction could be achieved in directed fishery discard mortality, TAC could have been set at 7 million lb (3.2 million kg), and future TACs could be set higher. This level of reduction is not possible at this time given the available tools (e.g., gear restrictions, bag limits, size limits, etc.) managers have to limit bycatch. However, the rule does implement measures to reduce red snapper discard mortality. This rule sets the commercial size limit at 13 inches (33 cm) total length (TL) for the commercial fishery, requires the use of non-stainless steel circle hooks when fishing for reef fish with live bait, and requires specific venting tools and dehooking devices for both the commercial and recreational fisheries. Reductions in the commercial size limit are estimated to reduce dead discards by 40 to 60 percent and allow the stock to recover faster. It is unknown to what extent a requirement of circle hooks, venting tools, and dehooking devices will have in reducing bycatch mortality when harvesting reef fish, but all these gears have been shown to increase the survival of released fish.

*Comment 6:* Reducing the commercial minimum size limit will enhance user conflict and is not fair and equitable. Recreational size limits should also be reduced to lower discard mortality. The commercial size limit should be further reduced to 12 inches (30.5 cm) TL, or no size limit should be implemented, to allow the stock to recover more quickly.

*Response:* Scientific analyses suggest both the red snapper stock and commercial fishery participants would benefit from reducing the commercial minimum size limit. This is because of high commercial discard mortality rates that nullify any benefit derived from protecting smaller size fish. However, reducing the minimum size limit in the recreational fishery would not benefit the red snapper stock or stock recovery in the long-term. The discard mortality rate of the recreational fishery is 15 to 40 percent whereas discard mortality rates for commercially caught red snapper are estimated to range between 71 and 82 percent. Thus, smaller fish caught and released by the recreational fishery are more likely to survive and help contribute to stock recovery. By contrast, reducing the commercial

minimum size limit to 13 inches (33 cm) TL will allow previously discarded fish to be retained and counted toward the quota. In addition, long-term TACs associated with lower recreational minimum size limits are expected to be slightly less than TACs with a 16-inch (41-cm) TL minimum size limit. Therefore, reducing the minimum size in the recreational fishery will not maximize yield over the long-term.

Although having no commercial minimum size limit was estimated to allow the stock to rebuild slightly faster than with a 13-inch (33-cm) TL size limit, the difference in rebuilding is small. Also, if the commercial minimum size limit were eliminated, while the recreational sector operates under a minimum size limit, the potential for competition and conflict between recreational and commercial fishers would have increased. The Council recommended, and NMFS approved, a 13-inch (33-cm) TL minimum size limit because it will have positive biological impacts and will reduce the potential for user conflicts between the commercial and recreational sectors relative to the alternative of eliminating the commercial minimum size limit.

*Comment 7:* The recreational fishing season should be changed. Suggested seasons included a separate spring/early summer season and late summer/fall season, shifting the season forward or backwards, or weekend openings. In addition, comments suggested the commercial fishery should be held to the same season as the recreational fishery.

*Response:* The Council evaluated numerous recreational fishing seasons including seasons with weekend openings. Ultimately, the Council determined it needed to preserve a core summer recreational fishing season. Comments from the public have indicated keeping the season open as long as possible is more preferable to more liberal bag or size limits. Therefore, given a bag limit of two fish, a zero-bag limit for the captain and crew of for-hire vessels, and a 16-inch (41-cm) TL minimum size limit, the Council recommended, and NMFS approved, the longest season that could be achieved and still cover the core summer fishing season. This season would be from June 1 to September 30 (122 days).

NMFS did not evaluate seasonal closure alternatives for the commercial red snapper fishery because fishery landings are managed in-season through an individual fishing quota (IFQ) program. This program was implemented in part to eliminate the derby fishery conditions that had developed in response to short fishing

seasons. IFQ programs effectively control total annual harvest by enabling fishery managers to track and limit the landings of each individual program participant.

*Comment 8:* Recreational measures for the eastern and western Gulf of Mexico recreational red snapper fisheries need to be different because of differences in how the fisheries operate.

*Response:* The Council considered different regulations between the eastern and western Gulf for the recreational fishery. Measures considered primarily examined different seasons; however, these options were not selected, in part, because of enforcement problems and angler confusion in areas around where the line of demarcation between the eastern and western Gulf is drawn.

*Comment 9:* The two-fish bag limit is too restrictive. Either the four-fish bag limit should be maintained, or the bag limit should be the first four to six fish landed.

*Response:* In managing the recreational fishery such that harvest is constrained to the recreational quota, NMFS has employed bag limits, size limits, and seasonal closures. The combined effect of reducing the recreational bag limit from four to two fish, reducing the captain and crew bag limit for for-hire vessels, and reducing the season to a June 1 to September 30 should control effort sufficiently to ensure the recreational fishery remains within the 2.45 million-lb (1.11 million-kg) quota. To maintain a four-fish bag limit or institute some other bag limit greater than two fish, the fishing season would need to be further reduced. While some fishermen commented they would prefer to maintain the bag limit over season length, the majority of testimony from fishermen suggested they would prefer a reduction in the bag limit rather than a reduction in season length.

*Comment 10:* The economic and social value of both recreational and commercial sectors needs to be considered in setting TAC. Current allocations of TAC should be changed to reflect these differences. The recreational fishery needs to be further divided into a for-hire and private angler allocation.

*Response:* This rule is intended to reduce the red snapper catch, bycatch, and discard mortality in the reef fish and shrimp fisheries, end overfishing of red snapper by 2010, and rebuild the red snapper stock by 2032. Therefore, addressing allocations is outside the scope of this rule. However, the Council is developing an amendment to address the allocation of different reef fish

species for recommendation to NMFS and may include red snapper.

*Comment 11:* Requirements for dehooking devices and venting tools should be standardized due to differences in performance of differently designed tools and other devices should be allowed. The effective date for specific fishing gear should be delayed to allow the fishing gear industry time to provide products to the public. The requirement for circle hooks creates an unfair burden on fishermen and causes increases in gut hooking.

*Response:* This rule provides specific details regarding the configuration of both dehooking devices and venting tools, as well as their use. The rule will require at least one dehooking device on a reef fish vessel, and the device must be able to remove hooks embedded in Gulf reef fish with minimum damage. For the venting tool, the rule will require at least one venting tool aboard a vessel, and the tool must be used to deflate the swim bladders of Gulf reef fish to release the fish with minimum damage. Gear types evaluated for this action were commercially available and easily obtainable by fishermen. Weighted release devices identified as alternative gear in comments on the rule are not commercially available at this time.

Additional public comments requested that the implementation of the circle hook requirement be delayed to allow manufacturers, distributors, and retail outlets sufficient time to produce and distribute the hooks and ensure adequate stock is available to meet fisherman demand. Additional time is reasonable to allow retailers to acquire sufficient stock and fishermen to come into compliance with these new gear requirements. Therefore, this final rule delays the effective date of these new gear requirements until June 1, 2008.

Circle hooks do not increase gut hooking in reef fish. As described in Amendment 27/14, circle hooks tend to embed in the corner of a fish's mouth, unlike J-hooks which are more likely to be swallowed. Swallowed hooks can cause internal damage leading to mortality. Because circle hooks tend to embed in the jaw, they are also easier to remove, causing the fish less stress when released and enhancing survival. Requiring the use of non-stainless steel circle hooks will allow a hook to degrade over time, providing a fish with a greater chance for survival.

*Comment 12:* There is a lack of enforcement of commercial fishing vessels, which allows illegal harvest of red snapper and contributes to overfishing.

*Response:* NMFS law enforcement officials work cooperatively with other Federal and state agencies to reduce and prevent illegal activity. The recently implemented red snapper IFQ program was designed with enforceability in mind and with full input by Federal and state law enforcement officers. The red snapper IFQ program is the best monitored fishery in the Gulf. It incorporates a vessel monitoring system, pre-departure and advance landing notification requirements, a dockside monitoring component, and real-time data management to account for all red snapper landed including a checks-and-balances system matching quota allocations with fish purchased by dealers.

*Comment 13:* Closures would preclude the shrimp fishery from achieving optimum yield (OY), and hence limit economic opportunities for the fishery.

*Response:* A restriction on effort in the mid-shelf region, which only affects the ability of the fishery to utilize a portion of the shrimp grounds for a limited time frame during the year, should not preclude the fishery from having the opportunity to achieve OY, as currently defined, on a continuing basis. Should it be necessary to implement a time-area closure to restrict fishing mortality on red snapper, shrimp fishing effort can shift either inshore or offshore of the closed areas with highest red snapper abundance. However, currently the shrimp fishery is adversely affected by external economic factors, such as increased fuel prices and depressed ex-vessel prices, which are constraining fishing effort.

If economic conditions should improve and effort increase in the shrimp fishery, especially in the mid-shelf region where juvenile red snapper are abundant, then a time-area closure might have to be implemented to maintain the 74-percent shrimp trawl bycatch mortality reduction target. If a closure was implemented for an extended period of time, especially a closure concurrent with the Texas Closure, the likelihood of achieving OY might be decreased. However, the Council and NMFS could take subsequent action to address that problem if it occurred. Moving the fishery into shallower water would lead to catches of smaller shrimp, which could result in reduced profits. However, such an extended closure, or an expansion of the fishery, is not expected in the near future. Alternatively, if more efficient bycatch reduction devices (BRDs) are developed in the future and provide better reductions in juvenile red snapper

mortality, time-area closures could be reduced. This could then allow the fishing mortality target to be achieved while simultaneously allowing effort to increase to a level that increases the likelihood that OY would be caught.

Given the above, the likelihood of significant adverse economic consequences resulting from a shrimp fishery area closure is low. The proposed bycatch mortality reduction target is allowed to decrease through time consistent with the framework procedure if supported by the best available scientific information. This would further reduce the chance the shrimp fishery would exceed its bycatch target. The long-term economic benefits associated with the proposed action are expected to outweigh the short-term adverse economic impacts that would result from fishing effort restrictions.

*Comment 14:* Effort shifts to other areas because of closures will shift bycatch problems to other benthic species.

*Response:* Insufficient information is available to assess the differences in the quantity and species composition of bycatch on a scale that would allow estimation of differential impacts to marine species. Seasonal area closures are intended to achieve a level of fishing mortality reduction in red snapper. Seasonal closures that lead to relocation of effort by the shrimp fleet to nearshore waters would most likely increase the level of other finfish bycatch. The ratio of finfish biomass to shrimp biomass is often twice as high for nearshore waters as it is for offshore waters. However, populations of many of the common species, such as Atlantic croaker, spot, and longspine porgy, are less susceptible to the adverse effects of shrimp trawling because they are short-lived, and have high natural mortality rates.

*Comment 15:* The rule does not reflect the Council's intent that the target-reduction of shrimp trawl bycatch mortality of red snapper be phased down from 74 percent of the benchmark years of 2001–2003, to 67 percent in 2011, and thereafter, reduced as necessary, to achieve the target goal of 60 percent by 2032.

*Response:* This rule allows NMFS the flexibility to modify the mortality reduction target over time via appropriate rulemaking, based on new information and analyses. The preferred alternative selected by the Council in Amendment 27/14 illustrates the Council's intent to adjust the targets over time to appropriate levels while maintaining the red snapper rebuilding schedule. As stated in the amendment, the specific reduction target values

identified in the Council's preferred alternative may not be appropriate in the future following new assessments and scientific advice, much like future adjustments to TAC in the directed fishery. Nevertheless, any future adjustment would need to be made through the FMP framework procedures established in this rule. The framework procedure provides the NMFS Southeast Regional Administrator authority to adjust the target reduction level consistent with the red snapper rebuilding plan and the findings of subsequent stock assessments via appropriate rulemaking.

*Comment 16:* The shrimp trawl fishery is not being constrained sufficiently through this rule, or is being constrained too much. Relaxation of the bycatch targets that occur later in the rebuilding plan could allow excessive bycatch by the shrimp fishery.

*Response:* This rule provides a procedure to constrain shrimp trawl bycatch mortality on red snapper to a level that is 74 percent less than the benchmark years of 2001–2003. The rule provides for adjustment of the target level reduction, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. These provisions ensure that any restrictions on shrimp trawl bycatch of red snapper will be consistent with the red snapper rebuilding plan and the best scientific information available.

In the near future, minimal measures to manage shrimp fishing effort in relation to the target red snapper bycatch mortality reduction goal may be needed. This is because the economic downturn in the shrimp fishery, coupled with increased fuel costs and hurricane damage to vessels and infrastructure, reduced effort from the benchmark years by nearly 60 percent in 2005 and 65 percent in 2006. Had the shrimp trawl fishery been operating at levels associated with the benchmark years, substantial action would have been required and proposed measures would have had greater adverse economic effects. Preliminary effort estimates for 2007 indicate the shrimp fishery is operating below the target level.

Allowing the shrimp bycatch reduction target to be reduced as the red snapper stock rebuilds will allow bycatch and bycatch mortality of red snapper to increase. However, any such increases would be constrained to levels consistent with the red snapper rebuilding plan and best available scientific information. The Council and NMFS believe it is appropriate to

provide for reduction of the shrimp bycatch mortality target, so that the shrimp fishery could receive some benefit from stock rebuilding. Holding the shrimp bycatch mortality constant would not provide any benefits to the shrimp fishery, while the directed red snapper fishery would benefit from larger TACs. In making any future adjustments to the target bycatch goal, NMFS will ensure bycatch is being minimized to the extent practicable.

To ensure red snapper bycatch does not increase above levels specified in Amendment 27/14, the rule establishes a framework and actions for NMFS to take should the target not be met. These are summarized in the above comment.

*Comment 17:* The final version of the amendment submitted for Secretarial review included updated shrimp landings information not available for the public hearing draft of the amendment. This lack of information was misleading regarding the Council's final choice of a preferred alternative, especially regarding the potential social and economic impacts of a closure. The text in the amendment is confusing in regard to how the revised BRD criterion would assist in reducing red snapper fishing mortality to achieve the reduction target. The document indicated an additional 10-percent reduction in fishing mortality on juvenile red snapper would be achieved through the certification and use of BRDs that are more efficient than the industry-standard Fisheye BRD. Conversely, another section of the document suggested there would be minimal additional reduction benefits from BRDs expected in the short-term.

*Response:* Updated information for 2006 indicated red snapper fishing mortality attributable to the shrimp fishery was 65 percent less than the benchmark years, and not 72 percent as noted in the public hearing draft. The updated shrimp effort data and possible implications were brought to the Council's attention at their June 2007 meeting prior to the Council's approval of the amendment for review by the Secretary. The public hearing draft of Amendment 27/14 contained the most recent information available at the time. This text was clear to point out the 2006 shrimp effort estimates were preliminary and based on two of three trimesters of data. If those estimates held true, the shrimp fishery would be near the 74 percent reduction goal.

With respect to the information on bycatch reductions from BRDs, both statements are accurate and are not contradictory. Additional bycatch mortality reduction is expected from the introduction of new BRDs for the fishery

under a pending revision to the certification criterion for BRDs. Recent evaluations of the most commonly used BRD, the Fisheye positioned forward in the cod end, indicate this BRD is reducing fishing mortality (F) on juvenile red snapper by approximately 11 percent. Based on a proposed new certification criterion to be established in 2008, NMFS expects that new and more effective BRDs will be certified for use in the fishery. These new BRDs reduce F on juvenile red snapper by greater than 20 percent; therefore, the new BRDs should double the reduction in F derived from using BRDs. However, the contribution attributable to BRDs is much less than the reductions of F achieved by restricting fishing effort in areas where juvenile red snapper are caught.

*Comment 18:* The rule does not consider mortality reductions achieved through improved BRDs in the process whereby the SEFSC makes recommendations to the RA in determining the scope and durations of shrimp closed areas. The condensing of the 12 statistical areas into 3 zones will reduce the SEFSC's ability to tailor the geographical scope of the time-area closures.

*Response:* The 74-percent reduction target in shrimp trawl bycatch mortality on red snapper from the 10–30 fathom area required by the red snapper rebuilding plan is based on total bycatch reduction. This includes both reductions in mortality from reduced fishing effort as well as reductions obtained from BRDs.

The three shrimp zones identified in this rule were developed to identify the geographical scope of the 10–30 fathom area of statistical zones 10–21 that could be closed to shrimp fishing should a closure be needed. The Texas zone corresponds to the area where the cooperative 60-day seasonal closure with the State of Texas to protect small brown shrimp emigrating from bay nursery areas occurs. The Louisiana and Eastern zones identify the rest of the area to be managed under the framework, but were split because of the lack of trawlable 10–30 fathom bottom in Federal waters between Louisiana and Mississippi. Because the rule states “the RA will, if necessary, establish a seasonal area closure of the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (l)(2) through (l)(4),” the closure could apply to all or a part of one or all three geographic zones. The extent of these closures would be based on the SEFSC's assessment.

*Comment 19:* The shrimp assessment conducted by the SEFSC and framework

procedures to set time and area closures should allow for input from the shrimp fishery.

*Response:* The SEFSC is dependent on landings and effort data from the shrimp fishery in conducting its assessment. The framework procedure indicates this assessment will be provided to the RA on or about March 1 of each year. At this time, the assessment results will be available to the public. Once the assessment is available, comments may be directed to the RA to use in the RA's determination if a closure is necessary, and if so, to what extent. It is also likely the assessment results will be presented to the Council for their review. Comments could also be introduced at this time when the Council evaluates the RA's decision.

### Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 27/14 is necessary for the conservation and management of the Gulf red snapper fishery and that it is consistent with the Magnuson-Stevens Act, and other applicable laws.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an SEIS for this amendment. A notice of availability for the draft SEIS was published on April 20, 2007 (72 FR 19928). A notice of availability for the final SEIS was published on August 3, 2007 (72 FR 43271).

A FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis, a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see ADDRESSES). A summary of the FRFA follows.

The final rule will reduce the commercial quota from 4.65 million lb (2.14 million kg) to 2.55 million lb (1.16 million kg) and the recreational quota from 4.47 million lb (2.06 million kg) to 2.45 million lb (1.11 million kg), reduce the recreational bag limit from four fish to two fish and the bag limit for captain and crew of for-hire vessels to zero, reduce the commercial minimum size limit from 15 inches (38 cm) TL to 13 inches (33 cm) TL, require participants in all Gulf reef fish fishery sectors to use non-stainless steel circle hooks (when using natural baits) and to use venting tools and dehooking devices, provides for seasonal area closures of the Gulf shrimp fishery to reduce red snapper bycatch consistent with Amendment 27/

14's framework procedure, and establishes authority to adjust the target shrimp bycatch reduction and effort levels and time-area closures consistent with the framework procedure.

The purpose of this final rule is to reduce red snapper catch, bycatch, and discard mortality in the directed commercial and recreational fisheries and the shrimp fishery in order to end overfishing for red snapper between 2009 and 2010 and rebuild the stock by 2032 in compliance with the red snapper rebuilding plan.

Several public comments were received on the economic impact of the rule. These comments stated that the economic impacts of the proposed TAC reduction and associated measures on the charter industry and associated businesses and communities were underestimated. Best available survey and modeling results indicate that relatively few angler trip cancellations are expected to occur as a result of this action. Most survey respondents indicated that when faced with a reduced red snapper bag limit, including a zero-fish bag limit, they would either continue fishing for red snapper or fish for another species. Fishing for other species may generate distributional effects (i.e., the trips may occur from different ports, modes, or seasons, resulting in one port/entity/season losing business while another gains). These distributional effects, however, cannot be predicted with current data. Additionally, contrary to the comments, preliminary data through August 2007 do not support claims of widespread reductions in charter business as a result of the interim reduction in the recreational quota and bag limit. Because the recreational red snapper fishery in Federal waters did not open until late April, data for May through August 2007 were examined. During this period, approximately 461,000 trips were estimated to have been taken by recreational anglers on charterboats in the Gulf from Florida through Louisiana (data for Texas are not collected in the same data program and are not available). This compares to an average of approximately 403,000 angler trips per year for the previous 3 years, 2004 through 2006. Omitting 2006 data on the assumption that effort in that year was reduced due to lingering effects of the Fall 2005 hurricanes, the annual average for 2004 through 2005 was only slightly greater, at approximately 405,000 angler trips. Thus, while these results do not address, and available data cannot address, claims of severe economic loss by individual entities, preliminary 2007 data do not support contentions of

widespread industry harm. Consistent with the projections, while effort may have shifted to other species or other charter businesses, a widespread reduction in effort as a result of the reduced interim recreational quota and bag limit is not apparent. The management measures in the final rule are more restrictive than the interim measures, i.e., while the bag limit would remain at the interim 2-fish bag limit, a lower quota results in a shorter open season. However, because anglers indicated they would generally continue to fish under a lower bag limit, including a 0-fish limit, widespread effort declines are similarly not expected. For these reasons, no changes were made in the final rule as a result of these comments.

Additional public comments requested that the implementation of the circle hook requirement be delayed to allow manufacturers, distributors, and retailers sufficient time to produce and distribute the hooks and ensure adequate stock is available to meet fisherman demand. NMFS has revised this final rule to delay the effective date of these new gear requirements until June 1, 2008.

The management actions considered in this final rule are expected to affect all vessels that operate in the commercial red snapper fishery, all vessels that have a Federal reef fish for-hire permit, and all dealers and processors that handle product from these fisheries. Although this final rule contains actions that pertain to the commercial shrimp fishery, these actions are not expected to impose any direct adverse impacts on the shrimp fishery or associated entities.

An IFQ program was implemented January 2007 for the commercial red snapper fishery. Summary data on the fleet economics under this program are not yet available. Prior to the implementation of the IFQ program, however, 136 entities held Class 1 licenses that allowed a commercial vessel trip limit of up to 2,000 lb (907 kg) of red snapper and 628 entities held Class 2 licenses that allowed a trip limit of up to 200 lb (91 kg) of red snapper. Between 2002 and 2004, the top 50 red snapper vessels in terms of landings harvested 2.77 million lb (1.26 million kg) of red snapper, on average, or 64 percent of the industry total. Vessels ranked 51 to 131 harvested 1.29 million lb (0.59 million kg), on average, or 30 percent of the industry total for the same period. Thus, the top 131 red snapper vessels accounted for approximately 94 percent of the total industry red snapper landings. Red snapper are mainly harvested by

fishermen using vertical-line gear. These fishermen accounted for approximately 90 percent of commercial red snapper Gulf harvests, on average, between 2002 and 2004.

Average annual gross receipts (2004 dollars) and net income (gross receipts minus all costs) per vessel vary by gear type, area fished, and volume of catch. High-volume vessels using vertical lines averaged gross receipts and net income of \$110,070 and \$28,466 in the northern Gulf, but only \$67,979 and \$23,822 in the eastern Gulf. Low-volume vessels using vertical lines averaged gross receipts and net income of \$24,095 and \$6,801 in the northern Gulf, but \$24,588 and \$4,479 respectively in the eastern Gulf. Vessels using bottom longlines averaged gross receipts and net income of \$116,989 and \$25,452 for high-volume vessels, but only \$87,635 and \$14,978 respectively for low-volume vessels.

The current fleet permitted to operate in the Gulf reef fish for-hire sector is estimated to be 1,625 vessels. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average charterboat is estimated to generate \$76,960 in annual revenues and \$36,758 in annual profits, whereas the appropriate values for the average headboat are \$404,172 and \$338,209, respectively.

The measures in this final rule are also expected to affect fish dealers, particularly those that receive red snapper from harvesting vessels. A Federal permit is required for a fish dealer to receive reef fish from commercial vessels, and there are 227 dealers currently permitted to buy and sell reef fish species. All reef fish processors are included in this total because all processors must be dealers. Most of these dealers are located in Florida (146), with 29 in Louisiana, 18 in Texas, 14 in Alabama, 5 in Mississippi, and 15 in states outside the Gulf. In addition, vessels identify the dealers who receive their fish on logbook reports. Commercial reef fish vessels with Federal permits are required to sell their harvest only to permitted dealers. From 1997 through 2002, on average, 154 reef fish dealers actively bought and sold red snapper. These dealers were distributed around the Gulf as follows: 7 in Alabama, 96 in Florida, 22 in Louisiana, 7 in Mississippi, and 22 in Texas. On average, Florida dealers purchased approximately \$1.8 million of red snapper, followed by Louisiana (\$1.4 million), Texas (\$1.3 million), Mississippi (\$174,000), and Alabama



(\$88,000). These dealers may hold permits for multiple fisheries, but it is not possible to determine what percentage of their total business comes from the red snapper fishery.

Approximately 2,000 vessels are expected to be issued a shrimp moratorium permit, which has been required to operate in the Gulf commercial EEZ shrimp fishery since March 26, 2007. Economic profiles of these vessels are not available at this time. Prior to implementation of the moratorium permit, approximately 2,666 vessels were identified as qualifying for the permit based on historical participation in the fishery. The following description of the shrimp fleet is based on an assessment of these qualifying vessels.

The average annual gross revenue (all harvest species) per qualifying shrimp vessel in 2005 was approximately \$116,000, while the comparable figure for qualifying vessels active in the Gulf shrimp fishery, i.e., vessels with recorded shrimp landings in 2005, was approximately \$152,000. In the same year, the maximum annual gross revenue from shrimp by a vessel was approximately \$757,000 for both qualifying and active qualifying vessels, whereas the maximum annual gross revenue for all harvest species was approximately \$1.89 million by an inactive qualifier and \$757,000 for an active qualifier. According to recent projections, on average, Gulf EEZ commercial shrimp vessels are experiencing a -33 percent rate of return (net revenues/total fixed and variable costs). These economic losses were projected to continue until 2012.

In 2005, 609 dealers were identified operating in the commercial shrimp fishery. Employment information for this sector is not available. In 2005, 60 processors in the shrimp fishery were identified, employing approximately 3,400 persons, or an average of 56 employees per entity. The maximum number of employees for a shrimp processor in 2005 was 353.

The Small Business Administration (SBA) defines a small business in the commercial fishing industry as an entity that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has total annual average receipts not in excess of \$4.0 million annually (NAICS codes 114111 and 114112, finfish and shellfish fishing). For for-hire vessels, these same criteria apply except that the average annual receipts threshold is \$6.5 million (NAICS code 713990, recreational industries). For seafood processors and dealers, the SBA uses an employee threshold rather than a

receipts threshold. The threshold is 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide for a seafood processor and 100 or fewer persons for a seafood dealer.

Some persons/entities are known to own multiple vessels (i.e., fleet operations) in the commercial red snapper fishery and in the commercial reef fish fisheries in general, but the extent of such operations is unknown. The maximum number of reef fish permits reported owned by the same person/entity is 6 permits. Additional permits and the revenues associated with those permits may be linked to an entity through affiliation rules, but such affiliation links cannot be made using existing data. Further, a definitive determination of whether any commercial entity would be considered a large entity cannot be made using average revenue information. However, since the average total revenue in the commercial red snapper fishery between 2002 and 2004 was \$11.652 million, given the number of license holders in the fishery is 764, the summary statistics and the maximum number of permits owned by a single person/entity provided above, NMFS determined that all commercial reef fish harvest entities that will be affected by this final rule are small entities.

Fleet operations also exist in the for-hire sector, with at least one entity reported to hold 12 permits. The bulk of the fleet, however, consists of single permit operations. Thus, based on the average revenue figures above, NMFS determined that all for-hire operations that will be affected by this final rule are small entities.

Average employment per reef fish dealer is unknown. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast is approximately 700 individuals, both part and full time. While all processors must be dealers, a dealer need not be a processor. Further, processing fish is a more labor intensive than buying fish. Therefore, given the employment estimate for the processing sector and the number of dealers that participated in the fishery on average per year from 1997–2002 (154 dealers), NMFS assumed that the maximum number of employees for reef fish dealers and processors are unlikely to surpass the SBA employment benchmarks. Therefore, NMFS determined that all reef fish dealers and processors that will be affected by this final rule are small entities.

As with the other fishery sectors, fleet operations are known to exist in the

commercial shrimp fishery, but the magnitude of such cannot be determined using available data. Given the maximum revenue per vessel figures noted above, NMFS determined that all shrimp vessels that could be affected by this final rule are small entities.

Similar to the reef fish industry, processing shrimp is more labor intensive than buying shrimp. Thus, average employment in the shrimp dealer sector is assumed to be less than that in the processing sector. Because the maximum number of employees for a shrimp processor does not exceed the SBA threshold, NMFS determined that all shrimp dealers and processors that could be affected by this proposed rule are small entities.

The red snapper recreational and commercial quota reductions are expected to reduce profits in the for-hire and commercial sectors. In the for-hire sector, declines in profits, approximated by net operating revenue (gross revenue minus operating costs except labor) decreases, are expected due to declines in individual angler trip bookings. Under the 2.45 million lb (1.11 million kg) recreational quota and two-fish bag limit, the for-hire sector is projected to lose approximately \$1.1 million in annual net operating revenues per year. It is not possible to accurately estimate the extent to which individual for-hire operations will be affected by the quota reduction. Depending on the geographic location of their operation, level of activity, reliance on red snapper trips, variety of species available, and preferences of their core clientele, some vessels will be impacted more than others. Quantifying the number of vessels that will face the greatest economic losses is not possible with available data. The average impact per vessel will vary inversely with the number of vessels substantially involved in and dependent upon the red snapper fishery. For example, if the expected economic impacts were borne by 10 to 25 percent of the fleet, average losses in net annual operating revenue per vessel would be expected to range from approximately \$2,700 to \$6,800. These losses still represent an average, however, and individual losses for some vessels will be higher by an indeterminate amount.

The assessment of impacts on for-hire profits was based on the recreational quota and not season length. Although industry comment during the development of the proposed rule indicated that a longer open season was preferable to a shorter season, regardless of total allowable catch, and would result in less economic losses, estimating the differential economic



impacts of season length was not possible with available data. As a result, the estimated reduction in for-hire profits is neutral with respect to season length. If the red snapper season length is a significant factor in for-hire profits, then the estimated \$1.1 million losses will understate the impacts of a shorter season by an indeterminate amount.

The commercial red snapper sector is expected to experience reductions in profits, measured by changes in net operating revenue to owners, captains, and crew, as a result of the lower quota specified by the final rule. Some of these losses will be mitigated by the reduction in the commercial minimum size limit. The impact analysis for the commercial red snapper sector assumed the fishery was operating under an IFQ program, which was implemented in January 2007. Under the IFQ, the number of vessels operating in the fishery is expected to decline substantially as quota shares are consolidated. However, since the IFQ program has been operating less than one year, sufficient data on the expected contraction is not yet available to indicate the size and type of fleet that will develop. Therefore, the analysis of the expected impacts of the commercial quota reduction assumed the fleet would contract to homogenous fleets of a specific vessel size and accompanying operational characteristics, with the resultant fleet comprised of either more small vessels (35 ft (10.7 m)) or fewer large vessels (65 ft (19.8 m)).

Under the status quo commercial quota of 4.65 million lb (2.14 million kg), the fleet is projected to contract to between ninety-five 35-ft (10.7 m) vessels or thirty-nine 65-ft (19.8 m) vessels. The average annual net operating revenue per vessel within each vessel size class was estimated at \$274,000 and \$667,000, respectively. Under the 2.55 million lb (1.16 million kg) commercial quota in the final rule, projected losses in net operating revenues to owners, captains, and crew in the commercial sector are estimated to be approximately \$11.5 million. The resultant fleet is projected to consist of between fifty-two 35-ft (10.7-m) or twenty-two 65-ft (19.8-m) vessels, representing a reduction of forty-three 35-ft (10.7-m) vessels to seventeen 65-ft (19.8-m) vessels. For each of these potential fleets, the corresponding average net operating revenue for remaining vessels was estimated at \$278,000 and \$665,000, respectively. Average short-term net operating revenue losses per vessel are estimated at \$121,000 and \$295,000 for the 35-ft (10.7-m) and 65-ft (19.8-m) vessel classes, respectively.

The reduction in the commercial quota is also expected to adversely impact dealers and processors that purchase and sell red snapper. Although substantial decreases in revenues collected from domestic red snapper are anticipated, the expected losses to dealers and processors cannot be quantified due to lack of firm-level gross revenues and profit data. To mitigate the adverse economic impacts that will result from the 45-percent decrease in the commercial quota, dealers and processors may increase their reliance on imported snapper and use other reef fish species as substitutes.

The zero-fish captain and crew bag limit while on charter is not expected to affect the profitability of for-hire operations because the sale of recreational reef fish landings is already prohibited. Requiring all persons aboard reef fish vessels to use non-stainless steel circle hooks when using natural baits, venting tools, and dehooking devices is expected to result in minimal impacts on the profitability of small entities because of the current widespread use of circle hooks, their competitive pricing, and the availability of dehooking devices and venting tools for less than \$15 each.

The management measures considered in this final rule do not affect the reporting or record-keeping requirements for reef fish and shrimp vessels, dealers, or processors. This final rule does not require additional records or report preparation.

Four alternatives, including the status quo, were considered for the action to set TAC and, thus, establish the recreational and commercial quotas in the red snapper fishery. Three of the alternatives include multiple options and sub-options to manage the recreational fishery under the respective TACs and quotas. The first alternative, the status quo, would not be consistent with assumptions related to expected reductions in directed and bycatch mortality rates and would not result in a sufficient, i.e., greater than 50 percent, probability of the red snapper rebuilding plan's success. If implemented, the status quo alternative would result in drastic TAC and quota reductions in subsequent years and, thus, greater adverse economic impacts during that time in order for the resource to continue on the designated recovery path.

The second alternative to the red snapper TAC would have reduced the TAC to 7.0 million lb (3.175 million kg), with resultant commercial and recreational quotas of 3.57 and 3.43 million lb (1.62 and 1.44 million kg), respectively. This alternative has the

potential of generating, depending upon the sub-option selected, lower short-term adverse economic impacts than the final rule. However, a 7.0 million lb (3.175 million kg) TAC is not consistent with the current mortality reduction assumptions and would not provide the necessary greater than 50-percent probability of achieving the rebuilding plan objectives. Like the status quo, this alternative would require greater TAC reductions in subsequent years, thereby generating greater adverse economic impacts over that time than the final rule.

The third alternative to the red snapper TAC would have reduced the TAC to 3.0 million lb (1.36 million kg), with resultant commercial and recreational quotas of 1.53 and 1.47 million lb (0.69 and 0.67 million kg), respectively. This alternative would have reduced the TAC and quotas more than necessary to end overfishing within the specified time period and would be expected to result in an overly restrictive management approach with unnecessary and greater adverse economic impacts than the final rule.

Three alternatives, including the status quo, were considered for the action addressing post-hurricane effort and landings reductions. Although some post-hurricane reduction in effort and landings is demonstrated by available data, the reductions are not consistent across the entire fishery and are not expected to persist. Therefore, the final rule does not assume any post-hurricane effort reduction in the determination of the management measures necessary to limit the recreational sector to its quota. The second alternative would have assumed a 10-percent reduction in post-hurricane effort in the recreational red snapper fishery. This alternative would extend the fishing season and yield greater short term economic benefits than the final rule. However, a 10-percent reduction in effort is not supported by available data, and adopting such an assumption may result in a failure to meet conservation goals, resulting in long-term negative economic impacts relative to the proposed action. The third alternative would have assumed a 25-percent reduction in post-hurricane effort and landings. This alternative would result in a longer season than the final rule and result in greater short-term economic benefits than the final rule. However, a 25-percent reduction is also not supported by available data, and adopting that assumption would be expected to result in a failure to meet conservation goals, resulting in substantial long-term negative economic impacts relative to the final rule.

Two alternatives, including the status quo, were considered for the action to set the captain and crew bag limit. The final rule will allow the recreational red snapper fishing season to remain open 4–16 days longer relative to the status quo. The status quo alternative, which would allow the captain and crew to retain the angler bag limit, would require either a shorter season or a lower bag limit for recreational anglers to achieve the rebuilding goals. These more restrictive measures would be expected to result in greater reductions in trip demand and increased reductions in for-hire profits and angler value than the final rule.

Three alternatives, including the status quo, were considered for the commercial red snapper minimum size limit. The first alternative to the final rule, the status quo, would be expected to result in continued unnecessary bycatch mortality and would not, therefore, meet the Council's objectives. The 13-inch (33-cm) minimum size limit in the commercial sector is expected to result in decreased economic impacts to the fishery and associated industries due to increases in the operational efficiency of commercial vessels and a potential ex-vessel price increase for smaller fish. The third alternative would eliminate the commercial minimum size limit. Eliminating the commercial minimum size limit would increase user conflicts between the commercial and recreational sectors since the recreational sector would have a 16-inch (41 cm) minimum size limit, while the commercial sector would not have any minimum size limit. Further, because no commercial market is currently known to exist for red snapper smaller than 12 inches (30 cm), no additional benefits would be expected to accrue to the commercial sector. Thus, the total economic impacts to the commercial sector of an elimination of the minimum size limit would be expected to be comparable to those of the final rule.

Three alternatives, including the status quo, were considered for the gear requirement action. The two alternatives that contained new gear requirements contained options that specified the fisheries over which the requirements would apply. The final rule will require the use of non-stainless steel circle hooks when using natural baits, and require the use of venting tools and dehooking devices for all participants in the reef fish fisheries in the EEZ of the Gulf of Mexico. The final rule will reduce bycatch and bycatch mortality in the red snapper and reef fish fisheries and contribute to improving the

likelihood of success of the red snapper rebuilding plan. This is expected to result in increased long-term economic benefits. The sub-options that reduced the fisheries to which the gear requirements will apply would be expected to result in less reduction in bycatch mortality and lower long-term economic benefits than the final rule. However, in general, little economic impact is expected because of the current widespread use of circle hooks and the low cost of venting/dehooking devices (less than \$15 each).

The first alternative to the final gear action would not impose new gear requirements on fishermen and would not, in the short term, result in any direct adverse economic impacts. However, this alternative would not contribute to improving the likelihood of success of the red snapper rebuilding plan. Relative to the final rule, this alternative could result in more severe restrictions on fishery participants in the long run and, thus, generate greater adverse economic impacts.

The second alternative and associated sub-options to the final gear action would specify only a minimum hook size. Compared to the final rule, this alternative would be less effective in reducing bycatch and bycatch mortality. As a result, in the long run, it would be expected to result in smaller economic benefits than the final rule.

Six alternatives, including the status quo, were considered for the bycatch reduction target in the commercial shrimp fishery. The status quo would not establish a bycatch reduction target, would not ensure consistent reductions in bycatch fishing mortality on juvenile red snapper in the shrimp fishery, and would not be consistent with the 2005 SEDAR assessment recommendations to further reduce bycatch fishing mortality rates on the red snapper stock. The final rule incorporates a target reduction of shrimp trawl bycatch mortality on red snapper 74 percent less than the benchmark years of 2001–2003 as specified in the amendment, which is consistent with the red snapper quotas established by final rule, and increases the probability of success of the red snapper rebuilding plan. Establishment of the bycatch reduction target is an administrative action and will not result in any direct adverse economic effects.

The second and third alternatives to the final bycatch reduction target would establish lower reduction targets than the 74-percent target reduction incorporated in the final rule. Like the final rule, these alternatives are not expected to result in direct adverse economic impacts. However, the lower targets do not contribute sufficiently to

increasing the likelihood of the success of the red snapper rebuilding plan and could be expected to require further effort reductions, resulting in more severe management measures in the long run. The fourth alternative would, as will the final rule, incorporate a 74-percent reduction in shrimp trawl bycatch mortality on red snapper, but would not specify changes to the target or the method by which the target might be adjusted in the future. Similarly, the fifth alternative would establish a 74-percent reduction in shrimp trawl bycatch mortality on red snapper, but would also explicitly link future adjustments to the bycatch reduction target to red snapper stock assessment updates.

Four alternatives, including the status quo, were considered for the action to potentially establish fishing restrictions for the EEZ shrimp fishery in the Gulf of Mexico if the bycatch reduction target in the fishery is not met. The first alternative to the final rule, the status quo, would not establish potential fishing restrictions for the Gulf shrimp fishery. The status quo would not result in direct or indirect adverse economic impacts because potential restrictions would not be established for the shrimp fishery. However, if effort reductions in the fishery are not sufficient to achieve target goals, this alternative may result in more severe future restrictions and potentially greater adverse economic impacts than the enactment of potential effort restrictions at this time.

The final rule will, if necessary, establish a procedure for implementing a seasonal closure in the 10- to 30-fathom (18- to 55-m) zone of selected areas within statistical zones 10–21 in the Gulf of Mexico via appropriate rulemaking. The closure is intended, when possible, to begin on the same start date as the closure of the EEZ off Texas. This measure will ensure that target reductions in shrimp trawl bycatch mortality are met, is consistent with the red snapper quotas, and will contribute to increasing the likelihood of the success of the red snapper rebuilding plan. Establishment of this procedure is an administrative action and will not result in any direct economic effects. Direct economic impacts will only accrue if, in the future, it is determined that the bycatch reduction target has not been met and a seasonal closure is necessary. The direct economic effects of the closure would be analyzed at that time, as appropriate.

The second and third alternatives to the final action to establish fishing restrictions if the bycatch reduction target in the fishery is not met would also establish a procedure for

implementing seasonal closures, as necessary, in the 10 to 30-fathom (18 to 55 m) zone of selected areas within statistical zones 10–21 in the Gulf of Mexico but would consider alternative time frames for the closures. As with the final rule, this procedure and associated alternatives are administrative in nature and would not be expected to result in any direct economic effects. Direct economic impacts would only accrue if, in the future, it is determined that the bycatch reduction target has not been met and a seasonal closure is necessary. However, compared to the long-term benefits expected to accrue to the red snapper fishery from the final rule, smaller long-term economic benefits to the red snapper fishery would be expected from these alternatives. The greater positive impacts associated with the final rule are attributable to the intended starting date of any potential closure coinciding with the movement of age 1 snapper from shrimp grounds to larger structures.

Two alternatives, including the status quo, were considered for the action to establish a framework procedure to adjust effort in the commercial shrimp fishery. The status quo would not establish a framework procedure and would not support adjusting effort in the commercial shrimp fishery in response to a failure to meet bycatch reduction requirements in a timely and efficient manner. The final rule will allow the Regional Administrator to implement closures based upon annual shrimp effort assessments conducted by the Southeast Fisheries Science Center. This procedure is expected to be the quickest and most efficient approach to establishing closures. Two other options were considered under the second alternative. These options would establish less expedient means of implementing recommended closures. Direct adverse economic impacts are not expected to result from the alternatives included in this action because the establishment of a framework procedure to adjust effort in the commercial shrimp fishery is an administrative action. Direct effects will only accrue if shrimp effort needs to be adjusted. The direct effects of any adjustment will be analyzed at the time such action is initiated, as appropriate.

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

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

Dated: January 23, 2008

**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 § 622.2, the definitions for “circle hook,” “dehooking device,” and “venting device” are added in alphabetical order to read as follows:

##### § 622.2 Definitions and acronyms.

\* \* \* \* \*

*Circle hook* means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

\* \* \* \* \*

*Dehooking device* means a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

\* \* \* \* \*

*Venting device* means a device intended to deflate the swim bladder of a fish to release the fish with minimum damage.

\* \* \* \* \*

■ 3. In § 622.34, paragraph (l) is added and the first sentence of paragraph (m) is revised to read as follows:

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

\* \* \* \* \*

(l) Closures of the Gulf shrimp fishery to reduce red snapper bycatch. During a closure implemented in accordance with this paragraph (l), trawling is prohibited within the specified closed area(s).

(1) *Procedure for determining need for and extent of closures.* Each year, in accordance with the applicable framework procedure established in the FMP for the Shrimp Fishery in the Gulf of Mexico (FMP), the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (l)(2) through (l)(4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and

associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 74-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP. The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. The assessment will use shrimp effort data for the most recent 12-month period available and will include a recommendation regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the **Federal Register**. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (l) will begin on the same date and time as the Texas closure unless circumstances dictate otherwise.

(2) *Eastern zone.* The eastern zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°14'	88°57'
B	29°24'	88°34'
C	29°34'	87°38'
D	30°04'	87°00'
E	30°04'	88°41'
F	29°36'	88°37'
G	29°21'	88°59'
A	29°14'	88°57'

(3) *Louisiana zone.* The Louisiana zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1'	93°41.4'
B	29°09.25'	92°36'
C	28°35'	90°44'
D	29°09'	89°48'
E	28°57'	89°34'
F	28°40'	90°09'
G	28°18'	90°33'
H	28°25'	91°37'
I	28°21.7'	93°28.4'
A	29°09.1'	93°41.4'

(4) *Texas zone.* The Texas zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1'	93°41.4'
B	28°44'	95°15'
C	28°11'	96°17'
D	27°44'	96°53'
E	27°02'	97°11'
F	26°00.5'	96°57.3'
G	26°00.5'	96°35.85'
H	26°24'	96°36'
I	26°49'	96°52'
J	27°12'	96°51'
K	27°39'	96°33'
L	27°55'	96°04'
M	28°21.7'	93°28.4'
A	29°09.1'	93°41.4'

(m)\*\*\*

The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31 and from October 1 through December 31, each year. \* \* \*

\* \* \*

■ 4. In § 622.37, paragraph (d)(1)(vi) is removed and paragraph (d)(1)(iv) is revised to read as follows:

**§ 622.37 Size limits.**

\* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) Red snapper -16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(iii) and 13 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

\* \* \*

■ 5. In § 622.39, paragraphs (b)(1)(viii) through (b)(1)(x) are removed, and paragraphs (b)(1)(iii) and (b)(1)(v) are revised to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Red snapper -2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

\* \* \*

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch -20.

\* \* \*

■ 6. In § 622.41, paragraph (m) is added to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \*

(m) *Required gear in the Gulf reef fish fishery.* For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (m)(1) through (m)(3) of this section.

(1) *Non-stainless steel circle hooks.*

Non-stainless steel circle hooks are required when fishing with natural baits.

(2) *Dehooking device.* At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

(3) *Venting tool.* At least one venting tool is required and must be used to deflate the swim bladders of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

■ 7. In § 622.42, paragraphs (a)(1)(v) and (a)(3) are removed, and paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

**§ 622.42 Quotas.**

\* \* \*

(a) \* \* \*

(1) \* \* \*

(i) Red snapper -2.55 million lb (1.16 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 -2.45 million lb (1.11 million kg), round weight.

\* \* \*

■ 8. In § 622.48, paragraph (i) is revised to read as follows:

**§ 622.48 Adjustment of management measures.**

\* \* \*

(i) *Gulf shrimp.* Closed seasons and areas, target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

\* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 070213032-7032-01]

RIN 0648-XF34

**Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska**

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

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is reopening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the A season allowance of the 2008 total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), January 25, 2008, through 1200 hrs, A.l.t., January 27, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 8, 2008.

**ADDRESSES:** You may submit comments, identified by 0648-XF34, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>;

• Mail: P.O. Box 21668, Juneau, AK 99802;

• FAX: (907) 586-7557; or

• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK. Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian.

Instructions: 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