

§ 1503.631 [Amended]

- 3. In § 1503.631(c)(2) remove the reference “§ 1503.215” and add in its place the reference “§ 1503.623”.
- 4. In § 1503.659 revise paragraph (e) to read as follows:

§ 1503.659 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.

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(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 30 days after service of the petition on that party, by filing a reply with the Enforcement Docket Clerk. A party must serve a copy of the reply on each party.

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Issued in Arlington, Virginia, on September 17, 2010.

John S. Pistole,
Administrator.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 970730185-7206-02]

RIN 0648-XY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Re-Opening of the 2010 Gulf of Mexico Recreational Red Snapper Season

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

ACTION: Temporary rule; re-opening.

SUMMARY: NMFS re-opens the recreational red snapper component of the reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). NMFS previously determined the recreational red snapper quota would be reached by 12:01 a.m., local time, July 24, 2010. However, due to the Deepwater Horizon MC252 oil spill and the associated large-area fishery closure (fishery closed area) in the north-central Gulf where a substantial portion of the recreational red snapper fishing efforts occurs, the latest landings estimates indicate the quota was not reached by that date. Therefore, NMFS will re-open the recreational red snapper season, for eight consecutive weekends (Friday

through Sunday), beginning October 1, 2010. The intent of this action is to provide fishermen the opportunity to harvest the recreational red snapper quota, and the opportunity to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: The re-opening is effective each weekend, from 12:01 a.m., local time, Fridays, through 12:01 a.m., local time, Mondays, beginning October 1, 2010, until 12:01 a.m., local time, November 22, 2010. The season will then be closed until it reopens on June 1, 2011, the beginning of the 2011 recreational fishing season.

FOR FURTHER INFORMATION CONTACT:

Steve Branstetter, telephone 727-824-5305, fax 727-824-5308, e-mail Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 2, 2010, NMFS implemented a recreational quota for Gulf red snapper of 3.403 million lb (1.544 million kg) and a commercial quota of 3.542 million lb (1.607 million kg) through a regulatory amendment (75 FR 23186, May 3, 2010). These quotas are based on the Councils' recommended total allowable catch of 6.945 million lb (3.150 million kg) for 2010 and subsequent fishing years, and the allocation ratios in the FMP.

The Magnuson-Stevens Act requires NMFS to close the recreational red snapper component of the Gulf reef fish fishery in Federal waters when the quota is met or projected to be met. Finalized 2009 recreational landings data indicated the recreational quota was projected to be met on or by July 23, 2010. Therefore, in the rule that published May 3, 2010 (75 FR 23186), NMFS announced the recreational red snapper fishing season would close at 12:01 a.m., local time, July 24, 2010, which constituted a 53-day fishing season.

Because of the Deepwater Horizon MC252 oil spill, NMFS subsequently closed a large area in the north-central Gulf to fishing (fishery closed area), resulting in lower than expected landings for recreational red snapper. Because the fishery closed area is located where a substantial portion of

the recreational red snapper fishing occurs, the Council did not expect the recreational red snapper quota to be met by July 23rd. Therefore, at its June 2010 meeting, the Council requested NMFS publish emergency rulemaking to authorize the RA to re-open the recreational red snapper season after September 30th, the end of the fishing season. A proposed rule was published on August 16, 2010 (75 FR 49883) and NMFS requested public comment through August 31, 2010. NMFS published a final rule in the same issue of the **Federal Register**, authorizing the RA to re-open the recreational red snapper fishing season after September 30th.

Based on the most recent landings data, NMFS has determined that 32 percent of the available recreational quota was landed by the July 23rd closure date. Based on landings rates and the remaining recreational quota of approximately 2.3 million lb (1.1 million kg), NMFS has determined the recreational red snapper season can re-open. At its August 2010 meeting, the Council voted to re-open the season on eight consecutive Fridays, Saturdays, and Sundays, beginning at 12:01 a.m., local time, on October 1, 2010 and closing at 12:01 a.m., local time, on Monday, November 22, 2010 (24 fishing days). In the interim, weekend openings would start at 12:01 a.m., local time, on Fridays and stay open through 12:01 a.m., local time, on Mondays. The season will then be closed until 12:01 a.m., local time, June 1, 2011, the beginning of the 2011 recreational fishing season.

During the open period, the bag and possession limit for recreational Gulf red snapper is two fish. However, no red snapper may be retained by the captain and crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

During the closed period, the bag and possession limit for recreational Gulf red snapper is zero. A person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued, must also abide by these closure provisions in state waters if Federal regulations are more restrictive than applicable state law.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B). Allowing prior

notice and opportunity for public comment on the re-opening is unnecessary because the rule establishing the annual quota has already been subject to notice and comment, and all that remains is to notify the public that additional harvest remains in the established quota and, therefore, the fishery will re-open for a limited time period.

This rule relieves a restriction by re-opening the recreational red snapper season after September 30, the end of the fishing season. Because it relieves a restriction, this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedures Act pursuant to 5 U.S.C. 553(d)(1).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 21, 2010.

Carrie Selberg,

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

[FR Doc. 2010-23992 Filed 9-21-10; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100713296-0452-02]

RIN 0648-BA06

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Emergency Rule to Authorize Re-Opening the Recreational Red Snapper Season

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

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to authorize the Regional Administrator, Southeast Region, NMFS (RA) to re-open the Gulf of Mexico (Gulf) recreational red snapper season after the September 30, 2010, end of the fishing season. NMFS has determined that the recreational red snapper quota was not met by the 12:01 a.m., local time, July 24, 2010, closure date. The BP Deepwater Horizon MC252 oil spill and the associated large-area fishery closure (fishery closed area) in the north-central Gulf are located where a substantial portion of the recreational red snapper fishing effort occurs. Therefore, the Gulf

of Mexico Fishery Management Council (Council) requested NMFS publish this emergency rule. The intent of this rulemaking is to provide the RA the authority to allow fishermen the opportunity to harvest the recreational red snapper quota, and to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: This emergency rule is effective September 24, 2010 through December 31, 2010.

ADDRESSES: Copies of the environmental assessment, the final regulatory flexibility analysis (FRFA), and the regulatory impact review for this rule may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail steve.branstetter@noaa.gov; or may be downloaded from the SERO Web site at <http://sero.nfms.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Steve Branstetter, 727-824-5796.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.* (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1355(c)).

On August 16, 2010, NMFS published a proposed emergency rule to grant the RA the authority to re-open the Gulf recreational red snapper season after September 30, and requested public comment (75 FR 49883). The rationale for the measures contained in this emergency rule is provided in the environmental assessment and the proposed emergency rule and is not repeated here.

Comments and Responses

A total of 139 comments were received on the proposed emergency rule. A summary of those comments, and NMFS responses, follows.

Comment 1: More than 50 percent of the comments expressed broad general support re-opening the recreational red snapper fishing season during 2010 without regard to specific timing. Another 25 percent specifically expressed support for re-opening later in the year and/or giving NMFS the authority to re-open the season after the September 30 end of the fishing season. At its August 2010 meeting, the Council

recommended re-opening the recreational red snapper fishing season on eight consecutive weekends (Friday through Sunday) beginning October 1, 2010. Several comments received after this meeting expressed opinions regarding weekend openings versus opening during the week as well.

Response: This emergency rule gives the RA the authority to re-open the recreational red snapper fishing season after September 30, 2010. Without this rulemaking NMFS is only authorized to re-open the season through the end of the designated June 1 through September 30 fishing season. The recreational red snapper quota is established based on an allowable biological catch level determined from the results of a peer-reviewed and vetted stock assessment, which is based on the best scientific information available. This rulemaking will provide the opportunity for the recreational sector to harvest the remaining quota and achieve the Council's designated optimum yield (OY) for the fishery, thus enhancing social and economic benefits to fishermen and the tourism industries of Gulf coastal communities. The timing and duration of a re-opening will not affect the goal of harvesting the allowable catch established in accordance with the red snapper rebuilding plan, which seeks to achieve OY for the red snapper component of the reef fish fishery. NMFS will publish an additional rulemaking specifying the dates of a re-opening.

Comment 2: A few comments suggested that areas that had been open to fishing during the June 1 through July 23 recreational red snapper season should remain closed. Any re-opening of the season should be restricted to those areas that had been closed to all fishing because of BP Deepwater Horizon MC252 oil spill, but are now re-opened to fishing.

Response: The recreational red snapper quota is a Gulf-wide quota; it is not separated into regional components. Current regulations do not allow NMFS to designate fishing season openings for specific geographic regions. In addition, many areas are still closed to all fishing because of the BP Deepwater Horizon MC252 oil spill, and may not be re-opened to fishing during the recommended eight consecutive weekend openings. Re-opening the recreational red snapper fishing season to specific geographic regions would create substantial regulatory confusion for the public, and increase the difficulty of enforcement.

Comment 3: A few comments suggested that the recreational red snapper fishing season should remain