

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

[Docket No. 0907271173-0629-03]

RIN 0648-XA154

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure of the 2010-2011 Recreational Sector for Black Sea Bass in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the recreational sector for black sea bass in the portion of the exclusive economic zone (EEZ) of the South Atlantic through 35°15.19' N. lat., the latitude of Cape Hatteras Light, North Carolina. NMFS has determined that the recreational annual catch limit (ACL) for black sea bass has been reached. This closure is necessary to protect the black sea bass resource.

DATES: The closure is effective 12:01 a.m., local time, February 12, 2011, until 12:01 a.m., local time, on June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727-824-5305, fax 727-824-5308, e-mail Catherine.Bruger@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. These regulations set the recreational ACL for black sea bass in the South Atlantic at 409,000 lb (185,519 kg), gutted weight, for the current fishing year, June 1, 2010, through May 31, 2011.

Background

Black sea bass are managed throughout their range. In the South Atlantic EEZ, black sea bass are managed by the Council from 35°15.19' N. lat., the latitude of Cape Hatteras Light, North Carolina, south. From Cape Hatteras Light, North Carolina, through Maine, black sea bass are managed jointly by the Mid-Atlantic Fishery

Management Council and the Atlantic States Marine Fisheries Commission. Therefore, the closure provisions contained in this notice are applicable to those vessels harvesting or possessing black sea bass from Key West, Florida, through Cape Hatteras Light, North Carolina.

Regulations effective January 31, 2011 (75 FR 82280, December 30, 2011), set the recreational ACL for black sea bass in the South Atlantic EEZ and established accountability measures, and require NMFS to close the recreational sector for black sea bass when the ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. The accountability measures state if black sea bass are overfished and if recreational landings reach or are projected to reach the recreational ACL of 409,000 lb (185,519 kg), gutted weight, the Assistant Administrator for Fisheries, NOAA (AA), will close the recreational sector for black sea bass for the remainder of the fishing year (50 CFR 622.49(b)(5)(ii)). On, and after, the effective date of the closure, the bag and possession limit of black sea bass in or from the South Atlantic EEZ is zero. This zero bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters. Additionally, if black sea bass recreational landings exceed the ACL, without regard to overfished status, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

Based on current statistics, NMFS has determined that the recreational ACL of 409,000 lb (185,519 kg), gutted weight, for black sea bass has been reached. Accordingly, NMFS is closing the recreational sector for black sea bass in the portion of the South Atlantic EEZ through Cape Hatteras Light, North Carolina, from 12:01 a.m., local time, February 12, 2011, until 12:01 a.m., local time, on June 1, 2011. Because this is the first time the recreational sector for black sea bass has closed, NMFS is delaying the closure until 12:01 a.m., local time, February 12, 2011, in order to contact state marine fishery agencies and fish houses, announce the closure on NOAA Weather Radio, and distribute a news bulletin to provide additional notice to the recreational fishermen. The closure is intended to prevent overfishing and increase the likelihood

that the current recreational ACL will not be exceeded even further.

Classification

This action responds to the best scientific information available recently obtained from the fishery. The 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)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the sector ACL and the associated requirement for closure of the sector when the ACL is met or projected to be met has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest and impracticable because any additional delay in the closure of the recreational black sea bass sector could result in the recreational ACL being exceeded even further, which would incur larger overages to the ACL. Overages to the ACL trigger a second accountability measure which states that if recreational landings exceed the ACL, NMFS will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage. Reducing the ACL even further for the following year would produce additional adverse economic impacts for black sea bass fishermen.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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: January 28, 2011.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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