

possible to allow affected participants the maximum amount of time to adjust their fishing activities to account for a projected closure of the commercial sector in June and no projected closure of the recreational sector.

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).

Dated: April 26, 2011.

James P. Burgess,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110207101-1257-02]

RIN 0648-BA54

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

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule increases the commercial and recreational quotas for red snapper for the 2011 fishing year and closes the recreational red snapper component of the Gulf of Mexico (Gulf) reef fish fishery at 12:01 a.m., local time, July 19, 2011. This rule also makes minor revisions to codified text, including revisions to the definition of “actual ex-vessel price,” extending the maintenance window for the Gulf individual fishing quota (IFQ) programs, and removing obsolete codified text for Gulf grouper. The intended effect of this final rule is to help achieve optimum yield (OY) for Gulf red snapper without increasing the risk of the red snapper resource experiencing overfishing, allow for better functioning and enforcement of the Gulf IFQ programs, and to remove obsolete text from the regulations.

DATES: This rule is effective May 31, 2011.

ADDRESSES: Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from Dr. Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Ave South, Saint Petersburg, FL 33701; telephone 727-824-5308; e-mail Steve.Branstetter@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727-824-5308.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the 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 (Magnuson-Stevens Act).

On February 22, 2011, NMFS published a proposed rule for the regulatory amendment and requested public comment (76 FR 9735). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This final rule sets the Gulf red snapper commercial quota at 3.664 million lb (1.662 million kg) and the recreational quota at 3.521 million lb (1.544 million kg). NMFS has determined that the combined commercial and recreational quota from 2010 was not exceeded, therefore, NMFS may increase the commercial and recreational quotas for red snapper in 2011, consistent with the rebuilding plan.

The regulatory text contained in this final rule reflects the commercial and recreational quotas for the 2011 fishing year only. This differs from the proposed rule because the proposed rule contained regulatory text for the 2010 fishing year and the 2011 fishing year, with a caveat that if the 2010 landings, as estimated by the Southeast Fisheries Science Center (SEFSC), NMFS, indicate the combined quota is exceeded, then the recreational quota would be maintained at the 2010 quota. Because NMFS has determined that the combined quota from 2010 was not exceeded, the 2010 quota and the caveat following the 2011 quota have been removed from the regulatory text.

The Magnuson-Stevens Act requires NMFS to close the recreational red snapper sector in Federal waters when the quota is met or projected to be met. Finalized 2010 recreational landings data indicate that the recreational red snapper quota is projected to be met on or by July 18, 2011. Therefore, NMFS will close the recreational red snapper

fishing season at 12:01 a.m., local time, July 19, 2011, which constitutes a 48-day fishing season. NMFS will continue to monitor landings after the 2011 fishing season opens June 1. If, as a result of the continuous monitoring, the quota is not projected to be met on or by July 18, 2011, a re-opening of the recreational sector could occur later in the fishing season.

The red snapper management measures contained in this final rule will achieve the goal of National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery. Because the 2010 recreational red snapper quota was not met, the Council has requested that the SEFSC re-run the 2009 update assessment projections using final landings data for 2009 and 2010. These projections will be provided to the Council's Scientific and Statistical Committee (SSC) for review at the SSC's May meeting, which could potentially change the allowable biological catch (ABC) recommendation. The Council will receive the SSC's recommendation for ABC at its June Council meeting. If the SSC recommends a higher ABC, red snapper TAC could be adjusted for the 2012 fishing year.

Additional Measures Contained in This Final Rule

This final rule removes the definition of “actual ex-vessel value” and adds the definition of “actual ex-vessel price,” so that actual ex-vessel price represents the total monetary sale amount per pound of fish before any deductions are made for transferred (leased) allocation and goods and services (e.g., bait, ice, fuel, repairs, machinery replacement, etc.), extends the IFQ maintenance window an additional 8 hours to allow for more time to conduct end-of-year maintenance, and removes obsolete text regarding the sale and purchase of Gulf grouper from the old February 15–March 15 seasonal closure for commercial gag, red, and black grouper. These additional measures are unrelated to the actions contained in the regulatory amendment.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and the regulatory amendment, and NMFS respective responses. During the comment period, NMFS received 88 comments on the proposed rule. The majority of the comments addressed issues beyond the scope of rule and therefore these

comments are not addressed below. Some noted that red snapper are more abundant than the stock assessments have determined and recommended the Council should consider increasing the recreational bag limit and the recreational season length. One commenter opposed the increase in the total allowable harvest of red snapper and is addressed below. Two comments were made regarding the revision of the "actual ex-vessel price" definition, including one in general opposition to changing the definition, and the other comment is addressed below.

Comment 1: The red snapper total allowable catch should not be increased until the effects of the Deepwater Horizon MC252 Oil Spill are known for larval impacts.

Response: To date, there have been no observed fish kills from the Deepwater Horizon MC252 Oil Spill in Federal waters. However, the oil spill may have impacted spawning success of red snapper and other species that spawn in the summer months, either by reduced spawning activity or by reduced survival of the eggs and larvae. If this is the case, impacts on harvestable size red snapper will begin to be seen in 2 to 3 years when the 2010 year class becomes large enough to enter the fishery and be retained.

Substantial portions of the red snapper population are found in the northwestern and western Gulf (western Louisiana and Texas) and an increasing population of red snapper is developing off the west Florida continental shelf, thus spawning by this segment of the stock should not have been impacted, which would mitigate the overall impact of a failed spawn by that portion of the stock located in oil-affected areas.

Comment 2: The current method of reporting ex-vessel price paid to the fisherman who fishes leased allocation is correct. It is the price being paid to the fisherman.

Response: NMFS does not agree that this is the true ex-vessel price. Actual ex-vessel price represents the total monetary sale amount per pound of fish before any deductions are made. The revision to the definition of "actual ex-vessel price" will allow NMFS to more accurately analyze the total value of the Gulf commercial red snapper and grouper and tilefish IFQ programs, and will more appropriately align the definition with the original intent of the IFQ programs.

Classification

The Regional Administrator, Southeast Region, NMFS, determined that the regulatory amendment is necessary for the conservation and

management of the red snapper component of the Gulf reef fish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

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

Dated: April 26, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, 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 definition of "actual ex-vessel value" is removed and the definition of "actual ex-vessel price" is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Actual ex-vessel price means the total monetary sale amount a fisherman receives per pound of fish for IFQ landings from a registered IFQ dealer before any deductions are made for transferred (leased) allocation and goods and services (e.g. bait, ice, fuel, repairs, machinery replacement, etc.).

* * * * *

- 3. In § 622.16, paragraph (c)(5) is revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(5) *Restricted transactions during the 20-hour online maintenance window.*

All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1-866-425-7627.

* * * * *

- 4. In § 622.20, paragraph (c)(5) is revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

* * * * *

(c) * * *

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers and tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1-866-425-7627.

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- 5. In § 622.42, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Red snapper*—3.664 million lb (1.662 million kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper.*

The recreational quota for red snapper

is 3.521 million lb (1.597 million kg),
round weight.

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§ 622.45 [Amended]

■ 6. In § 622.45, paragraph (c)(4) is removed.

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