

Tab E, No. 9

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. - - ; I.D. 112006B-X]

RIN 0648-AT87

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

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

ACTION: Proposed temporary rule; request for comments.

SUMMARY: This proposed rule would implement interim measures to
reduce overfishing of Gulf red snapper. This proposed rule would
reduce the commercial and recreational quotas for red snapper,
reduce the commercial minimum size limit for red snapper, reduce
the recreational bag limit for Gulf red snapper, prohibit the
retention of red snapper under the bag limit for captain and crew
of a vessel operating as a charter vessel or headboat, and
establish a target level of reduction of shrimp trawl bycatch
mortality of red snapper. The intended effect is to reduce
overfishing of red snapper in the Gulf of Mexico.

DATES: Written comments must be received on or before [insert
date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-AT87.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AT87.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Peter Hood.

Copies of documents supporting this proposed rule, which includes a draft environmental impact statement (DEIS), and an initial regulatory flexibility analysis (IRFA), may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727-551-5784, fax: 727-824-5308, e-mail: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The red snapper fishery of the Gulf of Mexico is managed under the Fishery Management Plan (FMP) for the Reef Fish Fishery of the Gulf of Mexico and the shrimp fishery is managed under the FMP for the Shrimp Fishery of the Gulf of Mexico. The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council) and are implemented under the authority of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Gulf of Mexico red snapper stock is overfished and undergoing overfishing. Multiple fisheries influence the status of this stock, including the commercial and recreational red snapper fisheries, and the shrimp trawl fishery which takes red snapper incidentally when harvesting shrimp. The competing interests and goals of these multiple fisheries challenge fishery managers to balance multiple tradeoffs in rebuilding the red snapper stock.

The first rebuilding plan established in 1990 has been revised several times, including extension of the target date for rebuilding the stock, in response to new data and assessments which have provided a better understanding of stock biomass and influencing factors, including shrimp trawl bycatch mortality. The current rebuilding plan, implemented in 2005, is designed to end overfishing in 2009/2010 and rebuild the stock by 2032 to the biomass level needed to allow harvest at maximum sustainable yield on a continuing basis. The most recent stock assessment (2005) indicates red snapper catch and discard mortality in the directed red snapper fishery and bycatch mortality rates in the shrimp fishery are jeopardizing the success of the current rebuilding plan. In the western Gulf, the shrimp trawl fishery represents the greatest source of red snapper fishing mortality,

followed by the commercial red snapper directed fishery, whereas the directed red snapper recreational fishery represents the greatest source of fishing mortality in the eastern Gulf. The eastern Gulf and western Gulf are separated by the Mississippi River delta.

At the August 2006 Council meeting, the Council voted to delay consideration of regulatory actions needed to address red snapper overfishing until more recent data and information become available for the directed red snapper and shrimp trawl fisheries. However, postponing development of a plan amendment would further delay progress in stock recovery because measures to address overfishing would not occur during the 2007 fishing season.

To address overfishing of the red snapper stock for 2007, NMFS is proposing this rule that would reduce fishing mortality in 2007 and allow progress towards rebuilding this stock until more permanent measures could be established to end overfishing. This proposed rule would also address overfishing by establishing a red snapper bycatch reduction goal for the shrimp fishery.

Provisions of This Proposed Rule

This proposed rule would reduce fishing mortality on red snapper in 2007 by reducing harvest and bycatch levels. Specifically, this proposed rule would: (1) reduce the red snapper total allowable catch (TAC) from 9.12 million lb (4.14 million kg) to 6.5 million lb (2.9 million kg), whole weight,

resulting in a commercial quota of 3.315 million lb (1.504 million kg) and a recreational quota of 3.185 million lb (1.445 million kg); (2) reduce the daily red snapper recreational bag limit from four to two fish per person; establish a 0-fish red snapper bag limit for the captain and crew of a vessel operating as a charter vessel or headboat; (3) reduce the commercial minimum size limit from 15 inches (38 cm) to 13 inches (33 cm), total length; and (4) establish a target reduction goal for shrimp trawl bycatch mortality on red snapper that is 50 percent less than shrimp trawl bycatch mortality during the 2001-2003 benchmark years used in the 2005 stock assessment.

Measures to Reduce Directed Fishing Mortality

In developing this proposed rule, NMFS evaluated measures for TAC and the recreational fishery based on a qualitative assumption that some level of reduction in landings has occurred due to the direct effects of hurricanes and increased fuel costs during 2004 and 2005. Sufficient data are not available at this time to quantify fully the precise level of reduction, although preliminary recreational data suggests a decrease in landings has occurred in 2006.

The Magnuson-Stevens Act requires that NMFS manage the red snapper fishery to ensure harvest is constrained to the available quotas. For the commercial fishery, the 3.315 million-lb (1.504 million-kg) quota will be managed through an individual fishing quota (IFQ) program beginning in 2007. For the recreational

fishery, NMFS previously has employed bag limits, size limits, and seasonal closures in an effort to constrain harvest to the available quota while minimizing, to the extent practicable, the short-term adverse economic and social impacts.

Reduction of TAC

This proposed rule would reduce the red snapper TAC for 2007 to 6.5 million lb (2.9 million kg), which is 0.5 million lb (0.23 million kg) less than the maximum allowable biological catch (ABC). Based on the 2005 stock assessment, TACs greater than 5 million lb (2.3 million kg) would not be expected to end overfishing immediately. TACs set at 5 million lb (2.3 million kg) or less during 2007 would end overfishing immediately, but only if all sources of fishing mortality (directed harvest, shrimp trawl bycatch, and closed season discards) could be reduced to the fishing mortality rate associated with harvesting the stock at the maximum sustainable yield. TACs greater than 5 million lb (2.3 million kg) but less than 7 million lb (3.2 million kg) would reduce fishing mortality and continue to allow rebuilding progress in 2007 consistent with the current rebuilding plan which ends overfishing in 2009. The Council would need to recommend more permanent TACs within or below this range after 2007 to be consistent with the current rebuilding plan over the long-term. The higher the TAC is set in 2007, the lower the TAC will need to be set in the future to end

overfishing by 2009 to maintain adequate progress under the current rebuilding plan.

Bag Limit Reductions

Assuming some level of reduction in recreational landings has occurred due to hurricanes and increased fuel prices, based on preliminary data, the combined effect of reducing the daily recreational bag limit from 4 to 2 fish per person and reducing the captain and crew bag limit for vessels operating as charter vessels or headboats to zero should control harvest sufficiently to ensure the recreational fishery remains within its 3.185 million-lb (1.445 million-kg) recreational quota while maintaining the current recreational fishing season. Reducing the bag limit is estimated to achieve at least a 17-percent reduction in harvest, and, therefore, would benefit red snapper stock recovery. Reducing the captain and crew bag limit to zero is estimated to reduce red snapper landings by approximately 2 percent. The reduction from these two measures, combined with the reduction in landings attributed to the effects of hurricanes and increased fuel prices, would allow the recreational fishery to maintain its current 194-day recreational fishing season (April 21-October 31) for 2007.

Measures to Reduce Bycatch Mortality

For the red snapper stock to recover in a manner consistent with the current rebuilding plan, bycatch mortality must be minimized. This proposed rule addresses two sources of bycatch

mortality--discard mortality in the directed commercial fishery and bycatch mortality in the shrimp fishery.

Reduction in the Commercial Minimum Size Limit

To reduce the number of red snapper discarded dead in the directed commercial red snapper fishery, this proposed rule would reduce the commercial minimum size limit from 15 to 13 inches (38 to 33 cm), total length. Red snapper discard mortality rates in the directed commercial fishery are very high--estimated to range between 71 and 82 percent. By reducing the commercial minimum size limit, fish between 13 and 15 inches (33 and 38 cm) would be retained and counted toward the quota rather than discarded, mostly dead, as bycatch. It is estimated that reducing the commercial minimum size limit by 2 inches (5 cm) would reduce the commercial red snapper fishery's dead discards by 40 to 60 percent.

NMFS carefully considered reducing the recreational minimum size limit but is not proposing to do so in this rulemaking because there is currently no scientific information to indicate a reduction in the recreational minimum size limit would reduce overfishing. This rule is being promulgated consistent with the provision of section 305(c) of the Magnuson-Stevens Act relating to interim measures needed to reduce overfishing. Measures that do not reduce overfishing would not be consistent with the regulatory authority provided in that provision of section 305(c).

Establishment of a Target Reduction for Shrimp Trawl Bycatch Mortality

To facilitate reduction of red snapper bycatch mortality in the shrimp fishery, the proposed rule would establish a target reduction in the shrimp trawl red snapper bycatch mortality rate that is 50 percent less than the bycatch mortality rate during the benchmark years, 2001-2003, used in the 2005 red snapper stock assessment. This target reflects the level of shrimp trawl effort documented in 2005 in areas where red snapper are abundant in the western Gulf of Mexico, compared to the level of effort during the benchmark years. The target goal does not meet the current rebuilding plan target mortality reduction level necessary to rebuild the red snapper stock. However, preliminary information for 2006 suggests effort in the shrimp fishery has continued to decline in offshore waters of the western Gulf of Mexico. Therefore, similar to the assumption applied to the directed red snapper fishery, NMFS is making a qualitative assumption effort for 2006 and 2007 will likely be less than the level of effort documented during 2005 for areas where red snapper are commonly taken. Additional bycatch mortality reduction is expected from the introduction of new bycatch reduction devices (BRDs) for the fishery under a pending revision to the certification criterion for BRDs. In combination, NMFS estimates red snapper bycatch mortality attributable to the shrimp fishery over the next few years may closely approximate

the needed reductions from the benchmark years of 2001-2003, while allowing the industry some flexibility in achieving optimum yield, as it is currently defined for the fishery.

The Council may recommend a different course of action for a long-term management strategy to control shrimp trawl bycatch mortality of red snapper; however, the proposed reduction target would provide an interim means to address shrimp trawl bycatch in 2007. NMFS intends to provide 2006 shrimp trawl effort information to the Council as soon as it is available. If shrimp effort for 2006 is above the target, the Council may recommend further action in 2007 to maintain the proposed reductions in shrimp effort in areas of the western Gulf of Mexico where red snapper are most abundant.

Future Action

NMFS believes that this proposed rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico. NMFS will consider all public comments received on this proposed rule in determining whether to proceed with a final rule and, if so, whether any revisions would be appropriate in the final rule. If NMFS issues a final rule, it would be effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. The final rule could be extended for an additional 180 days, provided that the public has had an opportunity to comment on the rule.

NMFS acknowledges the need to continue monitoring all sources of red snapper mortality to determine the appropriate level of future actions necessary to ensure progress consistent with the stock rebuilding plan over the long term.

Classification

At this time, NMFS has not determined whether the interim measures which this proposed rule would implement, are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on this proposed rule.

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

NMFS prepared a draft environmental impact statement (DEIS) for this action; a notice of availability was published on October 13, 2006 (71 FR 60509).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

This proposed rule would reduce TAC in the red snapper fishery, lower the recreational red snapper bag limit to 2 fish, lower the red snapper bag limit for captain and crew of a vessel operating as a charter vessel or headboat to 0 fish, reduce the red snapper minimum size limit in the commercial fishery to 13 inches (33 cm), and establish a reduction goal for red snapper bycatch mortality in the commercial shrimp fishery. The purpose for this action is to address overfishing of the red snapper stock on a temporary basis while the Council develops a comprehensive plan to reduce directed and incidental red snapper fishing mortality rates in the red snapper and shrimp fisheries. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed action would be expected to impact red snapper commercial fishers and for-hire operators, and reef fish dealers and processors participating in the red snapper trade. The proposed action and certain proposed alternatives would also apply to the commercial shrimp fishery. However, these shrimp-related alternatives would either maintain the status quo, or otherwise accommodate current conditions, such that no direct impacts are expected to accrue at this time. Nevertheless, a description of the entities in the shrimp fishery is included in the following discussion.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is \$6.5 million (NAICS code 713990, recreational industries). For seafood processor and dealers, the SBA uses an employee threshold rather than a receipts threshold, or 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations for a seafood processor and 100 or fewer persons for a seafood dealer.

Currently, 136 entities hold Class 1 licenses that allow a commercial vessel trip limit of up to 2,000 lb (907 kg) of red snapper and 628 entities hold Class 2 licenses that allow a trip limit of up to 200 lb (91 kg) of red snapper. Between 2002 and 2004, the top 50 red snapper vessels harvested a total of 2.77 million lbs (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 lbs (0.58 million kg), on average, or 30 percent of the industry total for the same period. In total, the

top 131 vessels accounted for approximately 94 percent of the total red snapper commercial landings. Red snapper are mainly harvested by vertical line fishermen, who accounted for approximately 90 percent of commercial red snapper Gulf harvests, on average, between 2002 and 2004.

Reported average annual gross receipts (2004 dollars) of commercial reef fish vessels in the GOM range from \$24,095 for low-volume vertical line vessels to \$116,989 for high-volume longline vessels. Annual net incomes range from \$4,479 for low-volume vertical line vessels to \$28,466 for high-volume vertical line vessels. Some fleet activity is known to exist in the commercial red snapper fishery, but the extent of such activity is unknown. The maximum number of reef fish permits reported owned by the same person/entity is six 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. A definitive determination of whether any commercial entities would be considered large entities cannot be made using average income information. However, based on the size and value of the commercial red snapper fishery (an average of 4.336 million lb (1.967 million kg) and \$11.652 million ex-vessel revenue per year, 2002-2004), the number of participants in the fishery (136 Class 1 licenses and 628 Class 2 licenses), the summary statistics provided above, and maximum number of permits owned by

a single entity, it is determined, for the purpose of this assessment, that all commercial reef fish harvest entities that would be affected by this action are small entities.

Currently, 1,625 vessels are estimated to be permitted to operate in the Gulf reef fish fishery in the for-hire sector. Fleet behavior also exists in this sector, with at least one entity reported to hold 12 permits. The bulk of the fishery, however, consists of single-permit operations.

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 calculation of costs does not include fixed and other non-operating expenses, which tend to be higher for headboats.

Based on the average revenue figures, it is determined, for the purpose of this assessment, that all for-hire operations that would be affected by this action are small entities.

The measures in this action would also be expected to affect fish dealers, particularly those that receive red snapper from harvesting vessels. Two hundred and twenty-seven dealers currently have the required Federal permit to buy and sell commercial reef fish species. All processors would be included in this total since all processors must be dealers. From 1997-

