

Dated: August 24, 1999.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99-22969 Filed 9-2-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990823235-9235-01; I.D. 061699F]

RIN 0648-AM55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Closure of the Red Porgy Fishery

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: This emergency interim rule prohibits the harvest and possession of red porgy in or from the exclusive economic zone off the southern Atlantic states. Closure of the fishery is intended to protect the red porgy resource, which is currently overfished.

DATES: This rule is effective September 8, 1999, through March 1, 2000. Comments must be received no later than October 4, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action, such as NMFS' economic analysis and environmental assessment, may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of a minority report submitted by a member of the South Atlantic Fishery Management Council (Council) should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; phone: 843-571-4366; fax: 843-769-4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727-570-5305, fax: 727-570-5583.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the 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.

Background

Fishing pressure on red porgy increased substantially from the early 1970's to the present. In 1992, an assessment revealed that red porgy were overfished with a spawning potential ratio (SPR) of 13 percent. Also, in 1992 the Council established a rebuilding timeframe of 10 years for red porgy. The Council used SPR as a proxy for maximum sustainable yield (MSY) and as a criterion to judge whether or not a stock was overfished.

Amendment 9 to the FMP, which was submitted to NMFS in February 1998 for review and implementation, recognized that red porgy were overfished and contained management measures to address that issue. Amendment 9 increased the minimum size limit from 12 to 14 inches (30.5 to 35.6 cm) total length, established a recreational bag limit of 5 fish, prohibited harvest and possession in excess of the bag limit during March and April, and prohibited purchase and sale during March and April. Based on the best scientific information available at that time, the Council believed that the proposed red porgy management measures in Amendment 9 would prevent overfishing.

Also, in October 1998, based upon the same information used to develop Amendment 9, the Council selected a 10-year rebuilding timeframe for red porgy in the Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions in Fishery Management Plans of the South Atlantic Region. NMFS partially approved the Comprehensive Amendment on May 19, 1999, and specifically approved the rebuilding schedule for red porgy.

In March 1999, a new red porgy assessment revealed the condition of the red porgy resource was substantially worse than previously thought. Specifically, for the first time in the management of this fishery, biomass-based estimates for MSY, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), and estimates of actual recruitment to the fishery for the 1973 through 1997 period were available. This information revealed that the red porgy resource is suffering recruitment failure. Recruitment failure means that the number of recruits is insufficient to maintain the spawning biomass of the population. If such a condition is

allowed to persist, the fishery will collapse. In addition, the 1999 assessment noted that the SPR estimate is useful to describe the fishing mortality rate, but the SPR estimate is not a valid proxy for MSY in this fishery because it does not provide information on the actual level of spawning biomass that is providing recruitment.

The 1999 red porgy assessment revealed that recruitment of age-1 red porgy had declined 99.85 percent from 1973 to 1997 (7.6 million to 0.012 million age-1 fish) and that total spawning biomass has declined 97.24 percent from 1978 to 1997 (11,700 metric tons (mt) to 323 mt). The MSST to achieve an SPR of 30 percent (MSY) is 2,845 mt; the comparable figure for optimum yield is 3,805 mt. The MFMT is 0.45; whereas, the current fishing mortality is 0.64, which is 42 percent over the MFMT. In addition, commercial and recreational landings have declined substantially, and the size of red porgy at maturity and size at transition from females to males have occurred at progressively smaller sizes.

The FMP specifies the overfishing threshold for red porgy at an SPR of 30 percent. The 1999 assessment estimated the SPR at 24 percent. Thus, overfishing is occurring.

The 1999 assessment clearly shows that the spawning biomass has been substantially below the MSST since 1992. Concomitant with the depressed level of spawning stock has been a depressed level of recruitment. Given the seriously overfished condition of the red porgy resource, as well as the original intent of the Council to rebuild this resource by the year 2001, the Council concluded that it is prudent and necessary under the Magnuson-Stevens Act to close the fishery to rebuild this species.

The Council will request NMFS to develop potential management options for the red porgy fishery in time for the September Council meeting. The Council intends to develop permanent management measures to replace the emergency interim rule for red porgy at the September Council meeting.

This action will require the discard of red porgy that inevitably will be caught incidentally when fishing for other snapper-grouper species. Some of these discarded fish will not survive. Nevertheless, the overall reduction in mortality of red porgy is necessary to return the biomass to levels that will allow harvests approximating the MSY for the species.

Minority Report

A Council member submitted a minority report that objects to the

closure of the red porgy fishery for the reasons summarized as follows.

First, the minority report states that the present situation does not constitute overfishing. The red porgy SPR of 24 percent is characterized in the latest assessment as "slightly underestimated." Further, 24-percent SPR is only slightly below the FMP's established overfishing level of 30 percent, and the red porgy conservation measures in Amendment 9 are projected to raise the SPR level above 30 percent.

Second, the minority report asserts:

(1) That the proposed action does not properly consider efficiency in the utilization of fishery resources, as required in national standard 5. Since red porgy are part of a mixed species fishery, fishermen will incur increased expenses because they will have to move to new areas when red porgy are encountered and will have to make longer, and possibly more distant, trips to make up for the foregone catches of red porgy and other species from their accustomed fishing areas.

(2) That there was a lack of meaningful discussions on economic concerns during the Council's deliberations on the proposed action and, therefore, the action violates national standard 8's requirement to take into account the importance of fishery resources to fishing communities.

(3) That the ban on retention of red porgy will create bycatch, rather than minimize it, as required in national standard 9.

(4) That closing the red porgy fishery will require some fishermen to stay longer at sea on trips, often in inclement weather, and possibly require trips farther off shore, both of which are contrary to national standard 10's requirement to promote the safety of human life at sea.

Finally, the minority report states that inaccurate statements during Council deliberations had a substantial effect on the outcome of the vote.

Copies of the minority report are available (see **ADDRESSES**).

Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation: results from recent, unforeseen events, or recently discovered circumstances; presents a serious management problem; and realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the

normal rulemaking process.

Specifically, the Council acted as soon as the results in the 1999 assessment were presented to it. Thus, the emergency results from recently discovered circumstances. As discussed here, the current red porgy stock is in danger of experiencing recruitment failure, i.e., the number of red porgy of a size that are subject to harvest may not be sufficient to sustain continued fishing for them. Continued fishing mortality of red porgy serves to worsen the current status of the stock. Thus, immediate closure of the fishery has immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process.

Period of Effectiveness

This emergency interim rule is effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. It may be extended for an additional period of not more than 180 days, provided that the public has had an opportunity to comment on it and the Council is actively preparing an amendment to address the emergency on a permanent basis. Public comments on this rule and the Council's actions will be considered in determining whether to extend this rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to minimize significant long-term adverse biological, social, and economic impacts that would occur with continued fishing for red porgy. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule, which is summarized as follows.

During the period 1993 through 1997, annual commercial landings of red porgy averaged 326,800 lb (148,236 kg) with revenues averaging approximately \$397,300. Such landings and revenues were approximately 8.2 and 6.3 percent, respectively, of the total landings and revenues of all species landed on trips on which red porgy were landed. An average of 331 vessels per year reported landings of red porgy during this period. The predicted total losses to commercial fishermen would have averaged approximately \$365,300 per year

between 1993 and 1997 had the red porgy fishery been closed. This prediction is a modeled result based on average vessel harvesting costs per trip. The actual short-term economic effect of a moratorium will depend on individual vessel's trip costs.

As the resource has declined, red porgy have not been an important species for charter vessels, headboats, and other recreational fishing vessels. The headboat sector is the most dominant sector in the fishery yet red porgy still comprise less than 10 percent of total annual headboat harvests for all states combined. Data do not exist to estimate the impact of the moratorium on these vessels, but it appears to be minor.

The long-term economic effects of the moratorium cannot be estimated without additional information about the rate at which the red porgy population would recover. Although the economic analysis does not estimate the long-term economic effects of the moratorium, NMFS data indicate that the MSY of red porgy, which is the ultimate goal of the moratorium and future actions to rebuild the resource, is in excess of 1,500,000 lb (680,400 kg), with potential annual revenues then exceeding \$1,800,000 (assuming a price of \$1.20 per lb (\$2.64 per kg), though it is unlikely that current prices could be maintained while more than tripling the market supply).

Copies of the economic evaluation are available (see **ADDRESSES**).

Recent NMFS stock assessment information clearly indicates that the red porgy resource is severely overfished and that stock recruitment (i.e., addition of fish to the red porgy population) is at a dangerously low level. Red porgy are currently being harvested in the snapper-grouper fishery, and continued harvest during the next several months (late summer - early fall) will worsen the stock condition. Continued fishing during this time period will fail to reverse overfishing of red porgy and increase the probability of recruitment failure and stock collapse, with resultant severe economic impacts on those dependent on the fishery. Thus, immediate closure of the fishery has potential significant benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest.

For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. However, to allow time for vessels at sea to be notified of the closure of the red porgy fishery and land red porgy on board, the effective date of this rule is delayed for 5 days after the date this rule is published.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 622

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

Dated: August 27, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, 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 § 622.32, paragraph (b)(4)(vii) is added to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(4) * * *

(vii) Red porgy may not be harvested or possessed in or from the South Atlantic EEZ. Red porgy caught in the South Atlantic EEZ must be released immediately with a minimum of harm.

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3. In § 622.36, paragraph (b)(5) is suspended.

4. In § 622.37, paragraph (e)(3)(iv) is suspended.

5. In § 622.39, paragraph (d)(1)(vi) is suspended.

6. In § 622.45, paragraph (d)(5) is suspended and paragraph (d)(7) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(7) During March and April, no person may sell or purchase a gag or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel

for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to gag or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of gag or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the gag or black grouper;

(iii) The port and date of offloading from the vessel harvesting the gag or black grouper; and

(iv) A statement signed by the dealer attesting that the gag or black grouper was harvested from an area other than the South Atlantic.

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[FR Doc. 99-22956 Filed 9-2-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990820230-9230-01; I.D. 080599B]

RIN 0648-AM92

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Restricted Reopening of Limited Access Permit Application Process

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: This emergency interim rule provides an additional opportunity to obtain snapper-grouper limited access permits for those vessel owners who were previously determined by NMFS to be eligible for such permits but did not submit an application by the

application deadline, on or before October 14, 1998, provided they have not violated the permit requirement in the interim. This rule is intended to avoid adverse social and economic impacts on the affected individuals.

DATES: This rule is effective September 3, 1999 through March 1, 2000. Comments must be received no later than October 4, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments regarding the collection-of-information requirements contained in this rule may be submitted to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727-570-5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states 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), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Amendment 8 to the FMP, approved by NMFS on January 28, 1998, and implemented by final rule (July 16, 1998; 63 FR 38298), limits access to the snapper-grouper fishery. A vessel owner who met certain required landings and permit histories in the snapper-grouper fishery was eligible for an initial limited access permit, provided the vessel owner applied for such a permit by no later than October 14, 1998. NMFS notified each vessel owner of NMFS' initial determination of the individual's eligibility for either a transferable or trip-limited limited access permit. Notifications were sent by regular mail to the owner's address as shown in NMFS' permit records.

For various reasons, including hurricanes Bonnie, Georges, and Mitch, some permit eligibility notifications were not received and/or were not responded to on or before October 14,