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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 635

[Docket No. 100510220-4111-06]

RINs 0648-AY87 and 0648-AY90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Highly Migratory Species; Withdrawal of Emergency Regulations
Related to the Deepwater Horizon MC252 Oil Spill

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

ACTION: Termination of emergency regulations.

SUMMARY: NMFS terminates the emergency regulations promulgated in response to the Deepwater Horizon MC252 oil spill. The circumstances that created the need for emergency short-term fishing closures no longer exist. As of April 19, 2011, NMFS reopened all areas of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) that were previously closed to all fishing because of the oil spill. NMFS has worked closely with the U.S. Food and Drug Administration (FDA) to assess whether seafood from the Gulf EEZ is tainted or contaminated to levels that pose a risk to human health. NMFS and FDA have determined that seafood from all previously closed areas of the Gulf EEZ due to

the oil spill is safe for human consumption. Therefore, NMFS withdraws the emergency regulations that established a protocol for closing and reopening portions of the Gulf, South Atlantic, and Caribbean EEZ that were or could potentially be affected by the oil spill. The intent of this rule is to withdraw the now obsolete regulations from the codified text. While NMFS and FDA determined that seafood from areas previously closed due to the oil spill is safe for human consumption, NOAA and other natural resource trustees continue to study the impacts of the oil spill through the natural resource damage assessment process to identify the extent of injuries to natural resources and services, as well as the proposed restoration alternatives to compensate for such injuries.

DATES: The rule is effective [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the documents supporting this final rule may be downloaded from the Southeast Regional Office Web site at

[http://sero.nmfs.noaa.gov/deepwater horizon oil spill.htm](http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm).

FOR FURTHER INFORMATION CONTACT: Anik Clemens, telephone: 727-824-5305, e-mail: anik.clemens@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides

the legal authority for the withdrawal of emergency regulations that respond to an oil spill under section 305(c).

Background

NMFS responded to the April 20, 2010 Deepwater Horizon MC252 oil spill by closing a portion of the Gulf EEZ to all fishing through an emergency rule effective May 2, 2010 (75 FR 24822, May 6, 2010). The intent of the emergency rule was to prohibit the harvest of adulterated seafood. A second emergency rule effective May 7, 2010 (75 FR 26679, May 12, 2010), expanded the closed area in the Gulf.

The oil spill continually shifted locations in the Gulf and had the potential to reach the South Atlantic and/or Caribbean EEZ, due to wind speed and direction, currents, waves, and other weather patterns. As the weather conditions controlling the movement of the oil changed, the oil could have moved in directions not initially predicted. A third emergency rule effective May 11, 2010 (75 FR 27217, May 14, 2010) established regulations allowing NMFS to close and reopen portions of the Gulf, South Atlantic, and Caribbean EEZ to all fishing, as necessary, as new information became available, to respond to the evolving nature of the oil spill. NMFS announced new closed areas via Southeast Fishery Bulletins and NOAA Weather Radio. The public could also receive updated closure information by visiting the Southeast Regional Office Web site, calling the

Deepwater Horizon Oil Spill Hotline, signing up to receive a text message about the closure information, or following Twitter to get a tweet when the closed area changed. The largest area of the Gulf EEZ that was closed due to the oil spill covered 88,522 square miles (229,270 square km), representing 37 percent of the Gulf EEZ, on June 2, 2010.

Need for Termination of Regulations

On July 22, 2010, NMFS began reopening significant areas of the Gulf that had been previously closed due to the oil spill. The closed area was divided into eight smaller areas, where testing occurred from the outer closed areas in toward the core area surrounding the incident site. NMFS and FDA conducted both sensory and chemical tests in these areas to determine if seafood was safe for human consumption, and reopened areas based on the results of these tests. On April 19, 2011, NMFS reopened the last area surrounding the incident site. NMFS and FDA determined that sensory testing from this last area showed no detectable oil or dispersant odors or flavors in the samples, and the results of chemical analysis were well below levels of concern for oil. Therefore, all portions of the Gulf EEZ previously closed to all fishing due to the oil spill are now open and the seafood has been determined to be safe to eat.

The third emergency rule stated that the emergency regulations codified in Title 50 of the Code of Federal

Regulations would remain in effect until terminated by subsequent rulemaking, which would occur once the existing emergency conditions from the oil spill no longer exist. Section 305(c) of the Magnuson-Stevens Act provides the authority for implementing emergency regulations responding to an oil spill, as well as the withdrawal of such regulations. "Any emergency regulation or interim measure promulgated under this subsection that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has an opportunity to comment after the regulation is published..." Because the public was given an opportunity to comment on each emergency rule related to the Deepwater Horizon MC252 oil spill and the circumstances that created the need for emergency short-term fishing closures no longer exist, NMFS withdraws the emergency regulations related to the Deepwater Horizon MC252 oil spill from the codified text. While NMFS and FDA determined that seafood from areas previously closed due to the oil spill is safe for human consumption, NOAA and other natural resource trustees continue to study the impacts of the oil spill through the natural resource damage assessment process to identify the extent of injuries to natural resources and services, as well as the proposed restoration alternatives to compensate for such injuries.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that termination of the emergency regulations related to the Deepwater Horizon MC252 oil spill is consistent with the Magnuson-Stevens Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and the opportunity for public comment is unnecessary because the public was given an opportunity to comment on each emergency rule related to the Deepwater Horizon MC252 oil spill, and now the circumstances that created the need for emergency short-term fishing closures no longer exist. NMFS and FDA have determined that seafood from all previously closed areas of the Gulf EEZ due to the oil spill is safe for human consumption. All that remains is to withdraw the now obsolete regulations related to the Deepwater Horizon MC252 oil spill from the codified text.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this rule under 5 U.S.C 553(d)(3).

Because prior notice and opportunity for public comment are not required 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 Parts 622 and 635

Fisheries, Fishing, Deepwater Horizon.

Dated: February 18, 2014.

Samuel D. Rauch III,
Deputy Assistant Administrator For Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622 and 635 are 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.

§ 622.14 [Removed and Reserved]

2. Section 622.14 is removed and reserved.

PART 635--ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

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

§ 635.21 [Amended]

4. In § 635.21, paragraph (a)(4)(vii) is removed.

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