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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679-5356-02]

RIN 0648-XF499

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revised 2017 Recreational Fishing Season for Red Snapper Private Angling Component in the Gulf of Mexico

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

ACTION: Temporary rule; re-opening.

SUMMARY: NMFS is re-opening the private angling component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. The Federal recreational season for red snapper in the Gulf EEZ re-opens at 12:01 a.m., local time, on June 16, 2017. For recreational harvest by the private angling component, from June 16, 2017, through Labor Day, September 4, 2017, the season will be closed Monday through Thursday with the exception of July 3, July 4, and September 4. After September 4, 2017, the private angling component will be closed through the end of the current fishing year. For recreational harvest by the Federal for-hire component, the season is unchanged and closes at 12:01 a.m.,

local time, on July 20, 2017. This temporary rule supersedes the previously announced Gulf red snapper 2017 private angling component season.

DATES: The reopening is effective each weekend, from 12:01 a.m., local time, Fridays, through 12:01 a.m., local time, Mondays, beginning June 16, 2017, until 12:01 a.m., local time, September 5, 2017. The reopening is also effective from 12:01 a.m., local time, July 3, 2017, until 12:01 a.m., local time, July 5, 2017; and from 12:01 a.m., local time, September 4, 2017, until 12:01 a.m., local time, September 5, 2017. The recreational fishing season will then be closed until it reopens on June 1, 2018.

FOR FURTHER INFORMATION CONTACT: Samuel D. Rauch, III, NMFS Office of the Assistant Administrator, email: nmfs.redsnappercomments@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial and recreational sectors are managed by separate quotas. Amendment 26 to the FMP established an individual fishing

quota program for commercial red snapper fishermen (71 FR 67447, November 22, 2006). Amendment 27 to the FMP established an annual June 1 start date for the recreational season that currently applies to both recreational components of the sector (73 FR 5117, January 29, 2008). The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component and the Federal for-hire component (80 FR 22422, April 22, 2015).

Currently, the Gulf of Mexico stock of red snapper is overfished. In 2005 (Amendment 22), NMFS adopted a rebuilding plan enacted by the Gulf of Mexico Fishery Management Council (GMFMC) that was designed to rebuild the stock by 2032. Since implementation of the rebuilding plan, red snapper are larger and more abundant and are also expanding their range to areas of Florida where they have not been prevalent for some time.

This has increased economic opportunity for the commercial red snapper industry. That industry contains a limited number of tightly regulated vessels that are able to closely monitor their catches and stay within their allotted quota. As the quotas have increased to reflect improved stock health, the commercial catches have gone up and the commercial fishery has been able to reap the economic benefit of improved stock status. The ex-vessel value of commercial red snapper landings has increased from \$10 million

dollars in 2007 to nearly \$30 million dollars in 2015.

The same cannot be said of private recreational fishermen. Red snapper is harvested recreationally throughout the Gulf, with proportionally larger landings in the eastern Gulf. The desire for recreational fishing generates economic activity as consumers spend their income on various goods and services needed for recreational fishing. This spurs significant economic activity in the region where recreational red snapper fishing from charter vessels and private anglers generates at least \$47 million dollars annually (output/sales in 2014 dollars) from West Florida through Texas.

A decade ago, recreational fishermen could fish for red snapper for more than 6 months. As the stock has grown, anglers are catching more and larger fish across a broader geographic range. Catch per day has increased because of abundance and fish size, but also more concentrated fishing effort as the season has become compressed. Further, angler access in Federal waters has declined as the Federal recreational season has shrunk. On the commercial side, more fish has resulted in higher catch rates and higher profits. On the private recreational side, abundance has meant fewer and fewer days to fish in Federal waters, which is at the heart of the recreational fishing experience. While explicable, this situation is untenable. The decreasing number of days allowed for the private angler component in Federal waters has resulted in derby style fishing that

forces anglers to take increased risks to fish in bad weather and concentrates fishing effort in a narrow time window. States have responded by setting State seasons for the private angling component that are far longer than the Federal season, greatly complicating fishery management and further reducing the available days in Federal waters. The current situation has undermined the Federal-State partnership on management of this transboundary stock and threatens to undermine the very fabric of Federal fisheries management in the Gulf and elsewhere.

Red snapper is primarily a deeper water species, although it does occur patchily in deeper parts of state waters. Given that it occurs and is caught within the jurisdiction of the 5 Gulf states and in Federal waters, a unified approach to management is critical to preserve the sustainability of the stock while maximizing the economic and recreational value of the stock. The increasingly short Federal recreational season has undermined that needed cohesiveness. As the federal seasons have become shorter, the states have allowed for longer and longer state water seasons. Since state catches "come off the top", the long state seasons have made the Federal season even shorter, further exacerbating the problem. So while the amount of red snapper that can be caught by private anglers is near an all-time high, more than 81 percent of those fish will be caught during state seasons under status quo management.

This incongruous management has a number of direct and indirect negative effects on the fishery. Managing the private recreational fishery is far more difficult than managing the commercial fishery. The commercial fishery is comprised of relatively few boats that fill out regular reports and land their fish in a limited number of places. Their landings can be cross-checked with dealer reports at the limited number of licensed fish dealers and it is feasible to know where the vessel was when it caught the fish. In comparison, there are hundreds of thousands of private anglers who can decide to put a fishing line in the water from shore anywhere on the coast or get in a private boat to go virtually anywhere off shore from a public boat ramp or a dock on private property, making it difficult to reliably track angler catches and fishing effort.

As a result, understanding what is happening in the vast recreational fishery and then appropriately managing it is not something the Federal government can do alone. We rely on the states as integral partners in the co-management effort. The States license fishermen and collect significant amounts of independent science data that goes into the stock assessment process. If the states are not partners in a cohesive management scheme, the management system will not work for anyone.

The lack of a unified approach can also significantly increase the burden on the taxpayer from duplicative or overlapping management

structures. Historically, the states and Federal government have cooperated in a unified management, survey and data collection program to estimate fishing effort and overall stock abundance of red snapper and other Gulf stocks. The effect of the non-uniform management approach existent today is essentially the creation of six individual management and science regimes for a single species of fish. Each of the five states is creating or has created a unique way of collecting data on and managing red snapper, which is somewhat independent of the Federal system. This has not always been the case and the state and Federal managers are trying to ensure that the various systems are compatible. Nevertheless, the disparate approaches do increase the overall cost to the taxpayer and create inconsistent data results, further undermining the integrity of the system.

Against this backdrop, the agreement reached today between the Secretary of Commerce and the five states is extraordinary. For the first time since 2007, the five States have agreed amongst themselves on a singular private recreational summer fishing season of 39 essentially weekend days. In addition, Florida and Alabama have committed to forgoing fall seasons, eliminating the vast majority of private angler catch that has occurred in the fall. Mississippi and Louisiana have also committed to reviewing their fall seasons in light of the catch from the combined summer season, and may decide

not to allow fall fishing for red snapper. Texas, which accounts for less than half a percent of private angler catch of red snapper in its fall season, expects to remain open. While slightly disparate, the emergency actions by all five States to bring their State water seasons into alignment with the Federal water season for the rest of the summer, when the bulk of private recreational angling occurs, is a significant step forward in building a new Federal-State partnership in managing this transboundary fish stock. The Secretary believes this increased Federal-State cooperation will benefit the long term recovery of the red snapper stock while maximizing the economic benefits from recreational fishing in the Gulf region.

The States have now recommitted themselves to cohesive and unified management. If Federal waters will stay open for the same amount of time, they will modify their various individual seasons and adopt a singular uniform season Gulf-wide through September 4. There will no longer be any incentive to fish in closed Federal waters when State waters are open. State and Federal managers and data collectors can once again work as partners trying to achieve the same management objective.

This is extraordinary and the States are sacrificing substantial near shore fishing opportunities to allow this to happen. Many States will forgo weeks or months of fishing in State waters

in exchange for better fishing opportunities and larger fish in Federal waters. This represents a significant commitment from the States to restore a shared vision of uniform management.

Both the States and the Federal government understand what is at risk with this approach. The stock is still overfished. While the stock is ahead of its rebuilding target, if employed for a short period of time, this approach may delay the ultimate rebuilding of the stock by as many as 6 years. This approach likely could not be continued through time without significantly delaying the rebuilding timeline. Similarly, the approach will necessarily mean that the private recreational sector will substantially exceed its annual catch limit, which was designed to prevent overfishing the stock. Nevertheless, NMFS calculates that the stock will continue to grow, although at substantially more modest pace if this approach is adopted for one year. Given the precipitous drop in Federal red snapper fishing days for private anglers notwithstanding the growth of the stock, the increasing harm to the coastal economies of Gulf States, and that the current disparate approaches to management are undermining the very integrity of the management structure, creating ever-increasing uncertainty in the future of the system, the Secretary of Commerce has determined that a more modest rebuilding pace for the stock is a risk worth taking.

As such, in coordination with the five Gulf States, the

Secretary of Commerce has determined to re-open the Federal private recreational season. The 2017 Federal recreational season was previously closed at 12:01 a.m., local time, on June 4, 2017, for the private angling component. The Federal for-hire component will close at 12:01 a.m. local time, on July 20, 2017 (86 FR 21140, May 5, 2017). All five Gulf States have indicated they will adopt State recreational fishing seasons through September 4, 2017, compatible with the Federal season announced through this temporary rule. The 2017 Federal recreational season for the private angling component is revised through this temporary rule and will be open an additional 39 days for a total of 42 days. In 2017, the private angling component will be open from June 1 through 4, June 16 through 18, June 23 through 25, June 30 through July 4, July 7 through 9, July 14 through 16, July 21 through 23, July 28 through 30, August 4 through 6, August 11 through 13, August 18 through 20, August 25 through 27, and September 1 through 4. The Federal season for the Federal for-hire component will remain the same and close at 12:01 a.m., local time, July 20, 2017. The commercial individual fishing quota program and the 2017 commercial quota remain unchanged through this temporary rule. The 2018 Federal recreational fishing seasons for the respective components will begin on June 1, 2018.

When the recreational component is closed, the bag and possession limits for red snapper in the respective component are

zero. Additionally, when the Federal charter vessel/headboat component or entire recreational sector is closed, these bag and possession limits apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters.

Classification

This action is taken under 50 CFR part 622 and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to provide additional recreational private angling fishing season days constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b) (B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the requirement to close the recreational components have already been subject to notice and comment, and all that remains is to notify the public of the closures. Providing prior notice and opportunity for

public comment are contrary to the public interest because of the need for timely re-opening of the Federal private angling component season. In addition, prior notice and opportunity for public comment would require time and many of those affected by the length of the recreational fishing season, particularly vacationing private anglers and associated businesses that are dependent on private anglers, need as much advance notice as NMFS is able to provide to adjust their personal and business plans to account for the recreational fishing season.

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).

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

Dated: June 14, 2017.

Samuel D. Rauch III,
Acting Assistant Administrator,
National Marine Fisheries Service.

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