

List of Subjects

49 CFR Part 1000

Administrative practice and procedure, Conflict of interests, Seals and insignia.

49 CFR Part 1001

Confidential business information, Freedom of information.

49 CFR Part 1004

Administrative practice and procedure.

By the Board, Chairman Morgan, Vice Chairman Morgan, and Commissioner Burkes.

Decided: August 23, 1999.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1000—[REMOVED]

1. Under the authority of 49 U.S.C. 721, part 1000 is removed.

PART 1001—INSPECTION OF RECORDS

2. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 702, and 49 U.S.C. 721.

3. Section 1001.1 is revised to read as follows:

§ 1001.1. Records available from the Board.

(a) The following specific files and records in the custody of the Secretary of the Surface Transportation Board are available to the public and may be inspected at the Board's office upon reasonable request during business hours (between 8:30 a.m. and 5 p.m., Monday through Friday):

(1) Copies of tariffs and railroad transportation contract summaries filed with the Board pursuant to 49 U.S.C. 13702(b) and 10709(d), respectively.

(2) Annual and other periodic reports filed with the Board pursuant to 49 U.S.C. 11145.

(3) All docket files, which include documents of record in a proceeding.

(4) File and index of instruments or documents recorded pursuant to 49 U.S.C. 11301.

(5) Surface Transportation Board Administrative Issuances.

(b) The following records, so-called "reading room" documents, are available for inspection and copying at the Board's office:

(1) Final decisions, including concurring and dissenting opinions, as

well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public; and

(4) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3) and that, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(c) The Board maintains, and makes available for inspection and copying, indexes of the documents described in paragraph (b) of this section. Final decisions are indexed in the "Surface Transportation Board Daily Releases", which is issued by the Board every working day. This document also explains how copies of decisions can be purchased. The remaining documents are indexed as they are made available.

(d) Documents described in paragraph (b) of this section that were created on and after November 1, 1996, are indexed by service date or date of issuance and are available for viewing and downloading from the Board's Electronic Reading Room at www.stb.dot.gov, the Board's website. Final decisions are maintained in a database that is full text searchable.

4. Part 1004 is revised to read as follows:

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

Sec.

1004.1 Gifts, donations, and hospitality by carriers.

1004.2 Misrouting, adjustment of claims.

Authority: 49 U.S.C. 721.

§ 1004.1 Gifts, donations, and hospitality by carriers.

It is unlawful for any common carrier engaged in interstate or foreign commerce to offer, make, or cause any undue or unreasonable preference or advantage to any person. Gifts or services or anything of substantial value to particular shippers or their representatives are considered violations of the law. Expenditures for such gifts may not support requests to increase carrier rates. The Board shall take appropriate enforcement action to redress such unlawful expenditures.

§ 1004.2 Misrouting, adjustment of claims.

Carriers should adjust claims for damages resulting from misrouting. Where a carrier admits responsibility for

billing, forwarding, or diverting a shipment over a higher rated route than that directed by the shipper or otherwise available, the misrouting carrier should refund the difference to the shipper (or reimburse the delivering carrier, as the case may be). Where the misrouting carrier alleges justification for using the higher rated route, the Board may, at its discretion and upon appropriate petition, determine or express an advisory opinion on the lawfulness of such routing. This interpretation must not be used to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for routing instruction. Damages caused by misrouting are not overcharges.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506119-9236-02; I.D. 040799B]

RIN 0648-AM66

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 the approved provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The rule establishes a 4-fish recreational red snapper bag limit with a 0-fish bag limit for the captain (operator) and crew of a charter vessel or headboat and changes the open periods of the fall red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning September 1 each year. The rule's intended effect is to maximize the economic benefits from the overfished red snapper resource within the constraints of the red snapper stock rebuilding program.

DATES: This final rule is effective October 1, 1999, except for the amendments to §§ 622.34(l) and 622.34(m), which are effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy E. Crabtree, 727-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone of the Gulf of Mexico is managed under the FMP. The Council prepared the FMP, which was 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.

In accordance with the framework procedures of the FMP, the Council recommended, and NMFS published, a proposed rule (64 FR 34756, June 29, 1999) to: Set the opening date of the recreational red snapper fishing season at March 1, beginning with the 2000 fishing year; establish a 4-fish recreational red snapper bag limit with a 0-fish bag limit for captain and crew of a charter vessel or headboat; and change the open periods of the fall red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning September 1 each year. The Council also recommended a reduction in the minimum size limit for red snapper from 15 (38.1 cm) inches to 14 inches (35.6 cm) total length. NMFS disapproved this measure under the FMP framework procedures prior to publication of the proposed rule; the preamble to the proposed rule explained NMFS' rationale for this disapproval action. After considering the Council's proposed red snapper measures and the public comments, NMFS has approved the proposed 0-fish bag limit for captain and crew of the for-hire vessels, the 4-fish bag limit for persons not fishing under the commercial quota, and the change in the duration of the commercial fall season open periods. NMFS has disapproved the proposed delay in the opening of the recreational red snapper fishing season (see response to comment 2 under "Comments and Responses"). The preamble to the proposed rule described the need and rationale for these approved measures and also explained NMFS' rationale for disapproving the Council's recommendation to reduce the minimum size limit for red snapper to 14 inches. That information is not repeated here.

Comments and Responses

NMFS received 197 written comments on the proposed rule. A summary of the comments and NMFS' responses follow.

Comment 1: The Council requested that NMFS disapprove the 0-fish bag limit for captain and crew of for-hire vessels. The Council contends that this measure was explicitly linked with its proposal for a 4-fish bag limit and a 14-inch (35.6-cm) minimum size limit. The intent of these combined measures was to provide a substantial extension of the recreational season. The Council states that because NMFS disapproved the 14-inch (35.6-cm) minimum size limit, approval of the 0-fish bag limit for captain and crew measure would be inconsistent with its original intent.

Response: NMFS has approved the 0-fish bag limit for captain and crew of for-hire vessels based on analyses that suggest that this measure reduces catch rates by about 3 percent. The 0-fish bag limit for captain and crew, along with the 4-fish bag limit, will extend the recreational season substantially. In contrast, the 14-inch (35.6-cm) minimum size limit requested by the Council would have reduced the length of the recreational season, which is contrary to the intent of the Council, with little or no corresponding benefit to the stock.

Comment 2: One hundred ninety-four commenters opposed the delay of the start of the recreational season from January 1 to March 1. They argued that this delay would result in a 6-month closure of the recreational fishery and would cause economic hardship in the Texas tourism and hospitality industries.

Response: NMFS agrees that a delay in the opening of the recreational fishery until March 1 would cause economic hardship in areas such as South Texas that are dependent on winter tourism and that the adverse economic impact of the lost fishing days in January and February would be greatest in Texas. With a January 1 opening date, preliminary projections indicate the year 2000 fishing season would close on July 29; with a March 1 opening these analyses project an August 27 closure. Thus, the measure would extend the season further into the summer but would result in a net loss of 30 fishing days. The Council's economic analysis based on a total allowable catch of 9.12 million lb, a 5-fish bag limit, and a 15-inch minimum size limit suggests a net loss of 6,891 total fishing trips—a 1.76 percent reduction. Of these, 1,566 would be for-hire trips. While a reduction in recreational fishing effort and an

extension of the season further into the summer were the intent of the Council in proposing to delay the start of the season until March 1, NMFS has disapproved this measure based upon finding it inconsistent with national standard 4 of the Magnuson-Stevens Act, which requires that the allocation of fishing privileges be fair and equitable. Approval of this measure would place an unfair economic burden on the Texas for-hire sector and would shorten the red snapper recreational fishing season.

Comment 3: Nineteen commenters supported a 4-fish bag limit; 171 commenters supported a 5-fish bag limit.

Response: NMFS believes that a bag limit of no more than 4 fish per person is necessary to reduce catch rates and extend the recreational fishing season. The Magnuson-Stevens Act requires NMFS to close the red snapper recreational fishery once the quota is caught. The Council's Socioeconomic Panel has noted that a lower bag limit with a longer season yields more economic benefits than a higher bag limit with a closure, provided the lower bag limit does not discourage anglers from fishing. Based on public testimony, the Council believes that a 4-fish bag limit would not significantly discourage anglers from fishing.

Comment 4: One individual commented on the proposed change in the duration of the commercial fall season from the first 15 days of each month to the first 10 days of each month until the fall subquota is reached. This individual believes the current commercial season has caused economic hardship in the commercial sector and suggested a continuation of the spring commercial season along with a 100-lb (45.5-kg) trip limit for the remainder of the year. This individual suggested that the fall season be eliminated if necessary to prevent exceeding the commercial quota.

Response: Trip limits to allow a red snapper bycatch were not part of the regulatory amendment submitted by the Council. The Council may wish to consider additional changes for its 2000 red snapper commercial season specifications.

Changes From the Proposed Rule

For the reasons discussed under the Response to Comment 2, NMFS has disapproved the measure delaying the opening of the recreational red snapper fishing season until March 1. That measure has been removed from this final rule.

Classification

This final rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The amendments to §§ 622.34(l) and 622.34(m) are necessary to mitigate derby fishery effects, e.g., market gluts and lower exvessel prices, and to prevent associated adverse social and economic impacts. It is essential that these amendments are effective when the fall commercial red snapper season opens on September 1, 1999. Accordingly, under authority set forth at 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds for good cause that a 30-day delay in the effective date of those measures would be contrary to the public interest.

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 § 622.34, the suspension of paragraph (l) is lifted; paragraph (m) is removed; and paragraph (l) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on September 1, whichever occurs first. From September

1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

* * * * *

3. In § 622.39, the suspension of paragraph (b)(1)(iii) is lifted; paragraph (b)(1)(vi) is removed; and paragraph (b)(1)(iii), is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—4, except that for an operator or member of the crew of a charter vessel or headboat, the bag limit is 0.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 052499C]

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark Species; Adjustments

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

ACTION: Fishery reopening; fishing season notification.

SUMMARY: NMFS has determined that the large coastal shark (LCS) commercial fishery quota for the second semiannual

fishing season has not been reached. Therefore, NMFS notifies eligible participants that the commercial fishery for LCS in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open beginning September 1, 1999, and will close September 30, 1999, at 11:30 p.m. local time. Both the ridgeback and non-ridgeback sectors of the LCS fishery will open and close on these dates. This action is necessary to ensure adequate opportunity for eligible fishery participants to harvest the available quota and to ensure that the adjusted semiannual quota for LCS for the period July 1 through December 31, 1999, is not exceeded.

DATES: The commercial fishery for LCS will open effective September 1, 1999, and will close effective 11:30 p.m. local time September 30, 1999, and will remain closed through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Steve Meyers, 301-713-2347; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

The annual commercial quota of LCS to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters is apportioned between two equal semiannual fishing seasons. The second semiannual quota for LCS of 642 mt dw was reduced by the overharvest of 57 mt dw in the first semiannual fishing season such that 585 mt dw was available for harvest for the semiannual period beginning July 1, 1999.

Dealer reports and state landings summaries for the period July 1 through July 28, 1999, indicate that approximately 278.5 mt dw of the available second semiannual LCS subquota of 585 mt dw have been harvested at a rate of 9.9 mt dw per day. Approximately 306.5 mt dw of the LCS subquota have not been harvested. Therefore, given a catch rate of approximately 9.9 mt dw per day, NMFS believes that the available quota will be attained within 30 days and that a LCS commercial fishery reopening from September 1 through September 30, 1999, will allow adequate opportunity for fishermen to harvest the available quota and will ensure that the quota is not exceeded. Therefore, the LCS commercial fishery will open