

mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the Letter of Authorization shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a Letter of Authorization shall be published in the **Federal Register** within 30 days of a determination.

#### **§ 217.67 Renewals and modifications of Letters of Authorization.**

(a) A Letter of Authorization issued under § 216.106 and § 217.66 of this chapter for the activity identified in § 217.60(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1) of this chapter), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous Letter of Authorization under these regulations were implemented.

(b) For Letter of Authorization modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1)) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed Letter of Authorization in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the Letter of Authorization.

(c) A Letter of Authorization issued under § 216.106 and § 217.66 of this chapter for the activity identified in § 217.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the USAF regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the

goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in a Letter of Authorization:

(A) Results from the USAF's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed Letter of Authorization in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.62(c) of this chapter, a Letter of Authorization may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 622 and 635**

[Docket No. 100510220-4111-06]

RIN 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 February 24, 2014.

**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, email: [anik.clemens@noaa.gov](mailto: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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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100120035-4085-03]

RIN 0648-AY26

#### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 14

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements approved measures in Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 14 was developed by the Mid-Atlantic Fishery