Gulf of Mexico Fishery Management Council

Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico

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Dr. Roy Crabtree
Regional Administrator
National Marine Fisheries Service
263 13th Avenue South
St. Petersburg, Florida 33701

Dear Dr. Crabtree:

At its April 15-18, 2013 meeting, the Gulf Council passed a motion requesting that the emergency rule establishing authority for NMFS to implement state-specific closures of the EEZ to recreational red snapper fishing be rescinded. The emergency rule had been requested by the Council at its February 5-8, 2013 meeting, and was implemented by NMFS effective March 25, 2013 through September 23, 2013 [78 FR 17882]. (See this rule for definitions of state boundary lines into the EEZ.)

At the time of the original emergency action request, the impact of this rule on the federal recreational red snapper season was unknown. Since that time, the Southeast Regional Office staff has conducted an analysis on the impact of the rule on the EEZ off of the individual states. Based on the inconsistent recreational fishing seasons adopted by the States of Texas, Louisiana, and Florida with the federal season, and the States of Mississippi and Alabama staying consistent with the federal season, the following state-specific federal seasons would be authorized under the emergency rule (all seasons would begin on June 1):

Texas	12 days
Louisiana	9 days
Mississippi	28 days
Alabama	28 days
Florida	21 days

If state-specific closed seasons were not implemented, then the single Gulf-wide federal recreational fishing season for red snapper would be 22 days.

With some states having more than three times as many EEZ days as others, the Council feels that this differential is excessive and is socially and economically disruptive. There are two ways in which this disruption can manifest itself.

1. Federally permitted charter vessels and headboats are required to abide by the more restrictive of state or federal regulations when fishing in state waters. As a result, for-hire vessels operating from states with inconsistent regulations will be subject to the shorter federal season while for-hire vessels from states with consistent regulations will have longer seasons. Furthermore, the for-hire federal red snapper fishing season will vary among the three inconsistent states. This is a violation of National Standard 4, which states that conservation and management measures shall not discriminate between residents of different states. In addition, if at some future time the Council allocates catches between the for-hire and private recreational sectors, this could result in a permanent reallocation of harvest from the for-hire to the private sector. The Council has, in a separate letter, requested this regulation be lifted in an emergency action to remove this regulation. If the request is approved, it will resolve this specific issue, but not other issues associated with regional EEZ closures.

2. Private recreational vessels and for-hire vessels that are not federally permitted will be able to fish in state waters under state regulations when the EEZ is closed. While this theoretically allows all private fishermen to continue to fish for red snapper, successful, experienced fishermen have invested years of time and effort into locating productive fishing areas. In most cases, these fishing locations are likely in the EEZ. Even though private fishermen can all fish in state waters, the likelihood of success will switch from those individuals who fish mostly in the EEZ to those who are experienced fishing for red snapper in state waters, creating both social and economic disruptions.

There are three possible ways in which this request to rescind regional EEZ closures can be implemented.

1. Emergency action. Although some differences in the EEZ season off of the different states was expected, the excessive differences noted above were unforeseen. These differences in seasons, as well as the effective allocations of landings from the for-hire sector to the private recreational sector create serious management problems, both short-term and long-term. The regulation cannot be rescinded in time for the June 1 season opening using the normal rule-making process; therefore, immediate benefits of rescinding the rule through an emergency action outweigh the benefits of the normal rule-making process.

2. Correction of an erroneously published rule. In the Environmental Assessment[1] for the emergency rule that implemented the regional closure provision, the Finding of No Significant Impact (FONSI) found that the emergency rule would not significantly affect the quality of the human environment. However, this finding is incorrect based on what

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1 http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/rs_er/documents/pdfs/gulf_rs_closure_authority_ea.pdf

appear to be incorrect conclusions of at least two of the FONSI's criteria. These include criterion 7 (Are significant social or economic impacts interrelated with natural or physical environmental effects?), and criterion 8 (Are the effects on the quality of the human environment likely to be highly controversial?). The Environmental Assessment did not consider the differential impacts to for-hire vessels from different states, the effective shift in allocation from the for-hire sector to the private recreational sector, or the shift within the private recreational sector from those individuals experienced with fishing in the EEZ to those more experienced with fishing in state waters. Had these issues been considered, the FONSI would have likely found the impacts with respect to criteria 7 and 8 to be both significant and controversial, and the emergency rule request would not have been approved. Recently, with respect to Gulf Council actions, NMFS published a rule on June 24, 2009 to resolve an error contained in the rule to implement Amendment 30B [74 FR 30001]. Could a rule be published to rescind the approved regional closure due to an error in the conclusions of the FONSI?

3. Non-implementation. The emergency rule implemented under Section 622.43(a)(1)(iv) states, "if one or more Gulf states establish less restrictive red snapper regulations than federal regulations, NMFS **may** reduce the recreational red snapper season in the Gulf EEZ off those states". Since the regulation uses may rather than shall, it leaves open the option for the Regional Administrator to not implement state-specific closures. In such a situation, the requirement to not exceed the combined recreational quota would still call for a Gulf-wide closure. Furthermore, virtually every other fishing closure regulation in 50 CFR states specifically that the Regional Administrator or the Assistant Administrator for Fisheries will file a notice of closure. Section 622.43(a)(1)(iv) merely states that NMFS may reduce the season, without specifying who within NMFS has that responsibility.

The Council's policy as established by its vote at the April Council meeting is to retain the Gulf-wide recreational red snapper closures rather than state-specific closures for the 2013 season. That Council requests that you implement this policy, either by one of the above methods or by any other suitable method.

Sincerely,

Doug Boyd
Council Chair

SMA

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