

DEPARTMENT OF COMMERCE

50 CFR Part 653

[Docket No. 80468-8123]

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 2 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This rule sets the total allowable catch (TAC) of red drum in the exclusive economic zone (EEZ) at zero, and makes technical corrections to the specification of the fishing year and to the allowable catch and allocation procedures. The intent of this rule is to protect the red drum spawning stock from overfishing.

EFFECTIVE DATE: This rule is effective 0001 hours, local time, June 29, 1988.

ADDRESS: A copy of Amendment 2, which includes the environmental assessment and regulatory impact review, may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The red drum fishery is managed under the FMP and its implementing regulations at 50 CFR Part 653, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). This rule implements Amendment 2 to the FMP.

In accordance with Amendment 1 to the FMP, NMFS' Southeast Fisheries Center prepared an October 1987 stock assessment report. That report concluded that excessively high mortality rates on juvenile red drum have resulted in adult red drum under 12 years of age being poorly represented in the offshore spawning stock. Stock conditions described in that report, analysis of the report, and recommendations stemming from it were discussed in the proposed rule to implement Amendment 2 (53 FR 12790, April 19, 1988) and are not repeated here.

Based on the stock assessment report and recommendations, the Secretary of Commerce (Secretary) implemented an emergency interim rule (53 FR 244, January 6, 1988) that set TAC at zero and prohibited harvest or possession of red drum in or from the primary area of the Gulf of Mexico EEZ from January 1 through March 30, 1988. At the Council's

request, the Secretary extended this rule for an additional 90 days, through June 28, 1988 (53 FR 7368, March 8, 1988).

This rule continues the zero TAC and the harvest and possession restrictions implemented by the emergency interim rule. When future stock assessments indicate that red drum harvest in the EEZ, or a portion thereof, may be safely resumed, the Council will amend the FMP to change the TAC and establish allocations. A description of the changes to the FMP and the regulations was contained in the proposed rule and is not repeated here.

Comments and Responses

Summary of Comments

Eight letters were received commenting on the proposed rule. The U.S. Coast Guard, a State Marine Fisheries Commission, and two commenters from the private sector supported the proposed rule.

Three commenters opposed Amendment 2 and the proposed rule, while the Gulf Council objected to the removal of certain language from the existing regulations.

Letters from two commercial fishing organizations and a minority report signed by two Council members objected to eliminating commercial bycatch allowances of red drum in the EEZ. Objection to Amendment 2 and the proposed rule was based upon concerns that elimination of such a small bycatch allowance was not responsive to resource conservation, results in waste and disruption of legitimate fisheries, and does not focus accountability on the source of the problem—overharvest of red drum in State waters.

The same letters also asserted that the amendment does not use the best available scientific information, and that the estimated size of the offshore population even further reduces the urgency to eliminate commercial bycatch allowances that amount to only 300,000 pounds. All three letters encouraged some form of preemptive action that would either close State waters or require the adoption of management programs that would increase juvenile escapement to recommended levels.

Response to Comments

Throughout the process of managing the red drum fishery, the Secretary has favored a conservative approach because of the scarcity of information. Management of this resource was largely unanticipated until increased consumer demand for "blackened redfish" triggered an upsurge in commercial harvest. Within a short time,

red drum landings increased to unprecedented levels and prompted the Secretary to take action to control harvest while gathering information required to make informed judgments regarding the proper management of this important resource.

Elimination of red drum commercial bycatch allowances (and recreational catch allowances, as well) in the EEZ is responsive to the most recent (October 1987) stock assessment report, and in keeping with the conservative management approach advanced by the Secretary. Even though potential allowable total landings of red drum under Amendment 1 amount to only 625,000 pounds, continued fishing on a series of already depressed year classes can only worsen the problem; over a period of years, this could amount to substantial cumulative losses. There is no short-term solution to the resource conditions that exist. The presently depressed year classes (fish under 12 years of age) cannot be restored to former levels. The only solution is long-term rebuilding of the stock of mature red drum by increasing the escapement of juveniles from nearshore waters and strengthening the contribution to successive year classes.

Juvenile red drum occur in inshore and nearshore waters, while adult red drum occur in nearshore and offshore waters. Therefore, the management of red drum is dependent upon the actions of both State and Federal regulatory authorities. Cooperative State/Federal action is being promoted by the Secretary as the most reasonable approach to the management of this valuable shared resource; inaction or inadequate action by either entity will have an adverse impact on the population.

Insofar as Secretarial action is concerned, reducing catch levels to zero in the EEZ is the penultimate step in restricting fishing on red drum, leaving only Federal preemption of State regulatory authority as an additional possible management action. Certain constraints and considerations argue against the use of preemption. First, preemptory authority under the Magnuson Act does not extend into inshore estuarine waters (such as bayous, bays, and sounds) where, according to recreational and commercial catch statistics, the large preponderance of red drum are taken. Second, the Secretary believes that at this time it is neither necessary nor advisable for him to set forth a specific program which the States must implement in order to achieve 30 percent juvenile escapement. The States are

aware of the condition of the resource, have competent scientists and managers at their disposal, and are capable of developing programs that would allow acceptable levels of juvenile escapement. The States have been requested to participate in a cooperative management program and actions by States to date have been positive and encouraging. NOAA will continue to encourage and monitor the States' actions on increasing juvenile escapement. Preempting State authority and dictating the terms of State management programs at this time would only serve to undermine the cooperative State/Federal management approach that the Secretary has promoted.

Undoubtedly, the elimination of red drum harvest in the EEZ will result in some waste and will disrupt other legitimate fisheries. These losses and inconveniences are not unlike those resulting from the closure of any fishery and are simply unavoidable costs associated with the management of a fishery.

Allegations that Amendment 2 was not based upon the best available scientific information largely stem from the release of preliminary assessment data regarding the size of the offshore adult population. Studies to determine the size of the offshore population commenced in 1986 when the Secretary first took emergency action to curtail red drum harvest. It was realized that information on the offshore population would be essential to the formulation of an effective management program, so additional funding was secured to initiate mark-recapture studies and aerial surveys to determine red drum movement and migration, as well as the age, size, and sex composition of the spawning stock. A preliminary analysis of these data indicate an adult standing stock of the magnitude of 123 million pounds. These data will be more thoroughly evaluated and the results will form the nucleus of the next annual red drum stock assessment that, by the terms of the FMP, is prepared for the Council each October. A point estimate of 123 million pounds, in itself, does not indicate the size of the offshore stock prior to the sudden increases in harvest, but does serve as a point of departure for measuring further changes in population size. (NMFS' fishery scientists have indicated that the 123-million-pound estimate is equivalent to about one-half of the offshore standing stock prior to 1980.) The magnitude of the offshore population, however, does not diminish either the reasonableness or the urgency of presently eliminating

commercial bycatch allowances or limited recreational quotas, as that action is based upon the risk of further reducing the severely depressed year classes.

The Council objected to removal of § 653.3(d), recently redesignated § 653.3(c), which requires, "A person landing red drum from the recreational fishery or from a commercial fishery, other than a directed red drum fishery, must comply with the landing and possession laws of the State where landed." This section refers only to fisheries conducted in the EEZ. The Council's objection is based on concern that elimination of this language will remove an important element in the management strategy for red drum, specifically, that cooperative State/Federal programs are essential. The Council originally included the quoted language so that State restoration efforts would not be circumvented. During the period that no harvest of red drum is allowed, that language is not applicable. Nevertheless, in response to the Council's objection, it is being retained and revised to make it clear that, at such time as a TAC is specified, the landing and possession laws of the State where landed will apply to a person landing red drum, other than from a directed commercial red drum fishery.

Changes from the Proposed Rule

The definitions for *Commercial fishing (fishery)* and *Directed commercial red drum fishing (fishery)* are not removed in this final rule. As noted above, § 653.3(d) has been redesignated § 653.3(c); it is revised in lieu of being removed. Because several of the prohibitions listed in § 653.7 have been removed by a recently published final rule, technical amendment, that consolidates into a new 50 CFR Part 620 those regulations common to all domestic fisheries, the prohibition that appeared in the proposed rule at § 653.7(a)(4) is redesignated § 653.7(g). Other minor editorial and technical corrections are made to the rule as proposed.

Classification

The Secretary determined that Amendment 2 is necessary for the conservation and management of the red drum fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 2 describing the impact on the environment as a result of this rule. Based upon the EA, the Assistant Administrator for Fisheries has determined that there will be no

significant impact on the human environment. A copy of the EA is available (see **ADDRESS**).

The Under Secretary, NOAA, determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review (RIR) on this rule. A summary of the economic effects was included in the proposed rule and is not repeated here. A copy of the RIR is available (see **ADDRESS**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. A summary of effects was included in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act. The collection-of-information requirements formerly applicable to commercial vessels that take red drum as incidental catch are removed by this rule. The collection-of-information requirements of the FMP that remain in effect were approved under OMB Control Number 0648-0177.

The Assistant Administrator for Fisheries, NOAA, determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, Alabama, Mississippi, and Louisiana. Texas does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Louisiana and Mississippi agreed with this determination. Alabama and Florida failed to comment within the statutory time period; therefore, consistency is automatically implied.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator for Fisheries, NOAA, finds that it would be contrary to the public interest in effective management of the red drum resource to delay for 30 days the effective date of this rule. The emergency interim rule which is in effect through June 28, 1988, currently provides necessary conservation measures for red drum. To continue those

conservation measures without interruption, it is necessary that this rule become effective on June 29, 1988. In addition, no premature change in fishing practice will be caused by advancing the effective date of this final rule, because it merely continues restrictions which are already in effect under the emergency rule.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 22, 1988.

James W. Brennan,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 653 continues to read as follows:

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

2. In § 653.2, the definitions for *Recreational fishing (fishery)*, and *Trip* are removed; and new definitions for *Overfishing* and *Spawning stock biomass per recruit (SSBR) ratio* are added in alphabetical order to read as follows:

§ 653.2 Definitions.

Overfishing means a fishing mortality rate that prohibits attaining the spawning stock goal or threshold, which is established at a 20 percent spawning stock biomass per recruit (SSBR) ratio.

Spawning stock biomass per recruit (SSBR) ratio is an index of the impact of fishing mortality on the lifetime reproductive potential of recruits to the population. With no fishing mortality, the SSBR is 100 percent. Combinations of fishing mortality and the average age at which a year class becomes subject to exploitation in the fishery give rise to lower levels of SSBR, all of which can be expressed as percentages of the maximum.

3. In § 653.3, paragraph (c) is revised to read as follows:

§ 653.3 Relation to other laws.

(c) At such time as a TAC is specified, a person landing red drum, other than from a directed commercial red drum fishery, must comply with the landing and possession laws of the State where landed.

§ 653.4 (Reserved)

4. In § 653.4, the text is removed and the section heading is reserved.

5. In § 653.5, paragraphs (a), (b), (c)(4), (c)(5), (d), (f), and (g) are removed; paragraphs (c) and (e) are redesignated (a) and (b), respectively; in newly redesignated paragraph (a)(2), the word "and" is added after the semicolon; and newly redesignated paragraph (a)(3) is revised, to read as follows:

§ 653.5 Reporting requirements.

(a) * * *

(3) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

6. In § 653.7, paragraphs (b), (c), (d), and (h) through (m) are removed; paragraphs (e), (f), (g), and (n) are redesignated (b) through (e), respectively; in paragraph (a) and in newly redesignated paragraphs (b) and (c), the references to "§ 653.22(c)", "§ 653.4 and § 653.5", and "§ 653.5(e)" are revised to read "§ 653.22(b)", "§ 653.5(a)", and "§ 653.5(b)", respectively; and newly redesignated paragraph (d) is revised, to read as follows:

§ 653.7 Prohibitions.

(d) Retain on board a vessel or possess red drum in or from the secondary or primary areas of the EEZ as specified in § 653.22(a).

7. Section 653.20 is revised to read as follows:

§ 653.20 Fishing year.

The fishing year for red drum begins on January 1 and ends on December 31.

8. Section 653.21 is revised to read as follows:

§ 653.21 Quotas.

TAC is zero for each fishing year.

9. In § 653.22, paragraph (a) is revised; paragraphs (b), (d), and (e) are removed;

and paragraph (c) is redesignated (b), to read as follows:

§ 653.22 Harvest and landing limitations.

(a) *Harvest from the EEZ.* No red drum may be harvested or possessed in or from the secondary or primary areas of the EEZ. Red drum caught in the EEZ must be released immediately with a minimum of harm.

§ 653.23 (Reserved)

10. In § 653.23, the text is removed and the section heading is reserved.

11. In § 653.24, paragraph (a)(4) is revised; in paragraph (b)(1), the words "through fishing" are removed; and paragraphs (b)(2), (3), and (4) are revised, to read as follows:

§ 653.24 Allowable catch and allocation procedures.

(a) * * *

(4) Re-examine the spawning stock requirements (established as a spawning stock goal or threshold of a 20-percent SSBR ratio in relation to an unfished stock) and specify escapement levels of juvenile fish necessary to achieve these requirements;

(b) * * *

(2) Include consideration of fishing mortality rates, abundance relative to the established spawning stock goal or threshold, trends in recruitment, and whether overfishing is occurring;

(3) In specifying ABC, separately identify the quantity of the offshore population, in excess of the spawning stock goal or threshold, that may be harvested;

(4) When requested by the Council, include information on the levels of bag limits, size limits, specific gear harvest limits, and other restrictions required to attain the necessary escapement goal or prevent a user group from exceeding its allocation or quota under a TAC specified by the Council and on the economic and social impacts of such limits and restrictions.

PART 653, APPENDIX—[REMOVED]

12. The Appendix to Part 653 is removed.

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