Author

The primary author of this proposed rule is Dr. Steven M. Chambers, Fish and Wildlife Biologist, Office of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by establishing a new taxonomic group heading, "Arachnids", to follow the entries under "Insects" on the List of Endangered and Threatened Wildlife.

3. It is further proposed to amend § 17.11(h) by adding the following, in alphabetical order under the two indicated taxonomic group headings, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species: Common name	Species: Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
INSECTS:							
* * * * *							
Beetle, Kretschmarr Cave moss	*Texamaurops reddelli*	U.S.A. (TX)	NA	E		NA	NA
* * * * *							
Beetle, Tooth Cave ground	*Rhadine persephone*	U.S.A. (TX)	NA	E		NA	NA
* * * * *							
ARACHNIDS:							
Harvestman, Bee Creek Cave	*Texella reddelli*	U.S.A. (TX)	NA	E		NA	NA
Pseudoscorpion, Tooth Cave	*Microcreagris texana*	U.S.A. (TX)	NA	E		NA	NA
Spider, Tooth Cave	*Leptoneta myopica*	U.S.A. (TX)	NA	E		NA	NA

Dated: March 25, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-8520 Filed 4-18-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 80468-8068]

Red Drum Fishery of the Gulf of Mexico

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This proposed rule would (1) set total allowable catch (TAC) of red drum from the primary area of the exclusive economic zone (EEZ) at zero by reducing recreational and commercial quotas to zero, thereby extending the existing prohibitions on the harvest or possession of red drum in the secondary areas to the entire Gulf of Mexico EEZ and (2) make technical corrections to the specification of the fishing year and to the allowable catch and allocation procedures. The intended effect of this rule is to protect the red drum spawning stock from overfishing.

DATE: Written comments on this proposed rule will be received until Saturday, May 21, 1988.

ADDRESS: Comments on the proposed rule and requests for copies of Amendment 2 and its associated documents should be sent to 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). Amendment 1 to the FMP, prepared by the Gulf of Mexico Fishery Management Council (Council) and implemented October 16, 1987 (52 FR 34918; September 16, 1987), divided the EEZ into primary and secondary areas, prohibited the harvest or possession of red drum from the secondary areas (waters off Texas and Florida), and established an annual TAC in the primary area (waters off Louisiana, Mississippi, and Alabama). Under the TAC, annual quotas were etablished at zero for the directed commercial fishery, 200,000 pounds as incidental commercial catch in the shrimp fishery, 100,000 pounds as incidental catch in other commercial fisheries, and 325,000 pounds for the recreational fishery. The regulations also imposed a recreational bag limit of one red drum per person per trip in or from the primary area.

Under Amendment 1, the procedures for specification of TAC and allowable catch provide that, by October each year, NMFS' Southeast Fisheries Center (SEFC) is to prepare a stock assessment for the fishery, examining all the parameters related to the condition of the stock. A scientific stock assessment group (Group), appointed by the Council from qualified fishery scientists throughout the Gulf region, is to review the stock assessment reports and specify a range of acceptable biological catch (ABC) and the risks of adversely impacting the spawning stock biomass (SSB) associated with each harvest level within ABC. The Council then reviews the Group's report, sets TAC for the fishery, and allocates that TAC among the user groups. Under Amendment 1,

revision of the TAC and allocation levels requires amendment of the FMP.

In accordance with the management objectives of Amendment 1, the Council also requested that the States take appropriate steps within their respective geographical areas of authority to provide an escapement rate of juvenile fish to the spawning stock equivalent to 20 percent of those that would have escaped in the absence of any nearshore fishery. This level of escapement was estimated by scientists as the amount necessary to maintain the spawning stock at a level that would prevent recruitment failure and collapse of the fishery. A cooperative State/Federal management approach is essential to effective and successful management of this resource because of the interdependent relationship of nearshore and offshore stocks: juvenile red drum occur in nearshore and inshore waters, while mature adults generally occur offshore. Overfishing of either group adversely impacts the resource in both areas. Insufficient recruitment of juveniles to the offshore spawning stock results in too few spawners to replenish the population in nearshore waters.

Present Situation

SEFC's October 1987 stock assessment report indicated that the mortality rates of juvenile red drum from State waters continued to be excessively high during 1983–1986 and that the annual rate of juvenile escapement to the offshore adult stock for this period was less than two percent for all areas examined. The report also observed that length-frequency and aging studies indicated that adult red drum under 12 years of age were poorly represented in the spawning stock.

The report concluded that, given the high mortality rate associated with the fishery on juveniles, any significant increase in fishing mortality on adults would likely endanger recruitment inshore. This results from both the lowering of the number of spawners and the compression of the age distribution of spawners into the first few reproductive years. The report concluded that a 20 percent spawning stock biomass per recruit (SSBR) ratio (defined in § 653.2) was a reasonable goal or threshold for maintaining the spawning stock. However, it was also concluded that the goal of 20 percent escapement of juveniles established in Amendment 1 was incompatible with this spawning stock goal because of natural and fishing mortality on the adults.

The Group presented its first report to the Council under Amendment 1 procedures on December 2, 1987. Reviewing the most recent information available, including the information determined from adult red drum schools sampled by purse seine for mark-recapture and aging studies, the Group observed low recruitment of recent year classes to the spawning stock; fish younger than 12 years of age were poorly represented in the samples. Further, the Group noted that fishing mortality rates on juveniles are sufficiently high to drive the adult stock below the 20 percent SSBR goal or threshold for maintaining the spawning stock. The Group also observed that 1983–1986 exploitation rates were greatly in excess of levels that would allow realization of the management goal of 20 percent escapement of juveniles from the nearshore waters. From this information, the Group concluded:

> The most liberal interpretations of the data available suggest that, at present, escapement of juveniles to the adult stock is less than two percent, because inshore fishing mortality remains high in all States. Limited observations on the age composition of the offshore stock also support the contention that few fish have reached breeding age during recent years. This possible major decline in recruitment to the adult stock underscores the importance of maintaining and protecting all remaining breeding fish.

The Group recommended that the Council (1) set the ABC for the EEZ at zero until necessary escapement levels are attained, and (2) maintain the 20 percent SSBR ratio as an appropriate spawning stock goal or threshold, but increase the juvenile escapement rate from 20 to 30 percent in order to meet that goal. The Group agreed that the fishing mortality rate for adults (both recreational and commercial) is probably in the range of three to five percent, even with no allowable harvest in the EEZ, because there is a limited harvest of adults from nearshore waters and a limited incidental catch of red drum in other fisheries.

In December 1987, the Council adopted the report of the Group and initiated Amendment 2 to the FMP to set TAC at zero. The Council requested the Regional Director, NMFS, to initiate emergency action under section 305(e) of the Magnuson Act to reduce mortality on the SSB to zero in the EEZ until Amendment 2 could be implemented. Further, the Council requested each State to adopt rules that eventually would result in a juvenile escapement rate of 30 percent.

The Secretary of Commerce (Secretary) implemented an emergency 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).

Amendment 2 and this rule propose to continue the zero TAC and the harvest and possession implemented for the primary area by the interim emergency rule. When an SEFC stock assessment report and a Group recommendation indicate that red drum in the EEZ may be safely harvested without adversely impacting the SSB, the Council may allow resumption of the fishery by further amendment of the FMP.

Amendment 2 modifies Management Objective 1 and the statement of optimum yield in the FMP to provide for a 30 percent escapement rate for juvenile red drum (rather than 20 percent) to achieve and maintain the 20 percent SSBR ratio necessary to assure that recruitment overfishing does not occur. Amendment 2 and this rule also revise the procedure for determining allowable catch and allocations to provide a more scientifically correct description of the stock assessment and the Group review portions of this procedure. Amendment 2 also includes, as an addendum, revision of FMP Section 6.0 describing the habitat requirements of the stock to comply with a requirement recently added to the Magnuson Act by amendment.

This rule proposes to modify the reports required by § 635.5 from dealers and processors by eliminating the separate data elements for red drum harvested from the EEZ and those harvested from State waters. Accordingly, it is no longer necessary to retain the proviso at § 635.5(g) that States may require additional reports from dealers and processors. The authority of the States to collect data regarding red drum harvested from their waters is not affected by this action.

Concomitant with these changes, this rule proposes to delete definitions no longer used, add two new definitions, remove paragraphs and sections no longer applicable, and change "seasons" to "fishing year" to simplify and more properly designate the time period described in that section.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99–659, requires the Secretary to publish regulations proposed by the Council within 15 days of receipt. At this time the Secretary has not determined that the FMP amendment this rule would

implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for Amendment 2 describing the impact on the environment as a result of this rule. You may obtain a copy of the EA (see **ADDRESS**).

The Under Secretary, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. Amendment 2 would continue measures implemented by the Secretary's emergency rule to protect the red drum spawning stock while the States take actions to increase the escapement of juvenile red drum to the SSB.

The Council prepared a draft regulatory impact review (RIR) that concluded the proposed rule will have the following economic effects. Greater long-term benefits will result than from other management alternatives considered (1) in terms of maintenance and restoration of the SSB, thereby preventing recruitment overfishing and collapse of the stock, and (2) in terms of increased production for eventual harvest.

The revision to 30 percent in the escapement goal of juvenile red drum to the offshore spawning stock is not expected to have an immediate impact on the fishery. This is because actual escapement levels, now less than 2 percent, are far below the current 20 percent goal; harvest or possession of red drum from the secondary areas is already prohibited; and the TAC for the directed commercial fishery is currently set at zero in the primary area. The major effect of this revision will be a possible extension of the time that the TAC will be held at zero in an effort to rebuild the resource and prevent overfishing. The economic effects cannot be estimated, but the increased benefits of sustained harvests over the long term from the protection of the resource is expected to more than offset any potential costs from keeping the fishery closed an additional amount of time.

Although directed commercial fishing is currently set at zero, the proposed action to close the primary area to all harvest of red drum will serve to eliminate any bycatch by shrimp and other net vessels. This reduction in catch will have a minimal impact because the 1987 bycatch of 8,100 pounds by shrimp vessels and 19,700 pounds by other net vessels represents a very small percentage of those vessels' gross revenue (likely less than 1 percent in most cases). Other factors that would further mitigate any effects of this action include (1) the industry has already adjusted to the effects of the rule as a result of a prohibition of fishing in the primary area by an emergency rule implemented on January 1, 1988, and (2) bycatch by shrimp vessels is now negligible, because the requirement to use turtle excluder devices by some shrimp vessels will greatly reduce, if not eliminate, red drum bycatch by these vessels. Consumers of red drum are not expected to be significantly impacted by the ban on commercial fishing because red drum appear to have good substitutes, indicating a highly elastic demand curve and, therefore, a small loss in consumer surplus.

Recreational fishermen will also be impacted in the primary area since both private and charter vessels will be required to reduce their retention of red drum by the 325,000-pound annual quota currently allowed. The impact on fishermen is expected to be relatively small, since the current bag limit is only one fish per individual, and fishermen will still be able to catch the fish, but must release any red drum caught. There may be a monetary impact on charter vessel operators if they lose trips directed on red drum as a result of the proposed action. A maximum gross annual economic loss to the 63 charter vessels operating from Mississippi and Louisiana was estimated to be $44,847 or an average of $712 per vessel (no Alabama trips in the primary area targeted red drum). As in the commercial fishery, the maximum impacts will be mitigated since the industry has already made necessary adjustments due to the emergency rule; charter vessels may shift their activities to targeting other species; and many fishermen may find a trip satisfying by hooking and releasing red drum.

The proposed action will not increase Federal enforcement costs, because the cost of enforcing the zero TAC equals the cost of enforcing bag and incidental catch limits. You may obtain a copy of the draft RIR (see **ADDRESS**).

This proposed rule is exempt from the procedures of Executive Order 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A summary of effects is included above. 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 applicable to commercial vessels that take red drum as incidental catch are proposed to be removed by this rule. The collection-of-information requirements of the FMP 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. These determinations have been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

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

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 13, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is proposed to be 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 *Commercial fishing (fishery), Directed commercial red drum fishing (fishery), Recreatinal 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.

* * * * *

§ 653.3 [Amended]

3. In § 653.3, paragraph (d) is removed.

§ 653.4 [Amended]

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 as paragraphs (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 (a)(1), (2), (3), (8), (17), (19), (21), and (22) are removed; paragraphs (a)(4) through (7), (20), and (9) through (16) are redesignated (a)(1) through (13), respectively; in newly redesignated paragraphs (a)(1), (2), (5), and (8), the references to "§ 653.4(a)", "§ 653.5(e)", "§ 653.22(c)", and "(a)(10)" are revised to read "§ 653.5(a)", "§ 653.5(b)", "§ 653.22(b)", and "(a)(8)", respectively; and newly redesignated paragraph (a)(4) is revised, to read as follows:

§ 653.7 Prohibitions.

(a) * * *

* * * * *

(4) 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 in the EEZ must be released immediately with a minimum of harm.

* * * * *

§ 653.23 [Amended]

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) Reexamine 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.

* * * * *

Appendix A to Part 653 [Amended]

12. The Appendix to Part 653 is removed.

[FR Doc. 88-8535 Filed 4-14-88; 4:29 pm]

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