

schedule for a rulemaking to address emissions from Category 3 marine engines. Thus, we have determined that the requirements of the NTTAA do not apply. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of NTTAA policy.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. See the direct final rule EPA has published in the "Rules and Regulations" section of today's **Federal Register** for a more extensive discussion of Executive Order 13045.

*K. Statutory Authority*

The statutory authority for this action comes from section 213 of the Clean Air Act as amended (42 U.S.C. 7547). This action is a notice of proposed rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

**List of Subjects in 40 CFR Part 94**

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated: April 23, 2007.

**Stephen L. Johnson,**

*Administrator.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 070410083-7083-01; I.D. 040207C]

RIN 0648-AV45

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Vermilion Snapper Fishery Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule that would implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would reduce the minimum size limit for vermilion snapper to 10 inches (25.4 cm) total length (TL), eliminate the 10-fish recreational bag limit for vermilion snapper within the existing 20-fish aggregate reef fish bag limit, and eliminate the 40-day commercial closed season for vermilion snapper (from April 22 through May 31 each year). The intended effect of this proposed rule is to help achieve optimum yield (OY) by reducing vermilion snapper harvest limitations consistent with the findings of the recent stock assessment for this species.

**DATES:** Written comments must be received on or before May 14, 2007.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-AV45.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AV45.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Sarah DeVido, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Sarah DeVido.

Copies of the regulatory amendment, which includes an environmental assessment (EA), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813-348-1630; fax: 813-348-1711; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Sarah DeVido, telephone 727-824-5305; fax 727-824-5308; e-mail [sarah.devido@noaa.gov](mailto:sarah.devido@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Background**

In 2001, the Gulf of Mexico vermilion snapper stock was assessed using data through 1999. The findings from that assessment indicated the stock to be overfished and undergoing overfishing. Based on the assessment, the Council prepared Amendment 23 to the FMP, which implemented measures to end overfishing and rebuild the stock within 10 years. This plan was implemented on July 8, 2005 (70 FR 33385). In 2006, a new stock assessment was conducted through the Southeast Data, Assessment, and Review (SEDAR) process. This assessment included a new data set to assess the vermilion snapper stock through 2004. The findings from this assessment determined vermilion snapper to be neither overfished nor undergoing overfishing.

Based on the findings of this recent stock assessment, the rebuilding plan for vermilion snapper implemented in Amendment 23 is no longer necessary. Under the current rebuilding plan, harvest of vermilion snapper would not achieve the OY for the fishery. This is resulting in the unnecessary loss of social and economic benefits. National standard (NS) 1 of the Magnuson-Stevens Act requires that management measures prevent overfishing while achieving on a continuing basis the OY from the fishery. Therefore, the Council recommended and NMFS is proposing to implement the measures described above. This proposed rule contains a measure that would eliminate the annual commercial closure period, thus relieving a restriction in the commercial sector, and other measures for both the recreational and commercial sectors that allow for increased harvest of vermilion snapper consistent with national standard 1 and the best scientific information available.

**Current Rebuilding Plan**

The current rebuilding plan, under Amendment 23, is based on a stepped-harvest strategy that was designed to restore the vermilion snapper stock to the stock biomass needed to allow harvest at maximum sustainable yield (BMSY) in 10 years or less. The plan would reduce harvest to 1.475 million lb (0.669 million kg) for the first 4 years (2005-2008), increase to 2.058 million lb (0.933 million kg) for the next 3 years (2009-2011), and increase to 2.641 million lb (1.198 million kg) for the final 3 years (2012-2014). Overfishing was expected to end by 2008, three years after the plan was implemented. The final rule for Amendment 23 (70 FR 33385, July 8, 2005) implemented measures designed to achieve the

reductions necessary for the first 4-year interval of the rebuilding plan. These measures included increasing the minimum size limit in the vermilion snapper fishery to 11 inches (27.9 cm) TL, reducing the recreational bag limit to 10 fish within the 20-fish aggregate reef fish bag limit, and establishing a commercial closure from April 22 through May 31 each year.

#### Recision of Rebuilding Plan

The 2006 vermilion snapper stock assessment, conducted through the SEDAR process, incorporated new age data, where available, into their analyses. The results from this age-structured assessment indicated the vermilion snapper stock to be neither overfished nor undergoing overfishing.

The 2006 assessment also determined that stock biomass is generally declining and fishing mortality (F) is increasing. The SEDAR panel concluded that if fishing mortality were to continue on the same trajectory as it is today, using data from 1986 through the projected target dates, F could exceed FOY in 2012, however, it is not likely to exceed  $F_{MSY}$ , the overfishing threshold, through 2017. NMFS and the Council will continue to monitor the fishery to ensure compliance with the plan, the national standards, and other provisions of the Magnuson-Stevens Act.

After receiving the assessment report and recommendations from its Science and Statistical Committee (SSC) and Reef Fish Advisory Panel (RFAP), the Council decided to eliminate the management measures developed in Amendment 23. The stock appears healthy and the current regulations are more restrictive than necessary to protect the stock at this time. Therefore, this rule proposes to eliminate the regulations established for vermilion snapper by Amendment 23 that are causing the vermilion snapper fishery to be fished below OY. Eliminating the management measures established by Amendment 23 results in social and economic gain for the fishery.

#### New Management Measures

The following measures in this proposed rule are designed to achieve a 25.5-percent increase in vermilion snapper harvest fairly and equitably across the commercial and recreational sectors.

##### *Measures Applicable to the Recreational Vermilion Snapper Fishery*

This proposed rule would reduce the minimum size limit for vermilion snapper from 11 inches (27.9 cm) TL to 10 inches (25.4 cm) TL. Implementing this measure alone is expected to

increase harvest in the recreational sector by 20.4 percent. This proposed rule would also eliminate the 10-fish bag limit specific to vermilion snapper but would include vermilion snapper in the 20-fish aggregate reef fish bag limit. This alternative would allow recreational vermilion snapper harvest to increase another 1.4 percent.

##### *Measures Applicable to the Commercial Vermilion Snapper Fishery*

This proposed rule would reduce the minimum size limit for vermilion snapper in the commercial fishery from 11 inches (27.9 cm) TL to 10 inches (25.4 cm) TL, which alone is expected to increase harvest in the commercial sector by 12.6 percent. Elimination of the commercial seasonal closure is expected to increase commercial harvest of vermilion snapper by approximately 15.8 percent.

Together these recreational and commercial measures are expected to increase harvest of the vermilion snapper stock by 25.5 percent, which would allow vermilion snapper to be fished at the OY for the fishery.

#### Classification

At this time, NMFS has not determined the regulatory amendment is consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on the vermilion snapper regulatory amendment and this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from the Council (see ADDRESSES). A summary of the IRFA follows.

This proposed rule would reduce the minimum size limit for vermilion snapper to 10 inches (25.4 cm) TL, eliminate the 10-fish vermilion snapper recreational bag limit but include vermilion snapper in the 20-fish aggregate bag limit, and eliminate the April 22 through May 31 commercial closed season. The purpose of this action is to eliminate management measures that are causing the vermilion

snapper fishery to be fished at a rate below OY, which is resulting in the unnecessary loss of social and economic benefits. These regulations have been determined to no longer be required because the vermilion snapper stock has been determined to be healthy, not overfished, nor undergoing overfishing. The Magnuson-Stevens Act provides the legal basis for the rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The measures in this proposed rule would be expected to affect commercial reef fish operations, for-hire vessels operating in the reef fish fishery, and dealers and processors that receive vermilion snapper. As of October 2003, there were 1,158 active commercial reef fish permits. Of these entities, 441 vessels reported logbook landings of vermilion snapper, with most using vertical line gear. During the period 2000–2004, the average vessel operating in the commercial vermilion snapper fishery generated revenues of \$65,200 of which \$7,400 was from vermilion snapper harvests. These estimates included all vessels that landed at least 1 lb (0.5 kg) of vermilion snapper and all the trips taken by these vessels regardless of whether vermilion snapper was caught on that trip. These estimates are assumed to be lower bound estimates, however, since landings of all commercial species, whether from Federal or state fisheries, are not required to be recorded or captured by the logbook program, which captures only reef fish and coastal pelagic harvests.

An estimated 1,625 for-hire vessels are permitted to harvest reef fish in the Gulf of Mexico. This sector is comprised of charter boats that are generally smaller and charge a fee on a per-vessel basis, and headboats that are larger and charge a fee per angler. On average, charter boats are estimated to generate gross revenues ranging from \$58,000 in the eastern Gulf to \$81,000 in the western Gulf, or an overall average of \$64,000. The comparable values for headboats are \$281,000 and \$550,000, or an overall average of \$400,000.

The Small Business Administration (SBA) defines a small business operating in the finfish industry as one that is independently owned and operated, is not dominant in its field of operation, and has average annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing). The appropriate revenue benchmark for a vessel operating in the for-hire sector is \$6.5 million (NAICS code 713990, amusement and recreation industries). Based on the gross revenues presented

above, all commercial and for-hire fishing vessels and reef fish dealers potentially affected by the proposed regulations are determined, for the purpose of this analysis, to be small business entities.

Instead of a receipts threshold, the SBA uses an employment threshold for seafood dealers and processors, with the appropriate values of fewer than 100 employees for dealers and fewer than 500 employees for processors. A Federal permit is required for a fish dealer to purchase reef fish from commercial vessels. Based on permits files, there are 227 dealers holding permits to buy and sell reef fish species. All reef fish processors would be included in this total since a processor must be a dealer. Dealers often hold multiple types of permits and operate in both Federal and state fisheries. It is unknown what percentage of any of the average dealer's business comes from the vermilion snapper fishery.

Average employment information per reef fish dealer is unknown. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast is estimated at approximately 700 individuals, both part and full time. While all processors must be dealers, a dealer need not be a processor. Further, processing is a much more labor-intensive exercise than dealing. Therefore, given the employment estimate for the processing sector (700 persons) and the total number of dealers operating in the reef fish fishery (227), it is assumed that the average number of employees per dealer and processor would be unlikely to surpass the SBA employment benchmark and, for the purpose of this analysis, it is determined that all dealers that would be affected by this action are small entities.

None of the measures considered in this amendment would alter existing reporting and record-keeping requirements.

The proposed rule would be expected to increase net revenues in the commercial vermilion snapper fishery by approximately \$1.443 million, or approximately 3.5 percent of total average net revenues relative to the 2000–2002 fishery. If spread over the average 441 vessels that operated in the

fishery from 2000–2004, the increased net revenues expected to be generated as a result of the proposed rule equate to approximately \$3,300 per vessel or approximately 5 percent of average gross revenues.

Within the for-hire sector, the proposed rule would be expected to result in an increase of approximately \$3.158 million in net revenues. It is not possible to determine how many of the 1,625 entities permitted to operate in this fishery would be affected. If evenly distributed across all said entities, the expected increase in net revenues would equate to approximately \$1,900 per entity, or approximately 12 percent per entity. Since not all of the vessels permitted to operate in the for-hire reef fish fishery would be expected to participate in the vermilion snapper fishery, actual increases in net revenue per vessel for those vessels fishing for vermilion snapper would be expected to exceed these estimates.

The impact of the proposed rule on reef fish dealers cannot be determined with available data. However, although the current measures were originally projected to result in an approximate 26-percent reduction in vermilion snapper harvests, which would be recovered under the proposed rule, the vermilion snapper fishery comprises less than 10 percent of the total commercial reef fish fishery. Hence, the additional commercial harvests, and resultant effect on revenues or profits, that would be expected to occur as a result of the proposed rule, however, are not expected to be substantial relative to overall commercial reef fish sales.

Two alternatives, including the status quo, were considered for this proposed rule. The status quo would maintain current regulations in the fishery that are not biologically supported and would result in the loss of economic benefits. The second alternative allowed the continuation or suspension of the individual components of current vermilion snapper regulations. The continuation of any of these individual components would be expected to, similar to the status quo, result in the continued loss of economic benefits to the fishery. The proposed rule would rescind current regulations that have been determined to be unnecessary from

a biological perspective and would be expected to result in increased economic and social benefits to the fishery.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 23, 2007.

#### Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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.*

#### § 622.34 [Amended]

2. In § 622.34, paragraph (n) is removed and reserved.

3. In § 622.37, paragraph (d)(1)(ii) is revised to read as follows:

#### § 622.37 Size limits.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) Vermilion snapper—10 inches (25.4 cm), TL.

\* \* \* \* \*

4. In § 622.39, paragraph (b)(1)(v) is revised to read as follows:

#### § 622.39 Bag and possession limits.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch—20.

\* \* \* \* \*

#### § 622.45 [Amended]

5. In § 622.45, paragraph (c)(5) is removed.

[FR Doc. E7–8116 Filed 4–26–07; 8:45 am]

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