

Dated: November 8, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120924488-3671-02]

RIN 0648-XC966

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for South Atlantic Gag

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for gag in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for gag, as estimated by the Science Research Director, have reached the commercial annual catch limit (ACL). Therefore, NMFS closes the commercial sector for gag on November 13, 2013, for the remainder of the 2013 fishing year, through December 31, 2013. This action is necessary to prevent overfishing of the South Atlantic gag resource.

DATES: This rule is effective 12:01 a.m., local time, November 13, 2013, until 12:01 a.m., local time, January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727-824-5305, email: *Catherine.Hayslip@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes gag, is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for gag in the South Atlantic is 326,722 lb (148,199 kg), gutted weight, for the current fishing year, as specified in § 622.190(a)(7).

In accordance with regulations at § 622.193(c)(1), NMFS is required to close the commercial sector for gag when the commercial ACL (commercial quota) has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL (commercial quota) for South Atlantic gag has been met. Accordingly, the commercial sector for South Atlantic gag is closed effective 12:01 a.m., local time, November 13, 2013, until 12:01 a.m., local time, January 1, 2014. The recreational sector will continue to remain open until December 31, 2013.

Additionally, a seasonal closure is in place for the recreational and commercial sectors for gag from January through April each fishing year as specified in § 622.183(b)(1). During the seasonal closure for the recreational and commercial sectors for gag from January through April each fishing year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any gag. Therefore, the commercial harvest of gag will not commence until May 1, 2014.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having gag onboard must have landed and bartered, traded, or sold such gag prior to 12:01 a.m., local time, November 13, 2013. During this commercial closure, the bag limit and possession limits specified in § 622.187(b)(2)(i) and (c)(1), respectively, apply to all harvest or possession of gag in or from the South Atlantic EEZ, and the sale or purchase of gag taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of gag that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, November 13, 2013, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for gag apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1).

In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, *i.e.*, in state or Federal waters as specified in § 622.190(c)(1)(ii).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic gag and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under § 622.193(c)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for gag constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect gag since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL (commercial quota).

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

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