



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110831547-2425-03]

RIN 0648-BB26

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic  
Region; Correction

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

ACTION: Correcting amendment.

SUMMARY: This action corrects the final rule implementing the  
Comprehensive Ecosystem-Based Amendment 2 (CE-BA 2) for the  
South Atlantic region, which was published in the Federal  
Register on December 30, 2011. This correcting amendment  
removes a paragraph of regulatory text that was incorrectly  
retained and will eliminate any possible confusion over what the  
regulations require.

DATES: This correction is effective [insert date of publication  
in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Anne Marie Eich, 727-824-5305;  
e-mail: [AnneMarie.Eich@noaa.gov](mailto:AnneMarie.Eich@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2011, NMFS published a final rule to implement CE-BA 2 (76 FR 82183). On January 30, 2012, NMFS published a correction to that final rule which revised the organization of the regulatory text implemented in CE-BA 2 (77 FR 4493). That final rule (76 FR 82183) and the correction (77 FR 4493) in part modified the fishery management unit (FMU) for octocorals under the Fishery Management Plan (FMP) for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (South Atlantic Coral FMP) in the South Atlantic exclusive economic zone (EEZ).

On December 29, 2011, NMFS published a final rule to implement the Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) to the Red Drum, Reef Fish Resources, Shrimp, and Coral and Coral Reefs FMPs for the Gulf of Mexico (Gulf) (76 FR 82044). That final rule in part modified the FMU for octocorals under the Coral and Coral Reefs FMP (Gulf Coral FMP) in the Gulf EEZ.

Prior to implementation of the final rules for CE-BA 2 and the Generic ACL Amendment, a 50,000 colony quota for allowable octocoral was in place in the Gulf and South Atlantic EEZs and a prohibition on the harvest of octocorals north of Florida, in

the South Atlantic EEZ was in effect. CE-BA 2 removed octocorals from the FMU off Florida, in the South Atlantic EEZ, and as such modified the FMU for octocorals under the South Atlantic Coral FMP to include octocorals in the EEZ off North Carolina, South Carolina, and Georgia only. CE-BA 2 included an ACL for octocorals in the EEZ off North Carolina, South Carolina, and Georgia of zero. The Generic ACL Amendment removed octocorals from the FMU in the Gulf EEZ. Therefore, Federal management of octocorals in the South Atlantic EEZ off Florida and in the Gulf EEZ is no longer included under the South Atlantic or Gulf Coral FMPs.

Florida's Fish and Wildlife Conservation Commission (FWC) is currently responsible for the majority of the management, implementation, and enforcement of octocoral harvest because the majority of octocoral harvest occurs in Florida state waters. In the absence of Federal regulations, the FWC regulations on octocoral harvest apply to adjacent Federal waters (68B-42.006 of the Florida Administrative Code).

#### Need for Correction

After the regulations implementing CE-BA 2 and the Generic ACL Amendment became effective on January 30, 2012, NMFS determined that the quota for Gulf allowable octocoral, specified in paragraph (b) of § 622.42, was inadvertently

retained in the regulations. The final rule implementing the Generic ACL Amendment removed the allowable octocoral quota for the Gulf EEZ, and the final rule implementing CE-BA 2 removed the allowable octocoral quota for the South Atlantic EEZ. However, these two final rules became effective on the same day and the Gulf allowable octocoral quota was inadvertently retained in the regulations through the final rule implementing CE-BA 2. NMFS's intent was to remove the quota for both Gulf and South Atlantic allowable octocoral from the regulations because the quota is no longer managed under Federal FMPs. This correcting amendment is necessary to remove and reserve paragraph (b) in § 622.42.

#### Correction

As published, the final rule implementing CE-BA 2 contains an error in the regulatory text. In § 622.42, paragraph (b) should be removed and reserved. All other information remains unchanged and will not be repeated in this correction.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because it would be unnecessary and contrary to the public interest. This correcting amendment removes a paragraph of

regulatory text that was incorrectly retained. NMFS incorrectly retained the quota for Gulf allowable octocoral in the CE-BA 2 final rule. The Generic ACL Amendment removed octocoral from Federal management in the Gulf EEZ. Notice and comment is unnecessary because the public had notice and an opportunity to comment on the removal of the quota for Gulf allowable octocoral when NMFS promulgated the proposed rule for the Generic ACL Amendment. The public has been led to believe that the quota for Gulf allowable octocoral was removed from the regulations on the effective date of the final rule implementing the Generic ACL Amendment. The delay caused by an additional public comment period might cause confusion among regulated parties and would therefore be contrary to the public interest.

For the same reasons, the Assistant Administrator also finds good cause, pursuant to 5 U.S.C. 553(d), to waive the 30-day delay in effective date for this correcting amendment. This correction removes regulatory text that the public believed was previously removed and does not change operating practices in Gulf or South Atlantic fisheries.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This rule has been determined to be not significant under Executive Order 12866.

List of Subjects in 50 CFR Part 622

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

Dated: May 15, 2012.

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Alan D. Risenhoover, Acting Deputy Assistant Administrator  
for Regulatory Programs, National Marine Fisheries Service.

Accordingly, 50 CFR part 622 is corrected by making the following correcting amendment:

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.

§ 622.42 [Amended]

2. In § 622.42, paragraph (b) is removed and reserved.

[FR Doc. 2012-12156 Filed 05/17/2012 at 8:45 am; Publication  
Date: 05/18/2012]