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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170126124-7124-01]

RIN 0648-XF488

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
2017 Accountability Measure-based Closures for Commercial and
Recreational Species in the U.S. Caribbean off Puerto Rico**

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

ACTION: Temporary rule; closures.

SUMMARY: Through this temporary rule, NMFS implements
accountability measures (AMs) for species and species groups
in the exclusive economic zone (EEZ) of the U.S. Caribbean off
Puerto Rico (Puerto Rico management area) for the 2017 fishing
year. NMFS has determined that annual catch limits (ACLs) in
the Puerto Rico management area were exceeded for spiny lobster;
the commercial sectors of triggerfish and filefish (combined),
and Snapper Unit 2; and the recreational sectors of triggerfish
and filefish (combined), and jacks, based on average landings
during the 2013-2015 fishing years. This temporary rule reduces

the lengths of the 2017 fishing seasons for these species and species groups by the amounts necessary to ensure, to the extent practicable, that landings do not exceed the applicable ACLs in 2017. NMFS closes the applicable sectors for these species and species groups beginning on the dates specified in the **DATES** section and continuing until October 1, 2017. These AMs are necessary to protect the Caribbean reef fish and spiny lobster resources in the Puerto Rico management area.

DATES: This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*], until 12:01 a.m., local time, on October 1, 2017. The AM-based closures apply in the Puerto Rico management area for the following species and species groups, and fishing sectors, at the times and dates specified below, until 12:01 a.m., local time, on October 1, 2017.

- Triggerfish and filefish, combined (commercial) effective at 12:01 a.m., local time, on August 13, 2017;
- Spiny lobster (commercial and recreational) effective at 12:01 a.m., local time, on September 7, 2017;
- Snapper Unit 2 (commercial) effective at 12:01 a.m., local time, on September 15, 2017;
- Triggerfish and filefish, combined (recreational)

effective at 12:01 a.m., local time, on September 18, 2017;

- Jacks (recreational) effective at 12:01 a.m., local time, on September 28, 2017.

FOR FURTHER INFORMATION CONTACT: María del Mar López, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *maria.lopez@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Caribbean EEZ includes triggerfish and filefish, snappers in Snapper Unit 2, and jacks, and is managed under the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP). Caribbean spiny lobster is managed under the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP). The FMPs were prepared by the Caribbean Fishery Management Council (Council) and are implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The 2010 Caribbean ACL Amendment (which includes, along with another amendment, Amendment 5 to the Reef Fish FMP) and the 2011 Caribbean ACL Amendment (which includes, among other

amendments, Amendment 6 to the Reef Fish FMP and Amendment 5 to the Spiny Lobster FMP) revised the Reef Fish and Spiny Lobster FMPs. Among other actions, the 2010 and 2011 Caribbean ACL Amendments and the associated final rules (76 FR 82404, December 30, 2011, and 76 FR 82414, December 30, 2011, respectively) established ACLs and AMs for Caribbean reef fish and spiny lobster, including the species and species groups identified in this temporary rule. The 2010 and 2011 Caribbean ACL Amendments and final rules also allocated ACLs among three Caribbean island management areas, *i.e.*, the Puerto Rico, St. Croix, and St. Thomas/St. John management areas of the Caribbean EEZ, as specified in Appendix E to part 622. The ACLs for species and species groups in the Puerto Rico management area, except for spiny lobster, were further allocated between the commercial and recreational sectors, and AMs apply to each of these sectors separately.

On May 11, 2016, NMFS published the final rule implementing the Comprehensive Amendment to the U.S. Caribbean FMPs: Application of AMs (81 FR 29166). Among other items, the final rule clarified that the spiny lobster ACL for the Puerto Rico management area is applied as a single ACL for both the commercial and recreational sectors, consistent with the

Council's intent in the 2011 Caribbean ACL Amendment, and the AM applies to both sectors. Additionally, the final rule clarified the fishing restrictions that occur in the Caribbean EEZ when an ACL is exceeded, and an AM is triggered and implemented. The Puerto Rico management area encompasses the EEZ off Puerto Rico.

In addition, on June 8, 2017, NMFS implemented the final rule for Amendment 8 to the Reef Fish FMP, Amendment 7 to the Spiny Lobster FMP, and Amendment 6 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (collectively referred to as the AM Timing Amendment) (82 FR 21475, May 9, 2017). The final rule implementing the AM Timing Amendment modified the date for initiating an AM-based closure in the event of an ACL overage for the species and species groups managed by the Council under the aforementioned FMPs. Instead of initiating an AM-based closure on December 31 and counting backward into the year for the number of days necessary to achieve the reduction in landings required so landings do not exceed the applicable ACL, the AM-based closure period will be applied on September 30 and count backward toward the beginning of the fishing year.

The ACLs for the applicable species and species groups,

and fishing sectors in the Puerto Rico management area covered by this temporary rule are as follows and are given in round weight:

- The commercial ACL for triggerfish and filefish, combined, is 58,475 lb (26,524 kg), as specified in § 622.12(a)(1)(i)(Q).
- The ACL for spiny lobster (applicable to the commercial and recreational sectors) is 327,920 lb (148,742 kg), as specified in § 622.12(a)(1)(iii).
- The commercial ACL for Snapper Unit 2 is 145,916 lb (66,186 kg), as specified in § 622.12(a)(1)(i)(D).
- The recreational ACL for triggerfish and filefish, combined, is 21,929 lb (9,947 kg), as specified in § 622.12(a)(1)(ii)(Q).
- The recreational ACL for jacks is 51,001 lb (23,134 kg), as specified in § 622.12(a)(1)(ii)(M).

NMFS has determined that landings for the species and species groups in this temporary rule from the Puerto Rico management area exceeded the applicable ACLs. Therefore, in accordance with regulations at 50 CFR 622.12(a), the Assistant Administrator for NOAA Fisheries (AA) is filing a notification with the Office of the Federal Register to reduce the lengths

of the fishing seasons for the applicable species or species groups in the 2017 fishing year by the amount necessary to ensure, to the extent practicable, that landings do not exceed the applicable ACLs. As described in the Reef Fish and Spiny Lobster FMPs, and in this temporary rule, any required fishing season reduction will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year on December 31. NMFS evaluates landings relative to the applicable ACL based on a moving 3-year average of landings, as described in the FMPs.

Based on the most recent available landings data, from the 2013-2015 fishing years, NMFS has determined that the ACLs for spiny lobster; the commercial sectors for triggerfish and filefish (combined), and Snapper Unit 2; and the recreational sectors of triggerfish and filefish (combined), and jacks in the Puerto Rico management area have been exceeded. In addition, NMFS has determined that the ACLs for these species and species groups were exceeded because of increased catches and not as a result of enhanced data collection and monitoring efforts.

This temporary rule implements AMs for the identified commercial and recreational sectors for the species and species groups listed in this temporary rule, to reduce the respective 2017 fishing season lengths to ensure that landings do not exceed the applicable ACLs in the 2017 fishing year. The 2017 fishing seasons for the applicable sectors for these species and species groups in the Puerto Rico management area of the Caribbean EEZ are closed at the times and dates listed below. These closures remain in effect until 12:01 a.m., local time, on October 1, 2017.

- The commercial sector for triggerfish and filefish, combined, is closed effective at 12:01 a.m., local time, on August 13, 2017. Triggerfish and filefish, combined, includes ocean, queen, and sargassum triggerfish; scrawled and whitespotted filefish; and black durgon;
- The commercial and recreational sectors for spiny lobster are closed effective at 12:01 a.m., local time, on September 7, 2017;
- The commercial sector for Snapper Unit 2 is closed effective at 12:01 a.m., local time, on September 15, 2017. Snapper Unit 2 includes queen and cardinal snapper;
- The recreational sector for triggerfish and filefish,

- combined, is closed effective at 12:01 a.m., local time, on September 18, 2017. Triggerfish and filefish, combined, includes ocean, queen, and sargassum triggerfish; scrawled and whitespotted filefish; and black durgon; and
- The recreational sector for jacks is closed effective at 12:01 a.m., local time, on September 28, 2017. Jacks includes horse-eye, black, almaco, bar, and yellow jack; greater amberjack; and blue runner.

After these specified closures, on October 1, 2017, these applicable species and species groups will reopen through December 31, 2017, the end of the current fishing year.

During the Puerto Rico commercial sector closures announced in this temporary rule for the species above, except for spiny lobster, which is described below, the commercial harvest of the indicated species or species groups is prohibited. All harvest or possession of the indicated species or species groups in or from the Puerto Rico management area is limited to the recreational bag and possession limits specified in § 622.437, unless the recreational sector for the species or species group is closed, and the sale or purchase of the indicated species or species group in or from the Puerto Rico management area is prohibited.

During the Puerto Rico recreational sector closures announced in this temporary rule for the species above, except for spiny lobster, which is described below, all recreational harvest of the indicated species groups is prohibited, and the recreational bag and possession limits for the indicated species groups in or from the Puerto Rico management area are zero.

During the Puerto Rico spiny lobster closure announced in this temporary rule, both the commercial and recreational sectors for spiny lobster are closed. The harvest, possession, purchase, or sale of spiny lobster in or from the Puerto Rico management area is prohibited. The bag and possession limits for spiny lobster in or from the Puerto Rico management area are zero.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of the species and species groups included in this temporary rule, in the Puerto Rico management area, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.12(a) 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 scientific information available. The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b) (B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rules implementing the ACLs and AMs for these species and species groups have been subject to notice and comment, and all that remains is to notify the public that the ACLs were exceeded and that the AMs are being implemented for the 2017 fishing year. Prior notice and opportunity for public comment on this action would be contrary to the public interest because many of those affected by the length of the commercial and recreational fishing seasons, including commercial operations, and charter vessel and headboat operations that book trips for clients in advance, need advance notice to adjust their business plans to account for the reduced commercial and recreational fishing seasons.

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

Dated: July 3, 2017

Jennifer M. Wallace,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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