

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 80**

RIN 1018-AD83

**Federal Aid in Sport Fish Restoration Program; Participation by the District of Columbia and U.S. Insular Territories and Commonwealths****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We propose to conform our regulations for the Federal Aid in Sport Fish Restoration Program to a recently enacted law by letting the States spend up to 15 percent (not just 10 percent) of their Federal Aid funds on aquatic education and outreach and communications. We also propose to let the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa spend more for these purposes, with the approval of the appropriate Fish and Wildlife Service Regional Director. While making these changes in this section of our regulations, we also propose to rewrite that entire section to put it in plain language, without making substantive change.

We also propose a new section to define existing requirements for the collection of information required by the Paperwork Reduction Act and the Office of Management and Budget's implementing regulation. This section is also presented in plain language format. Comments are welcome on both sections.

**DATES:** Comments must be received by August 8, 2000.

**ADDRESSES:** Comments may be addressed to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Arlington Square 140, 4401 North Fairfax Drive, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Jack Hicks, Division of Federal Aid, U.S. Fish and Wildlife Service. Telephone: (703) 358-1851.

**SUPPLEMENTARY INFORMATION:****Background**

Through the Federal Aid in Sport Fish Restoration Program, the U.S. Fish and Wildlife Service (Service) disburses funds to States (including the District of Columbia and the U.S. insular territories and Commonwealths) to restore and manage the Nation's fishery resources.

The States use the funds to fund fisheries research, surveys, and management; purchase and restore habitat; operate hatcheries; build boat access; and provide aquatic education and outreach and communications programs.

The program is authorized by the Federal Aid in Sport Fish Restoration Act (Act), 16 U.S.C. 777 *et seq.*, enacted in 1950, and carried out by regulations in 50 CFR part 80, "Administrative Requirements, Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts." Funds for the program are derived from excise and import taxes on fishing tackle and motorboat fuel. The manufacturer or importer collects the tax and pays it to the U.S. Department of the Treasury, who transfers the money to the Service for distribution to the States.

Congress has amended the Act several times, most recently via the Transportation Equity Act for the 21st Century (Pub. L. 105-178), passed in 1998. Among other things, that law, commonly referred to as TEA-21, increased, from 10 to 15 percent, the maximum allowable expenditure of Sport Fish Restoration apportioned dollars for aquatic education, which now also applies to related outreach and communications projects. Section 777g(c) of the Act states, "(E)ach State may use not to exceed 15 percent of the funds apportioned to it under Section 777c of this title to pay up to 75 percent of the costs of an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms."

To carry out TEA-21, we are proposing changes to 50 CFR part 80. Specifically, we are proposing to amend part 80 by revising § 80.15 and by adding a new § 80.27 pertaining to information collection requirements. Currently, 50 CFR 80.15(e) states, "(N)ot more than 10 per centum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration Act may be obligated on projects for aquatic education." In accordance with TEA-21, we propose to amend part 80 to raise the amount that States may expend for aquatic education and outreach and communications to 15 percent. However, we also propose to allow the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa to spend a higher portion of their funds for this purpose, as described below. We further propose

to convert the existing language in § 80.15 to plain language.

As proposed, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa would not be subject to the statutory cap of 15 percent for aquatic education and outreach and communications expenditures; that cap would apply only to the actual States. Section 777k of the Act states in part that "(T)he secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects, as defined in Section 777a of this title, upon such terms and conditions as he shall deem fair, just, and equitable\* \* \*". Under this authority, we propose to let these jurisdictions spend a higher share of their program funds on aquatic education and outreach and communications, on the grounds that doing so is fair, just, and equitable because of the unique characteristics that set them apart from the States.

The District of Columbia has a very small land base in District ownership (most of the riverfront land is owned by the National Park Service), limited aquatic resources (portions of two rivers and assorted small ponds and streams), and a very high urban population. The District commits a steady amount of funding for fisheries research and survey work in those portions of the two rivers that flow through its boundaries and for maintenance of its boating access facilities. Because of the land ownership situation, however, limited opportunities exist for the District to acquire land or to build additional boat access facilities, hatcheries, or fishing piers. In 1987 the District began an aquatic education program that has grown steadily and provides diverse, high-quality education programs for D.C. students and other citizens. The District's urban population creates the opportunity and need for developing innovative education strategies. While the demand for aquatic education remains high, the District's program cannot provide all the services requested because, under the current rules, the agency is limited to 10 percent of the total apportionment to spend on aquatic education programs.

The Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin

Islands, and American Samoa, although located over large geographical areas, have limited land mass. These islands are mostly small, separate land masses, creating special educational needs on an island-by-island basis. Unlike the U.S. mainland, which has reservoirs and lakes, the islands have an array of riverine, estuarine, and coastal habitats in very close proximity. Island aquatic ecosystems are less resilient than their continental counterparts. Thus, education on the conservation of aquatic resources on these islands becomes more critical.

Despite these unique characteristics, our current regulations in 50 CFR part 80 impose the same limitation on the education, outreach and communications funding of the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa as they do on all the States. For the reasons just described, we believe the District of Columbia and the U.S. insular territories and commonwealths should be allowed discretion in determining the funding needed for aquatic education and outreach and communications. However we are proposing to authorize Service Regional Directors to make final determinations regarding spending for this purpose. With this proposed rule change, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa will gain the flexibility to spend more on aquatic education and outreach and communications programs, if given approval to do so by the appropriate Service Regional Director.

#### Required Determinations

We have examined this action under the Paperwork Reduction Act (PRA) of 1995 and found it to contain no new or revised information collection requirements. However a new section, 50 CFR 80.27, is added to fulfill the public notice requirements of the PRA for existing approved information collection requirements contained in part 80.

This document was not subject to review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. It is not a significant regulatory action.

This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not

required because of the low dollar amount of this proposed rule change. This change would simply redistribute existing money. The District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa (but not Puerto Rico) each receive an annual apportionment of one-third of one percent of the Sport Fish Restoration account. Over the last 10 years, this amount has ranged from about \$580,000 to \$910,000, with an average of approximately \$720,000 per year. In 2000, the apportionment was \$803,128, which permitted them to each spend \$120,469 (15 percent) for aquatic education and outreach and communications. Puerto Rico, which receives 1 percent, has a 10-year average of \$2,164,533, with a 2000 apportionment of \$2,409,383, and currently has an aquatic education and outreach and communications spending limit of \$361,407. The dollar amounts of this proposed rule will not have a major effect on the affected economies, since the money would have been obligated under programs other than aquatic education and outreach and communications without this change.

This rule will not create inconsistencies with other agencies' actions or materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule increases the allowable spending levels of Sport Fish Restoration dollars for aquatic education and outreach and communications, not the total apportionment for the recipients.

This rule will not raise novel legal or policy issues. The 15-percent limit applying to States was done through congressional action. The requested raised spending authority for the District of Columbia and the U.S. insular territories and commonwealths simply recognizes the different situations that these recipients have concerning opportunities for aquatic education and outreach and communications projects. The Act authorizes cooperation with the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa. If not obligated, the money reverts after 2 years to the Service.

We are soliciting comments on the readability of this proposed rule change and conformance with "plain language" guidelines. Please send comments to Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, 4401 North Fairfax, Suite 140, Arlington, VA 22030.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. *et seq.*). This action affects, by giving them more flexibility, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa. These governmental entities govern populations of more than 50,000, and, therefore, they are not small entities as defined in 5 U.S.C. 601. The proposed change simply allows for the redistribution of existing funds.

In the District of Columbia, two constraints on the use of Sport Fish Restoration funds are (1) fisheries and water resources are limited to about 30 miles of river and a few impoundments and wetland areas and (2) most of the undeveloped shoreline in the District, which would be used to develop boat access sites, is owned by the National Park Service. The District's population of 650,000 people offers both a need and an opportunity for education. A greater public benefit can be achieved by allowing spending above the cap for the District of Columbia. The District would expand and improve the work outlined in its current 5-year plan, including building an addition to the heavily used Aquatic Education Center to include classrooms and a wet lab for both fisheries research and educational demonstrations and expanding the summer youth program and in-school program to reach a greater percentage of constituents.

The Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa are very

diverse in culture and language, creating a need for multiple approaches to similar conservation issues. Letting the Regional Directors approve spending above 15 percent will allow more flexibility to use education and outreach and communications to help prevent and solve fisheries and aquatic resource problems.

Additional funding for aquatic education and outreach and communications will benefit local residents without appreciable losses in management capability. No discernible effects on product prices or other economic effects are associated with this rule.

We have determined and certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rulemaking will not impose a cost of \$100 million or more in any given year on local, State, or territorial governments or private entities.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, territorial, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule change would allow redirection of certain monies within a total apportionment; no added or reduced total funding is involved in this change.

We have determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule gives the recipients (the District of Columbia, the Commonwealth of Puerto Rico, the commonwealth of the northern Mariana Islands, Guam, the Virgin Islands, and American Samoa) more self-determination by allowing them more flexibility in their spending decisions.

#### List of Subjects in 50 CFR Part 80

Fish, Grant programs, Natural resources, Reporting and recordkeeping requirements, Wildlife.

Accordingly, we propose to amend part 80 of title 50 of the Code of Federal Regulations as follows:

#### PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

**Authority:** 16 U.S.C. 777i; 16 U.S.C. 669i; 18 U.S.C. 701.

2. Section 80.15, is revised to read as follows:

##### §80.15 Allowable costs.

(a) *What are allowable costs?* Allowable costs are costs that are necessary and reasonable for accomplishment of approved project purposes and are in accordance with the cost principles of OMB Circular A-87.

(b) *What is required to determine the allowability of costs?* All costs must be supported by source documents or other records as necessary to substantiate the application of funds. Such documentation and records are subject to review by the U.S. Fish and Wildlife Service and, if necessary, the Secretary to determine the allowability of costs.

(c) *Are costs allowable if they are incurred prior to the date of the grant agreement?* Costs incurred prior to the effective date of the grant agreement are allowable only when specifically provided for in the grant agreement.

(d) *How are costs allocated in multipurpose projects or facilities?* Projects or facilities designed to include purposes other than those eligible under either the Sport Fish Restoration or Wildlife Restoration Acts must provide for the allocation of costs among the various purposes. The method used to allocate costs must produce an equitable distribution of costs based on the relative uses or benefits provided.

(e) *What is the limit on administrative costs for State central services?*

Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency must be in accord with an approved cost allocation plan and cannot exceed in any 1 fiscal year 3 per centum of the annual apportionment to that State. Each State has a State Wide Cost Allocation Plan that describes approved allocations of indirect costs to agencies and programs within the State.

(f) *How much money may be obligated for aquatic education and outreach and communications?*

(1) Each of the 50 States may spend no more than 15 percent of the annual amount apportioned to it under provisions of the Federal Aid in Sport Fish Restoration Act for an aquatic education and outreach and communications program for the purpose of increasing public understanding of the Nation's water

resources and associated aquatic life forms.

(2) The Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa are not limited to the 15-percent cap imposed on the 50 States. Each of these entities may spend more for these purposes with the approval of the appropriate Regional Director.

3. A new § 80.27 is added to read as follows:

##### § 80.27 What are the information collection requirements in this part?

(a) Information gathering requirements include filling out forms to apply for certain benefits offered by the Federal Government. Information gathered under this part is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777i) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless the request displays a currently valid OMB control number. Our requests for information will be used to apportion funds and to review and make decisions on grant applications and reimbursement payment requests submitted to the Federal Aid Program.

(b) OMB Circulars A-110 and A-102 require the use of several Standard Forms: SF-424, SF-424A and SF-424B, SF-269A and SF-269B, SF-270, SF-271 and SF-272. Combined, as many as 12,000 of these forms are used annually by grant applicants. The individual burden is approximately 1 hour to compile information and complete each form; the total burden is approximately 12,000 hours (approximately 3,500 grants are awarded/renewed each year, but not all forms are used for all grants). These forms are needed to document grant applications and requests for reimbursement.

(c) Part 1 Certification (form 3-154A) and Part 2 Summary of Hunting and Sport Fishing License Issued (form 3-154B) (OMB Approval 1018-0007) require approximately 1/2 hour from each of 56 respondent States and territories for a total burden of 28 hours. The information is routinely collected by the States and territories and easily transferred to these forms and certified. This information is used in a statutory formula to apportion funds among the grant recipients.

(d) The Grant Agreement, 3-1552, and Amendment to Grant Agreement, 3-1591 (OMB Approval 1018-0049) require approximately 1 hour to gather

relevant information, review, type, and sign. This information is compiled in the normal agency planning processes and transferred to these forms. Recipients nationwide complete approximately 3,500 Grant Agreement forms and 1,750 Amendment to Grant Agreement forms during any fiscal year for a total burden of 5,250 hours. This information is used to document financial awards made to grant recipients and amendments to these awards.

(e) The public is invited to submit comments on the accuracy of the estimated average burden hours needed for completing Part I—Certification, Part II—Summary of Hunting and Sport Fishing License Issued, Grant Agreement, and Amendment to Grant Agreement forms and to suggest ways in which the burden may be reduced. Comments may be submitted to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

Dated: May 11, 2000.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 000511132-0132-01; I.D. 042400]

RIN 0648-AM04

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

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

**SUMMARY:** NMFS proposes regulations to implement provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These proposed regulations would modify the recreational and commercial red

snapper fishing seasons; allocate two-thirds of the commercial red snapper quota for the spring fishing season, with the remainder available for the fall fishing season; increase the recreational minimum size limit for red snapper; and reinstate a 4-fish recreational red snapper bag limit for captain and crew of for-hire vessels (charter vessels and headboats). The intended effect of these proposed regulations is to maximize the economic benefits from the red snapper resource within the constraints of the stock rebuilding program for this overfished resource.

**DATES:** Comments must be received no later than 4:30 p.m., eastern standard time, on July 10, 2000.

**ADDRESSES:** Written comments on the proposed rule must be sent to Dr. Roy E. Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015; E-mail: gulf.council@noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roy E. Crabtree, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Roy.Crabtree@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the 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.

Under the regulatory amendment, the Council has proposed adjusted management measures for the Gulf red snapper commercial and recreational fisheries. Under provisions of the FMP, these measures, if approved and implemented, would continue in effect until changed through a subsequent rulemaking action. The Council has submitted the regulatory amendment to NMFS for review, approval, and implementation. The measures in this regulatory amendment were developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in management

measures for the red snapper fishery. The proposed regulations would implement the measures contained in the Council's regulatory amendment.

#### Background

The measures contained in the proposed rule, except for the change in the start date of the fall commercial season and the minor change in the allocation of the commercial quota, were implemented by interim rule (64 FR 71056, December 20, 1999). This proposed rule would implement these measures on a permanent basis.

The measures contained in this proposed rule are needed to reduce overfishing, while allowing the total allowable catch (TAC) of red snapper to be harvested by fair, equitable, and effective means. These changes would reduce overfishing by: (1) increasing the likelihood of compatible closures of state waters during Federal closures, thereby improving enforcement of closures of the EEZ recreational red snapper fishery and reducing the harvest from state waters during Federal closures; (2) improving compliance with Federal regulations by opening the recreational fishery during the time of greatest demand and reducing confusion among anglers by promoting compatible state and Federal regulations; and (3) reducing the rate of harvest in the commercial fishery, thus reducing the probability of the commercial fishery exceeding its quota.

These red snapper measures are based, in part, on the recommendations to the Council from a stakeholder conference held in New Orleans, LA, on September 27, 1999. Stakeholders' recommendations for the recreational red snapper fishery included a 4-fish bag limit for the captain and crew of for-hire vessels, a minimum size limit not to exceed 16 inches (40.6 cm), and a March 1 to October 31 recreational season. The interim rule was necessary to implement these changes before the 2000 fishing seasons began.

Section 407(d) of the Magnuson-Stevens Act requires NMFS to close the Gulf of Mexico recreational red snapper fishery after the recreational quota (currently 4.47 million lb (2.03 million kg)) is caught. The recreational fishery was closed on November 27 in 1997, on September 29 in 1998, and on August 29 in 1999. Under the regulations in place prior to promulgation of the interim rule, i.e., a 4-fish bag limit and a 15-inch (38.1-cm), minimum size limit, NMFS projected that with a January 1 opening date for the recreational fishery, the 2000 quota (4.7 million lb (2.03 million kg)) would be reached on July 29, 2000;