

TEXAS PARKS AND WILDLIFE DEPARTMENT

EXECUTIVE DIRECTOR ORDER NO. 017-004

Under the provisions of Parks and Wildlife Code, §79.002 and 31 TAC §57.801, the Executive Director of the Texas Parks and Wildlife Department, after notifying the Chairman of the Texas Parks and Wildlife Commission, ORDERS the adoption, on an emergency basis with less than 30 days' notice, of new 31 TAC §57.983, to prohibit the take of red snapper in state waters from Monday through Thursday of each week for the period beginning June 16, 2017 until September 4, 2017, with exceptions for July 3-4, 2017 and September 4, 2017 (Labor Day).

Under Parks and Wildlife Code, §79.002, the department may follow procedures outlined in Parks and Wildlife Code, §12.027, Chapter 61, or Chapter 77 in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.). Section 79.002 further provides that the Texas Parks and Wildlife Commission (Commission) may delegate to the executive director (director) the duties, responsibilities, and authority provided by Parks and Wildlife Code, Chapter 79 for taking immediate action as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the U.S. Exclusive Economic Zone (EEZ, also called "federal waters," those waters extending from state waters to 200 nautical miles offshore). The Commission delegated authority to the director, including but not limited to emergency rulemaking, pursuant to Parks and Wildlife Code, §79.002, by promulgating 31 TAC §57.801. Parks and Wildlife Code, §12.027, provides for the adoption of emergency rules by the director as provided by Government Code, Chapter 2001.

On June 14, 2017, the National Marine Fisheries Service (NMFS) by temporary rule (FR Doc. 2017-12735) authorized additional recreational harvest of red snapper in the EEZ during three-day weekends (Friday through Sunday) from June 16, 2017 until September 4, 2017, and including July 3 & 4 and September 4. This increase in the number of private recreational red snapper fishing days in federal waters is conditioned on each state bordering the Gulf of Mexico closing its respective state waters during the week (Monday through Thursday) to the recreational harvest of red snapper from June 19 through September 4, except July 3-4 and September 4, 2017. The director considers that this federal action presents a significant opportunity for recreational anglers in Texas, since red snapper is a popular recreational fishing species and more recreational anglers are able to go fishing on weekends. In addition, increasing private recreational fishing days in federal waters while decreasing private recreational fishing days in state waters is supported by the department's scientific data regarding the abundance of red snapper in Texas state waters and the adjacent federal waters.

For these reasons, the director finds that adoption of this rule on an emergency basis on less than 30 days' notice as provided by Parks and Wildlife Code, §79.002 and 31 TAC §57.801 is necessary to modify state coastal fisheries regulations in order to provide for consistency with and to conform to federal regulations in the EEZ and is in the best interest of the State of Texas. As required by 31 TAC §57.801, the Chairman of the Parks and Wildlife Commission has been notified prior to this action.

The Executive Director also hereby authorizes publication of the Notice of Adoption in the *Texas Register*.

This order is issued pursuant to §79.002 of the Texas Parks and Wildlife Code and 31 TAC §57.801 and is effective immediately. The adopted regulations shall be effective as provided in the regulations and as provided by other law.

Signed this the 15th day of June, 2017.

A handwritten signature in black ink, appearing to read "Carter Smith", written in a cursive style.

Carter Smith
Executive Director
Texas Parks and Wildlife Department

CONSISTENCY WITH FEDERAL FISHERIES REGULATIONS
EMERGENCY ADOPTION PREAMBLE

1. Introduction.

Pursuant to Parks and Wildlife Code, §79.002 and 31 TAC §57.801, the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, new §57.983, concerning Special Provisions – Red Snapper. The emergency action closes state waters to the recreational take of red snapper from Monday through Thursday of each week from June 16, 2017 until September 4, 2017, with exceptions for July 3, 4 and Labor Day (September 4).

Under Parks and Wildlife Code, §79.002, the department may follow procedures outlined in Parks and Wildlife Code, §12.027, Chapter 61, or Chapter 77 in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.). Section 79.002 further provides that the Texas Parks and Wildlife Commission (Commission) may delegate to the department's executive director (director) the duties, responsibilities, and authority provided by Parks and Wildlife Code, Chapter 79 for taking immediate action as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the U.S. Exclusive Economic Zone (EEZ, also called "federal waters," those waters extending from state waters to 200 nautical miles offshore). The Commission delegated authority to the director, including but not limited to emergency rulemaking, pursuant to Parks and Wildlife Code, §79.002, by promulgating 31 TAC §57.801. Parks and Wildlife Code, §12.027, provides for the adoption of emergency rules by the director as provided by Government Code, Chapter 2001.

The National Marine Fisheries Service (NMFS) is the federal agency responsible for the stewardship of marine resources and their habitat within the EEZ. NMFS develops and implements harvest and management strategies for marine resources in the EEZ, including red snapper. The season for the recreational take of red snapper in federal waters is established annually, based on projections of the expected total red snapper catch between commercial and recreational components. On May 2, 2017, NMFS established a three-day season (June 1 – 3) for private recreational take of red snapper in the EEZ in 2017.

After receiving feedback from the public, state fishery managers in the five states bordering the Gulf of Mexico, and private recreational anglers, on June 14, 2017, NMFS by temporary rule (FR Doc. 2017-12735) authorized additional recreational harvest of red snapper in the EEZ during three-day weekends (Friday - Sunday) from June 16, 2017 until September 4, 2017, and including July 3 & 4 and September 4. This increase in the number of private recreational red snapper fishing days in federal waters is conditioned on each state bordering the Gulf of Mexico closing its respective state waters for four days during the week (Monday through Thursday) to the recreational harvest of red snapper from June 19 through September 4, except July 3 - 4 and September 4, 2017. The department considers that this federal action presents a significant opportunity for recreational anglers in Texas, since red snapper is a popular recreational fishing species and more recreational anglers are able to go fishing on weekends. In addition, increasing private recreational fishing days in federal waters while decreasing private recreational fishing days in state waters is supported by the department's scientific data regarding the abundance of red snapper in Texas state waters and the adjacent federal waters.

For these reasons, the director finds that adoption of this rule on an emergency basis on less than 30 days' notice as provided by Parks and Wildlife Code, §79.002 and 31 TAC §57.801 is necessary to modify state coastal fisheries regulations in order to provide for consistency with and to conform to federal regulations in the EEZ and is in the best interest of the State of Texas. As required by 31 TAC §57.801, the Chairman of the Parks and Wildlife Commission has been notified prior to this action.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §79.002, which authorizes the department to follow procedures outlined in Parks and Wildlife Code, §12.027, Chapter 61, or Chapter 77 in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.), and under 31 TAC §57.801, which delegates to the executive director the duties, responsibilities, and authority to take action as necessary, including but not limited to emergency rulemaking, to modify state coastal fisheries regulations to conform with federal regulations in the Exclusive Economic Zone, when such action is deemed to be in the best interest of the State of Texas.

This rule will continue in effect through September 4, 2017.

2. Text.

§57.983. Special Provisions - Red Snapper.

(a) The take of red snapper in state waters is prohibited from 12:01 a.m. Monday to 11:59 p.m. Thursday of each week from June 16, 2017 to September 4, 2017, except for:

(1) July 3-4, 2017; and

(2) September 4, 2017.

(b) To the extent that any provision of §57.981 of this chapter (relating to Bag, Possession, and Length Limits) conflicts with the provisions of this section, this section controls.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on