



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120417412-2412-01]

RIN 0648-BB90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish
Management Measures

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

ACTION: Temporary rule; interim measures extended.

SUMMARY: NMFS issues this temporary rule to extend the
expiration date of interim measures to reduce overfishing of
gray triggerfish in the Gulf of Mexico (Gulf) implemented by a
temporary rule published by NMFS on May 14, 2012. This
temporary rule extends the reduced commercial quota (commercial
annual catch target (ACT)), commercial and recreational annual
catch limits (ACLs), and recreational ACT; and the revised
recreational accountability measures (AMs) for gray triggerfish,
as requested by the Gulf of Mexico Fishery Management Council
(Council). The intended effect of this temporary rule is to

reduce overfishing of the gray triggerfish resource in the Gulf while the Council develops permanent management measures.

DATES: The expiration date for the interim rule published at 77 FR 28308, May 14, 2012, is extended from November 10, 2012, through May 15, 2013, unless NMFS publishes a superseding document in the Federal Register.

ADDRESSES: Electronic copies of documents supporting this temporary rule, which include an environmental assessment (EA) and a regulatory flexibility analysis, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727-824-5305 or e-mail: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of interim regulations under section 305(c) (16 U.S.C. 1855(c)).

Section 305(c)(2) of the Magnuson-Stevens Act provides the

Council the authority to request interim measures, if necessary, to reduce overfishing. On April 19, 2012, the Council requested that NMFS implement a temporary rule to reduce overfishing of gray triggerfish in the Gulf while the Council and NMFS develop Amendment 37 to the FMP. Amendment 37 will contain permanent measures to end overfishing of the gray triggerfish stock. On May 14, 2012, NMFS published the final temporary rule (77 FR 28308) to implement measures to reduce overfishing of gray triggerfish in the Gulf and requested public comment. The interim measures implemented revised commercial and recreational ACLs and ACTs and revised the AMs for the recreational sector. Through the final temporary rule, the commercial sector ACL was reduced to 64,100 lb (29,075 kg), round weight, and the commercial ACT (commercial quota) was reduced to 60,900 lb (27,624 kg), round weight. The recreational sector ACL was reduced to 241,200 lb (109,406 kg), round weight, and the recreational ACT was reduced to 217,100 (98,475 kg), round weight. Additionally, the temporary rule established an in-season AM for the gray triggerfish recreational sector that prohibits the recreational harvest of gray triggerfish (a recreational sector closure) after the recreational ACT is reached or projected to be reached.

The Council requested an extension of the interim rule on August 23, 2012, to ensure that management measures remain in effect for gray triggerfish to reduce overfishing while more permanent measures are developed through Amendment 37. Section 305(c)(3)(B) of the Magnuson-Stevens Act allows for interim measures to be extended for one additional period of 186 days provided that the public has had an opportunity to comment on the interim measures and the Council is actively preparing a plan amendment to address the overfishing on a permanent basis.

Amendment 37 is scheduled to be implemented early in the 2013 fishing year.

Comments and Responses

Section 305(c)(3)(B) of the Magnuson-Stevens Act requires that the public has an opportunity to comment on interim measures after the regulation is published and the Council is actively preparing a plan amendment to address overfishing on a permanent basis. Therefore, NMFS solicited comments in the May 14, 2012, final temporary rule. NMFS received comments from a total of 11 entities on the final temporary rule. The following is a summary of the substantive comments NMFS received and NMFS' respective responses. Similar comments have been grouped together.

Comment 1: Personal observations do not support the stock assessment findings that the stock is overfished and undergoing overfishing. Therefore, there is no reason for the temporary rule.

Response: Gray triggerfish are known to be highly site specific and so it is possible that gray triggerfish abundance is greater in some areas of the Gulf than in others. However, both the 2006 benchmark and 2011 update Southeast Data, Assessment, and Review (SEDAR) assessments of the gray triggerfish stock used data from a variety of sources throughout the Gulf. Both of these assessments, which are considered the best available science, indicate the stock size is too low (overfished) and that too many fish are being caught and landed (overfishing). The Magnuson-Stevens Act requires the Council and NMFS to end overfishing and allow the stock to recover; therefore, the Council and NMFS are obligated to revise the gray triggerfish rebuilding plan to achieve these objectives.

Comment 2: Personal observations support that gray triggerfish abundances are low, but the cause of the reduction in abundance is not due to overfishing. Reductions in abundance are due to the number of red snapper feeding on juvenile reef fish, including gray triggerfish.

Response: The 2011 SEDAR update assessment indicated that for 2005-2009, gray triggerfish recruitment has been less than average. However, the reason for the reduced recruitment is currently unknown. At this time, there is no evidence to support that low gray triggerfish recruitment is a result of red snapper predation.

Comment 3: Rather than closing gray triggerfish recreational harvest when the ACL is reached, a reduced recreational bag limit should have been implemented to avoid any closures.

Response: In evaluating long-term measures to reduce the recreational harvest of gray triggerfish in Amendment 37, the Council is evaluating reduced recreational bag limits. However, their analyses indicate that even if the bag limit were reduced to 1-fish per person per day from the current 20-fish reef fish aggregate bag limit, some type of seasonal closure is needed to reduce harvest consistent with reductions needed for the rebuilding plan. The Council is evaluating a combination of these measures in Amendment 37 to the FMP.

Comment 4: The 2011 SEDAR gray triggerfish update stock assessment did not account for changes in gray triggerfish fishing as a result of the increase in the minimum size limit

and the requirement to use circle hooks.

Response: The 2011 SEDAR update assessment did account for the increase from 12-inches (30.5 cm), total length, to 14-inches (35.6 cm), fork length. This change was noted in the regulatory history section in the final 2011 SEDAR update assessment report. The effects of the size limit change were reflected in length data from fishery-dependent sampling programs after August 4, 2008, when Amendment 30A to the FMP became effective and these measures were implemented (73 FR 38139, July 3, 2008). Although the effects of circle hooks on gray triggerfish fishing were not specifically examined in the 2011 update assessment, the 2011 SEDAR update stock assessment showed declines in both the commercial and recreational harvest starting in 2005, well before the circle hook requirement went into effect on June 1, 2008. Therefore, other factors are responsible for the declining gray triggerfish stock. In addition, differences between catch-per-unit-effort estimates between the 2011 SEDAR update assessment and the 2006 SEDAR benchmark assessment did not vary by much, suggesting the change to circle hooks has had little effect on gray triggerfish fishing.

Comment 5: The gray triggerfish commercial sector should

be closed until the gray triggerfish stock recovers.

Response: The temporary rule reduces overfishing of the gray triggerfish stock while the Council develops a rebuilding plan in Amendment 37. In rebuilding overfished stocks, the Magnuson-Stevens Act requires that regulations shall "allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery" (Magnuson-Stevens Act section 304(e)(4)(B)). The action proposed in the comment would place all overfishing restrictions to the commercial sector, and as the stock recovers, allocate these benefits to the recreational sector. Thus, this action would not be fair and equitable and would not conform to the Magnuson-Stevens Act.

Additionally, the current allocation between the commercial and recreational sector is 29 percent and 71 percent, respectively. Given the needed reduction in gray triggerfish harvest from 2011 levels to 2012 levels is approximately 50 percent, closing the commercial sector would not achieve the needed reduction in harvest that would allow the stock to recover by 2017, the end year of the 10-year gray triggerfish rebuilding plan. Therefore, even with an established commercial closure, recreational measures would still need to be implemented for the stock to recover within the allotted time of

the rebuilding plan.

Classification

The Administrator, Southeast Region, NMFS, (RA) has determined that the interim measures this temporary rule extends are necessary for the conservation and management of the Gulf gray triggerfish stock, until more permanent measures are implemented, and is consistent with the Magnuson-Stevens Act and other applicable laws. The Council and NMFS are developing Amendment 37 to the FMP to establish long-term measures to end the overfishing of Gulf gray triggerfish and rebuild the stock. Amendment 37 and its associated regulations are still being implemented and are not expected to become effective until the 2013 fishing year.

This temporary rule has been determined to be not significant for purposes of E.O. 12866.

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

An EA was prepared for the interim measures contained in the May 14, 2012, final temporary rule (77 FR 28308). The EA analyzed the impacts of reduced harvest through the 2012 fishing year, which includes the impacts related to extending the

interim rule. Therefore, the impacts of continuing the interim measures through this extension have already been considered. Copies of the EA are available from NMFS (see ADDRESSES).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553 (b) (B) to waive prior notice and opportunity for public comment on this temporary rule extension. Providing prior notice and opportunity for public comment would be contrary to the public interest. This rule would continue interim measures implemented by the May 14, 2012, final temporary rule, for not more than an additional 186 days beyond the current expiration date of November 10, 2012. The conditions prompting the initial temporary rule still remain, and more permanent measures to be completed through Amendment 37 have not yet been finalized. Failure to extend these interim measures, while NMFS finalizes the more permanent measures in Amendment 37, would result in additional overfishing of the Gulf gray triggerfish stock, which is contrary to the public interest and in violation of National Standard 1 of the Magnuson-Stevens Act.

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

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

Dated: November 6, 2012.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

[FR Doc. 2012-27444 Filed 11/08/2012 at 8:45 am;
Publication Date: 11/09/2012]