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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120907427-3652-02]

RIN 0648-BC51

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

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the vermilion snapper recreational bag limit, revises the yellowtail snapper stock annual catch limit (ACL), and removes the requirement for reef fish vessels to have onboard and use a venting tool when releasing reef fish. The purpose of this rule is to help achieve optimum yield (OY) and prevent overfishing of vermilion and yellowtail snapper, reduce the unnecessary burden

to fishers associated with venting reef fish, and minimize bycatch and bycatch mortality.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727-824-5305; email: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the 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).

On May 7, 2013, NMFS published a proposed rule for the framework action and requested public comment (78 FR 26607). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

Through this final rule, NMFS establishes a 10-vermillion

snapper recreational bag limit within the 20-fish aggregate reef fish bag limit, increases the Gulf yellowtail snapper ACL from 725,000 lb (328,855 kg), round weight, to 901,125 lb (408,743 kg), round weight, and removes the requirement to have onboard and use venting tools when releasing reef fish. All weights discussed in this final rule are in round weight.

Vermilion Snapper Recreational Bag Limit

Vermilion snapper is currently included within the Gulf reef fish aggregate recreational bag limit of 20 fish. The Council's Reef Fish Advisory Panel (RFAP) recommended that the Council take action to constrain the recreational harvest of vermilion snapper because of significant recent increases in recreational landings. In 2011, recreational landings were approximately 1.15 million lb (521,631 kg), compared to 457,000 lb (207,292 kg) in 2010. The Council decided that the vermilion snapper bag limit should be restricted to 10 fish within the overall 20-fish aggregate reef fish bag limit to help constrain vermilion snapper recreational harvest and to minimize the opportunity for the vermilion snapper stock ACL to be exceeded by slowing the rate of potential future increases in the recreational harvest.

Yellowtail Snapper ACL

In the Gulf, the yellowtail snapper ACL is managed with a single stock ACL. Additionally, because yellowtail snapper in

the U.S. comprise a single stock, landings from both the South Atlantic and Gulf regions are combined for stock assessment purposes. The resulting acceptable biological catch (ABC) is allocated among both regions with 75 percent of the ABC assigned to South Atlantic jurisdiction and 25 percent of the ABC assigned to Gulf jurisdiction. Currently, the stock ABC is 2.9 million lb (1.3 million kg), with 725,000 lb (328,855 kg) allocated to the Gulf. This Gulf ABC value is used to determine the Gulf yellowtail snapper stock ACL, where the ACL is equal to the ABC, which was established through the Gulf's Generic ACL/Accountability Measures (AM) Amendment (76 FR 82044, December 29, 2011).

In 2012, the Florida Fish and Wildlife Research Institute (FWRI) conducted a benchmark stock assessment of yellowtail snapper. The assessment indicated that the yellowtail snapper stock was not overfished or undergoing overfishing. As a result of that stock status and the fact that the yellowtail snapper biomass is greater than what is needed to support harvesting at the maximum sustainable yield, the South Atlantic and Gulf Council's Scientific and Statistical Committees (SSCs) agreed to set the overall stock ABC at 4.05 million lb (1.94 million kg). Using the 25 percent Gulf allocation of the overall stock ABC, the ABC for Gulf yellowtail snapper was determined to be 1.012 million lb (0.459 million kg).

For setting the Gulf yellowtail snapper ACL, the Council applied its ACL control rule to the ABC to account for management uncertainty. Following the control rule, the ACL was reduced by 11 percent from the Gulf allocation of the ABC. This results in a Gulf yellowtail snapper ACL of 901,125 lb (408,743 kg).

Venting Tools

A venting tool is a device intended to deflate the abdominal cavity of a fish to release the fish with minimal damage. Currently, Gulf reef fishermen must possess venting tools onboard and use them when releasing reef fish. This requirement was implemented through Amendment 27 to the FMP (73 FR 5117, January 29, 2008). The venting tool requirement was implemented to reduce bycatch and discard mortality in the reef fish fishery. However, several recent scientific studies have questioned the usefulness of venting tools in preventing discard mortality in fish, particularly those caught in deep waters. In addition, some fish caught in shallow waters may not need to be vented, and attempts at venting may damage fish by improper venting techniques and increased handling time while the fish are out of the water. Finally, the current requirement to use a venting tool may prevent fishermen from using other devices such as fish descenders, which are devices that take the fish back to depth without puncturing them. Because of these factors, the

Council voted to remove the venting tool requirement for the Gulf reef fishery. This provides fishermen with more discretion when they release reef fish, but does not prohibit the use of venting tools or other release devices by fishers.

Additional Management Measure Contained in the Framework Action

Vermilion snapper in the Gulf is managed with a single stock ACL. The current ACL for the Gulf vermilion snapper stock is 3.42 million lb (1.55 million kg), and was set through the Gulf's Generic ACL/AM Amendment (76 FR 82044, December 29, 2011). This ACL was established based on 1999-2008 landings data and was adjusted to account for scientific and management uncertainty per the Council's ABC and ACL control rules developed in the Generic ACL/AM Amendment.

In 2011, a vermilion snapper update stock assessment was performed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 9 Update) and used data through 2010. The assessment indicated that the stock was not overfished nor undergoing overfishing. Based on the SEDAR 9 Update, the Council's SSC recommended that the vermilion snapper stock ABC be set at 4.41 million lb (2.00 million kg) in 2013, 4.34 million lb (1.97 million kg) in 2014, and 4.33 million lb (1.96 million kg) in 2015, 2016, and subsequent years.

The Council reviewed several alternatives for setting the Gulf vermilion snapper stock ACL that ranged from maintaining it

at the current 3.42 million lb (1.55 million kg) to setting it equal to the ABC. Recommendations by the Council's RFAP and public testimony from vermilion snapper fishermen to the Council indicated that the stock condition appeared to be declining in recent years. Given this information, and considering that the last year of data used in the update assessment was 2010, the Council recommended, as a precaution, not to increase the vermilion snapper stock ACL at this time. Therefore the vermilion snapper stock ACL will remain at 3.42 million lb (1.55 million kg).

Comments and Responses

NMFS received a total of 18 comment submissions on the framework action and the proposed rule. Of these comment submissions, 11 were generally opposed to the rule, 4 were generally in favor of the rule, 2 were in favor of some aspects of the rule and against other aspects, and one was from a Federal agency that had no objection to the framework action or the proposed rule. The comments specific to this framework action or proposed rule can be generally categorized as either for or against the bag limit, and for or against eliminating the venting tool requirement. NMFS agrees with those comments supporting the bag limit and eliminating the venting tool requirement. NMFS responds to the remaining comments as follows.

Comment 1: A 10-fish vermilion snapper recreational bag limit within the 20-fish reef fish aggregate bag limit is too restrictive and unnecessary.

Response: NMFS disagrees. This final rule implements a 10-fish vermilion snapper bag limit as a precautionary measure due to concern about the status of the vermilion snapper stock. Members of the Council's RFAP who target vermilion snapper expressed concern that the stock appears to be declining in recent years and that stock status does not match the projections in the SEDAR 9 Update assessment. Therefore, the RFAP recommended setting the ACL below the ABC level recommended by the Council's SSC. In addition, the Council received similar comments through public testimony. The Council did not increase the vermilion snapper ACL in response to those comments. The RFAP also recommended that the Council constrain vermilion snapper recreational harvest because of recent increases in landings, which increased from approximately 457,000 lb (207,292 kg) in 2010 to 1.15 million lb (521,631 kg) in 2011. The RFAP was concerned that if such increases persist, the ACL could be exceeded. They recommended the Council set a recreational bag limit of 10 vermilion snapper within the 20-fish reef fish aggregate bag limit, which is expected to constrain recreational harvest, and should reduce the likelihood of the vermilion snapper ACL being exceeded. Given concern about the stock

status and the recent increases in recreational landings, the Council took a precautionary approach and revised the vermilion snapper bag limit.

Comment 2: Retain the venting tool requirement or require that some type of gear that reduces barotrauma, such as a fish descender, be onboard a vessel when reef fish fishing.

Response: NMFS recognizes that the use of a venting tool can reduce the discard mortality rate of reef fish brought to the surface when used correctly for certain types of fish. However, requiring the use of venting tools can contribute to discard mortality when used incorrectly or with other types of fish, particularly those harvested from deeper waters. Recent research has determined that use of venting tools is of questionable usefulness. Depending on the species of fish to be vented, the size of the fish to be vented, and the circumstances surrounding the release of the fish, alternative methods of returning the fish to depth (e.g., rapid descent devices, recompression devices, etc.), or simply releasing the fish with no venting may be preferable. The venting tool requirement may also discourage fishermen from using other methods to return fish to deeper waters that might improve the chance of a reef fish species surviving catch and release, such as the use of a recompression device.

Additionally, requiring some type of gear that reduces reef

fish barotrauma poses management and enforcement problems. Removing the venting tool requirement will simplify Federal regulations and provide fishermen the flexibility to use other release devices that may be more effective than venting certain types of fish. This final rule does not preclude fishermen from using venting tools in the future, but simply removes the requirement to have them onboard and use them.

Changes from the Proposed Rule

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, a certification was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013 rule, NMFS has reviewed the certification prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule and the framework action are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Reef fish, Venting tool,
Vermilion snapper, Yellowtail snapper.

Dated: July 29, 2013

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.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.30, paragraph (c) is removed and the introductory text is revised to read as follows:

§ 622.30 Required fishing gear.

For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such

person must use the gear as specified in paragraphs (a) and (b) of this section.

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3. In § 622.38, paragraph (b) (5) is revised to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(5) Gulf reef fish, combined, excluding those specified in paragraphs (b) (1) through (b) (4) and paragraphs (b) (6) through (b) (7) of this section--20. In addition, within the 20-fish aggregate reef fish bag limit, no more than 2 fish may be gray triggerfish and no more than 10 fish may be vermilion snapper.

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4. In § 622.41, the second sentence of paragraph (n) is revised to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(n) * * * The stock ACL for yellowtail snapper is 901,125 lb (408,743 kg), round weight.

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