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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160613514-6514-01]

RIN 0648-BG12

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 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). If implemented, this action would revise the commercial quota and annual catch limit (ACL) and the recreational annual catch target (ACT) and ACL for red grouper in the Gulf of Mexico (Gulf) exclusive economic zone. The purpose of this proposed rule is to adjust the allowable red grouper harvest to achieve optimum yield based upon an updated Gulf red

grouper stock assessment.

DATES: Written comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0077" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0077, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Richard Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will

be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web site at

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2016/red_grouper_allowable_harvest/index.html

FOR FURTHER INFORMATION CONTACT: Richard Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red grouper, 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).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to achieve on a continuing basis the optimum yield from federally managed fish stocks. This mandate is intended to ensure that fishery resources are managed for the

greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems.

The 2015 Southeast Data Assessment Review (SEDAR 42) for Gulf red grouper determined that the stock is not overfished or undergoing overfishing based upon the assessment's terminal year of 2013. As a result of SEDAR 42, the Council's Science and Statistical Committee (SSC) recommended increasing the Gulf red grouper overfishing limit (OFL) and acceptable biological catch (ABC). The SSC provided two alternative OFL and ABC recommendations: (1) as a declining yield stream for the 2016 through 2020 fishing years; and (2) as a constant catch. The Council chose the constant catch OFL and ABC (14.16 million lb (6.42 million kg) and 13.92 million lb (6.31 million kg), respectively), but chose a more conservative approach in setting the ACLs and ACTs, basing these catch levels on the minimum ABC of 10.77 million lb (4.89 million kg) from the declining yield stream. The Council's decision was based on testimony from the general public and commercial fishermen, who suggested the Council use caution when setting the catch levels. Thus, through this framework action, the Council is increasing the red grouper

commercial and recreational ACTs and ACLs. The commercial ACT is codified as the commercial quota.

Management Measures Contained in this Proposed Rule

The proposed rule would revise the commercial quota and ACL, and the recreational ACT and ACL for Gulf red grouper. All weights described in this proposed rule are in gutted weight.

Commercial and Recreational Catch Limits

The current red grouper commercial quota and ACL, and recreational ACT and ACL were implemented through Amendment 32 to the FMP (77 FR 6988, February 10, 2012). The current commercial quota is 5,720,000 lb (2,590,000 kg) and the commercial ACL is 6,030,000 lb (2,735,000 kg). The current recreational ACT is 1,730,000 lb (785,000 kg) and the recreational ACL is 1,900,000 lb (862,000 kg).

This proposed rule would increase catch levels for both sectors. The commercial quota would be revised to 7,780,000 lb (3,528,949 kg) and the commercial ACL would be revised to 8,190,000 lb (3,714,922 kg). Additionally, the recreational ACT would be revised to 2,370,000 lb (1,075,014 kg) and the recreational ACL to 2,580,000 lb (1,170,268 kg).

For Gulf red grouper, 76 percent of the stock ACL is allocated to the commercial sector and 24 percent of the ACL is

allocated to the recreational sector. The commercial quota is set by applying a 5 percent buffer to the commercial ACL to account for management uncertainty and the recreational ACT is set by applying a buffer to the recreational ACL of 8 percent to account for management uncertainty.

The revised commercial quota in this proposed rule would provide the commercial sector additional harvest opportunities as a result of the increased commercial quota beginning in 2016. The increase in the recreational ACL is expected to allow the recreational sector to remain open for the entire fishing year by avoiding the implementation of an in-season accountability measure.

Other Measures Contained in the Framework Action not in this Proposed Rule

In addition to the measures contained in this proposed rule, this framework action would also revise the Gulf red grouper OFL and ABC based upon the results of SEDAR 42.

The stock OFL proposed in the framework action is 14,160,000 lb (6,422,868 kg), which is a 43 percent increase from the current stock OFL of 8,100,000 lb (3,674,098 kg). The ABC proposed in the framework action is a 35 percent increase to the current ABC. The current red grouper stock ABC is 7,930,000 lb (3,596,987 kg).

The revised ABC would be 13,920,000 lb (6,314,006 kg) .

Classification

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this rule, as required by section 603 of the RFA, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting,

record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

This proposed rule, if implemented, would be expected to directly affect all commercial vessels that harvest red grouper under the FMP.

Only recreational anglers, who may fish from shore, man-made structures, private, rental, or charter vessels, and headboats, are allowed a bag or possession limit of reef fish species in the Gulf. Captains or crew members on charter vessels or headboats (for-hire vessels) cannot harvest or possess red grouper or other reef fish under the recreational bag limits. Therefore, only recreational anglers would be directly affected by the proposed changes to the red grouper recreational ACL and ACT. Recreational anglers, however, are not considered to be small entities under the RFA, so the economic effects of this proposed rule on these anglers are outside the scope of the RFA.

For-hire vessels sell fishing services to recreational anglers. The proposed changes to the recreational red grouper ACL and ACT would not directly alter the services sold by these vessels. Any change in demand for these fishing services and associated economic effects as a result of this proposed rule

would be a consequence of a behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA.

As of March 7, 2016, there were 852 valid or renewable Federal Gulf commercial reef fish permits. Each of these permits is associated with an individual vessel. To harvest red grouper, a vessel permit must be linked to an individual fishing quota (IFQ) account and possess sufficient allocation (pounds of fish) for this species. IFQ accounts can be opened and valid permits can be linked to IFQ accounts at any time during the year. Allocation is distributed at the beginning of each fishing year based on the shares held by each IFQ participant. Eligible vessels can also purchase red grouper allocation or shares from other IFQ participants. On average (2010 through 2014), 397 vessels landed red grouper each year. Their average annual vessel-level revenue for 2010 through 2014 was approximately \$99,000 (2015 dollars), of which \$41,000 was from red grouper.

The maximum annual revenue reported by a single one of these vessels in 2014 was approximately \$1.5 million (2015 dollars).

On December 29, 2015, the NMFS issued a final rule

establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). Under this rule, a business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Pursuant to the RFA, and prior to July 1, 2016, an IRFA was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial fishing businesses and were considered small under the SBA's size

standards, and they all would continue to be considered small under the new NMFS standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action. No other small entities that would be directly affected by this proposed rule have been identified.

Of the 852 commercial vessels eligible to fish for the species managed under the FMP, 397 of them are expected to be affected by this proposed rule (approximately 47 percent). Because all entities expected to be affected by this proposed rule are small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Using the Council's preferred alternative, this proposed rule would set the commercial ACL for red grouper at a constant catch value of 8,190,000 lb (3,714,922 kg). The commercial quota would be set at 95 percent of the commercial ACL. This would represent a 2,060,000 lb (934,400 kg) (36 percent) increase in the commercial quota relative to the status quo. The increased quota would be expected to result in an increase in commercial red grouper harvests, although this increase would be constrained by industry capacity, individual harvesters' profit

maximization strategies, and current Federal management restrictions. Economic benefits may accrue to the commercial sector as a result of the increased landings and availability of red grouper allocation; however, these would be tempered by potential decreases in ex-vessel and IFQ allocation prices. It is not possible to quantify these economic effects with available data. For 2016, it is unlikely that the commercial fleet would be able to harvest the totality of the additional red grouper amounts made available by the increase in this proposed rule, because if implemented, this framework action would likely not be effective until early fall of 2016. In subsequent years, commercial fishermen may or may not be able to scale-up their operations to harvest the full quota. Price effects in both the ex-vessel and allocation transfer markets would depend on the price elasticity of demand for red grouper and red grouper allocation, respectively. Assuming the price elasticity of demand (percentage change in quantity demanded divided by the percentage change in price) for red grouper in the ex-vessel market is greater than one (*i.e.*, the percentage change in quantity demanded is greater than the percentage change in price), then an increase in landings would result in an increase in ex-vessel revenue and vice versa. Assuming the price

elasticity of demand for red grouper allocation is greater than 1, IFQ shareholders would experience an overall increase in allocation transfer proceeds and vice versa. With respect to IFQ share value, if investors believe that the discounted future revenue stream associated with shares is greater under the new quota than under the current quota, then share prices would be expected to increase, otherwise they would remain the same or decrease. IFQ account holders that routinely purchase red grouper allocation would likely benefit from the wider availability and cheaper price of allocation. Again, these cost savings may be offset by changes in ex-vessel prices. Additionally, if the proposed rule is implemented in 2016, those that have already purchased annual allocation for use later in 2016 would incur supplementary costs because they would have likely overpaid for the allocation. Finally, the higher quota could result in increased congestion of fishing grounds, which in turn, could have a minor impact on harvesting costs.

The following discussion describes the alternatives that were not selected as preferred by the Council.

Four alternatives, including the preferred alternative discussed above, were considered for modifying the red grouper OFL, ABC, and commercial and recreational sector catch levels.

The first alternative, the no action alternative, would not be expected to affect current commercial red grouper harvests. This alternative was not selected because the OFL and ABC would not be based on the best scientific information available and economic benefits derived from increased commercial and recreational harvests would be forgone, possibly preventing the achievement of OY.

The second alternative would adopt the OFL and ABC schedule recommended by the SSC for 2016 through 2020. Using the current sector allocation, the commercial and recreational ACLs would be set at 76 percent and 24 percent of the ABC, respectively. Under the second alternative, the commercial quota would be set at 95 percent of the commercial ACL and the recreational ACT would be set at 92 percent of the recreational ACL. This alternative would result in a 154 percent increase in the commercial quota in 2016, followed by successively lower quotas through 2020. In 2020 and subsequent fishing years, the red grouper commercial ACL and quota would be equivalent to the constant catch values specified in the preferred alternative. Economic effects to commercial vessels under this alternative would depend on the capacity of the fleet, individual harvesters' profit maximization strategies, current Federal management

restrictions, and the effects of the quota increase on ex-vessel, IFQ allocation, and IFQ share prices. Given the very substantial size of the quota increases under this alternative, the 35-fathom (64-m) bottom longline closure during June through August each year, and the lack of issuance of new Eastern Gulf reef fish bottom longline endorsements, it is not likely that the commercial fleet would be able to harvest the entirety of its quota each year. Therefore, although positive direct economic benefits may result from additional red grouper harvests, increased availability of allocation, and potential increases in IFQ share value, they would be constrained by the industry's capacity and tempered by negative price effects. It is possible that negative price effects from increased allocation and landings could actually result in a decrease in allocation transfer proceeds and ex-vessel revenues, respectively. As for IFQ share prices, NMFS expects that they would fluctuate in the short-term as allocation and ex-vessel markets re-stabilize and investors speculate on future market and stock conditions, as well as Federal management measures. Finally, the higher commercial quotas could result in increased congestion of fishing grounds, which in turn could have a minor impact on harvesting costs. This alternative was not selected because the

Council preferred to take a more conservative approach to setting the OFL, ABC, and commercial and recreational catch levels in order to account for scientific uncertainty in the stock assessment, specifically the below average red grouper recruitment in the Gulf, since 2005, and to reduce the chances of negative economic effects to commercial vessels from a large increase in the red grouper quota.

The third alternative would implement the constant catch OFL and ABC recommended by the SSC. Using the current sector allocation, the commercial and recreational ACLs would be set at 76 percent and 24 percent of the ABC, respectively. The commercial quota would be set at 95 percent of the commercial ACL and the recreational ACT would be set at 92 percent of the recreational ACL. This would represent a 76 percent increase in the commercial quota from the current quota. This alternative would result in a greater commercial quota compared to the preferred alternative, but a lesser quota compared to the second alternative through 2017. After 2017, the constant catch commercial ACL and quota under this alternative would be greater than both the preferred alternative and the second alternative. Once again, economic effects to commercial vessels under this alternative would depend on the capacity of the fleet, individual

harvesters' profit maximization strategies, current Federal management restrictions, and the effects of the quota increase on ex-vessel and IFQ allocation and share prices. As was the case with the second alternative, given the very substantial size of the quota increase under this alternative, the 35-fathom (64-m) bottom longline closure during June through August each year, and the lack of issuance of new Eastern Gulf reef fish bottom longline endorsements, it is not likely that the commercial fleet would be able to harvest the entirety of its quota each year. Therefore, although positive direct economic benefits may result from additional red grouper harvests, increased availability of allocation, and potential increases in IFQ share value, they would be constrained by the industry's capacity and tempered by negative price effects. As discussed earlier, these negative price effects could actually outweigh the economic benefits of increased allocation and landings. Additionally, IFQ share prices would likely fluctuate in the short-term. There would also be an increased potential for fishing congestion and, in turn, increased harvesting costs. Because the commercial quota would be less than under the second alternative but greater than under the preferred alternative, it would be expected to fall somewhere in between those alternatives in terms of potential landings and

likelihood of negative price effects for 2016 and 2017. In the long-term, this alternative would result in the greatest commercial quota and greatest potential landings. Because there is insufficient data to estimate the total expected change in landings and revenue, it is not possible to definitively state which alternative would be expected to result in the greatest economic benefits to the commercial sector. This alternative was not selected for the same reasons the Council did not select the second alternative.

List of Subjects in 50 CFR Part 622

Annual catch limits, Annual catch targets, Fisheries, Fishing, Gulf, Recreational, Red grouper, Reef fish, Quotas.

Dated: July 15, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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 § 622.39, revise paragraph (a)(1)(iii)(C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper*--7,780,000 lb (3,528,949 kg).

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3. In § 622.41, revise the last sentence of paragraph (e) (1) and paragraph (e) (2) (iv) to read as follows:

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

* * * * *

(e) * * *

(1) * * * The applicable commercial ACL for red grouper, in gutted weight, is 8,190,000 lb (3,714,922 kg).

(2) * * *

(iv) The recreational ACL for red grouper, in gutted weight, is 2,580,000 lb (1,170,268 kg). The recreational ACT for red grouper, in gutted weight, is 2,370,000 lb (1,075,014 kg).

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