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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160613514-6908-02]

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: Final rule.

SUMMARY: NMFS issues regulations 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 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 (EEZ). The purpose of this final rule is to adjust the allowable red grouper harvest to achieve optimum yield (OY) based upon an updated Gulf red grouper stock assessment.

DATES: This final rule is effective [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: 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

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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).

On July 26, 2016, NMFS published a proposed rule for the framework action and requested public comment (81 FR 48728). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule revises the commercial quota (which is equivalent to the commercial ACT) and ACL, and the recreational ACT and ACL for Gulf red grouper. All weights described in this final 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 a 2011 regulatory amendment (79 FR 67618, November 2, 2011) and 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).

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 an 8-percent buffer to the recreational ACL to account for management uncertainty.

This final rule increases catch levels for both sectors. The commercial quota will be revised to 7,780,000 lb (3,528,949 kg) and the commercial ACL will be revised to 8,190,000 lb

(3,714,922 kg). Additionally, the recreational ACT will be revised to 2,370,000 lb (1,075,014 kg) and the recreational ACL to 2,580,000 lb (1,170,268 kg).

The revised commercial quota in this final rule will provide the commercial sector additional harvest opportunities as a result of the increased commercial quota that will be distributed upon the effective date of this final rule in the 2016 fishing year. NMFS notes that the increase to the red grouper commercial multi-use allocation, that is a function of the groupers and tilefish individual fish quota (IFQ) program, will not be distributed in the 2016 fishing year to ensure that the gag commercial ACL is not exceeded as a result of that increase. The increase to the red grouper commercial multi-use allocation will be distributed to the applicable IFQ participants on January 1, 2017, the start of the next fishing year. 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.

Comments and Responses

A total of 28 comment submissions were received on the framework action and the proposed rule from commercial and recreational fishers, college students, and a sport-fishing club. Ten of the comments received were against increasing the

red grouper allowable harvest while six were in favor of the increase. Five commenters stated that the recreational quota should be increased but that the commercial quota should not be increased. Seven additional comments were submitted that were not related to the proposed rule or the framework action; several of these questioned the rationale for the allocation between the commercial and recreational sectors. Specific comments related to the actions in the framework action and the proposed rule as well as NMFS' respective responses, are summarized below.

Comment 1: There is no need to raise catch levels because setting a one-fish recreational bag limit would allow the recreational season to remain open all year.

Response: The Council did not consider reducing the recreational bag limit to one fish in this framework action because the increase in the recreational ACL is expected to allow the recreational sector to remain open the entire fishing year. The Council determined and NMFS agrees that this increase in the recreational ACL is supported by the results of the most recent stock assessment.

Comment 2: Only the recreational quota should be increased, not the commercial quota.

Response: NMFS disagrees that only the recreational quota should be increased through this final rule. Red grouper are

managed as an overall Gulf stock and any change to the total allowable catch is allocated to both sectors consistent with the allocations established in Amendment 30B to the FMP (72 FR 17603, April 16, 2009). The Council did not consider and this final rule does not alter current sector allocations. Therefore, both the commercial and recreational sectors will have their respective catch limits increased in this final rule.

Comment 3: The combination of red grouper mortality from red tide events and the associated destruction of red grouper habitat is detrimental to the species. When this mortality and habitat loss is considered in addition to the uncertainty of the actual recreational landings, the Council and NMFS should take a precautionary approach to any increase of the ACL.

Response: NMFS and the Council considered natural mortality and any relevant landings data uncertainty when deciding what catch levels were appropriate. First, the Council's Integrated Ecosystem Assessment Group (IEA) considered the linkage of natural mortality and recruitment to ecosystem processes including predation, red tide events, and oceanographic conditions to produce estimates of natural mortality for different life stages of red grouper that were incorporated into SEDAR 42. Based on the results of SEDAR 42, the Council's Science and Statistical Committee (SSC) provided two alternative

overfishing limit (OFL) and acceptable biological catch (ABC) recommendations: as a declining yield stream and as a constant catch during this period. The Council chose the constant catch OFL and ABC, 14.16 million lb (6.42 million kg), gutted weight, and 13.92 million lb (6.31 million kg), gutted weight, respectively, but chose a more conservative approach in setting the catch levels, basing them on the minimum ABC of 10.77 million lb (4.89 million kg), gutted weight, from the declining yield stream. Second, the uncertainty in recreational landings was accounted for by the Council by applying the ACL/ACT control rule, which resulted in the recreational ACT being set 8 percent below the recreational sector ACL. For the commercial sector, the quota is set 5 percent below the ACL to account for the management uncertainty associated with the multi-use provisions in the IFQ program.

Comment 4: The increase of the red grouper ABC and total ACL should not be approved by NMFS because the bag limit was recently reduced from four to two fish, which should allow the recreational fishing season to remain open throughout the fishing year.

Response: NMFS disagrees that the two fish bag limit will allow the recreational season to remain open for the entire fishing year. Although the recreational bag limit reduction

from four to two fish was implemented in the spring of 2015, recreational fishing for red grouper closed on October 8, 2015. Further, as explained in the framework action, both the two-fish bag limit and the increase in the recreational catch level resulting from the implementation of this final rule are necessary to allow the recreational season to remain open through the end of the 2016 fishing year.

Comment 5: The commercial IFQ program for groupers and tilefish should land 95 percent of the red grouper commercial quota for a minimum of 3 to 5 years prior to any red grouper commercial quota increase.

Response: NMFS disagrees. There are a variety of potential reasons why 100 percent of the red grouper commercial quota has not been harvested since the implementation of the IFQ program, including, but not limited to, the current 35 fathom longline closure that occurs annually from June through August, the moratorium on the issuance of new longline endorsements to the Federal reef fish permit, inactive IFQ accounts, and low catch and effort rates. Additionally, individual commercial vessels strive to maximize profits across a diverse range of reef fish and other Gulf species and their harvest strategies, both at the trip level and throughout the fishing year, may result in some red grouper commercial quota not being harvested during a fishing

year. Based upon historical landings, NMFS does not expect negative effects on the red grouper stock from increased fishing pressure or ex-vessel market prices to change significantly as a result of this final rule. Additional information on the potential effects to commercial fishing vessels from this action may be found in the Classification Section of this final rule.

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

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

The stock OFL in this framework action is increased to 14,160,000 lb (6,422,868 kg) from the current stock OFL of 8,100,000 lb (3,674,098 kg). The ABC in this framework action is also increased from the current red grouper stock ABC of 7,930,000 lb (3,596,987 kg) to an ABC of 13,920,000 lb (6,314,006 kg).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant

for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. The final rule and the preamble to this final rule provide a statement of the need for and objectives of 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 final rule.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA follows.

Public comments relating to socio-economic implications and potential impacts on small businesses are addressed in the response to Comment 5 in the Comments and Responses section of this final rule. No changes to this final rule were made in response to public comments. No comments were received from the Office of Advocacy for the Small Business Administration.

NMFS agrees that the Council's choice of preferred alternatives will best achieve the Council's objectives for the framework action while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule 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 recreational bag or possession limit of reef fish species in the Gulf. Captains or crew members on federally-permitted charter vessels or headboats (for-hire vessels) cannot harvest or possess Gulf red grouper or other reef fish under the recreational bag limits. Therefore, only recreational anglers would be directly affected by the 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 final rule on these anglers are outside the scope of the RFA.

For-hire vessels are entities that sell fishing services to recreational anglers. The 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 final rule would be a consequence of a behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of this final rule. Because the only 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 IFQ account and possess sufficient allocation (pounds of fish) for this species. IFQ accounts can be opened and valid Federal commercial reef fish 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 commercial 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, 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 initial regulatory flexibility analysis was developed for this framework action using SBA's size standards. NMFS has reviewed the analyses prepared for this framework action with respect to the new size standard. All of the entities directly regulated by this framework 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 framework action. No other small entities that would be directly affected by this final rule have been identified.

Of the 852 commercial vessels eligible to fish for the species managed under the FMP, 397 are expected to be affected by this final rule (approximately 47 percent). Because all entities expected to be affected by this final rule are small entities, NMFS has determined that this final 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 final rule will set the commercial ACL for red grouper at a constant catch value of 8,190,000 lb (3,714,922 kg). The commercial quota will be set at 95 percent of the commercial ACL. This will represent a 2,060,000 lb (934,400 kg) (36 percent) increase in the commercial quota relative to the status quo. The increased quota is expected to result in an increase in commercial red grouper harvests, although this increase will 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 Gulf reef fish commercial fleet will be able to harvest all of the additional red grouper amounts made available by the ACL and ACT increases in this final rule because this framework action will likely not be effective until late October 2016. In subsequent fishing years, commercial fishermen may or may not be able to scale-up their operations to harvest the full commercial quota. Price effects in both the ex-vessel and allocation transfer markets will 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 will 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 will 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 commercial quota than under the current quota, then IFQ share prices will likely increase, otherwise they will remain the same

or decrease. IFQ account holders that routinely purchase red grouper allocation will 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, those fishers that have already purchased annual allocation for use later in 2016 will incur supplementary costs because they will have likely overpaid for the allocation. Finally, the increased commercial 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 all 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 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 future Federal management measures. Finally, the increased 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 commercial 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. 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 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 all 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 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 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 increase in the 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.

This final rule is exempt from the requirement to delay the effectiveness of a final rule by 30 days after publication in the **Federal Register**, under 5 U.S.C. 553(d) (1) because the

measures implemented by this final rule relieve restrictions on the regulated community as a result of increased catch levels for the commercial and recreational sectors. Specifically, the revised commercial quota in this final rule will provide the commercial sector additional harvest opportunities as a result of the increased commercial quota that will be distributed upon the effective date of this final rule in the 2016 fishing year. The increase in the recreational ACL is expected to allow the recreational sector to remain open for the entire 2016 fishing year by avoiding the implementation of an in-season accountability measure as a result of the recreational ACL being reached. For these same reasons, NMFS finds good cause under 5 U.S.C. 553(d) (3) to waive the delay in the effective date of this final rule. Delaying implementation of these measures for red grouper could result in a recreational fishing closure and will provide less time for commercial fishermen to harvest the catch level increase before the fishing year's end. Therefore, a delay in effectiveness would diminish the social and economic benefits for reef fish fishermen this final rule provides, which is part of the purpose of the rule itself. Finally, this final rule creates no new duties, obligations, or requirements for the regulated community that would necessitate delaying this rule's

effectiveness to allow them to come into compliance with it. Thus, this final rule is effective upon publication.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as 'small entity compliance guides.' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

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

Dated: October 5, 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 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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