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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170505465-7465-01]

RIN 0648-BG87

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish
Management Measures; Amendment 46**

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 Amendment 46 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) (Amendment 46). For gray triggerfish, this proposed rule would revise the recreational fixed closed season, recreational bag limit, recreational minimum size limit, and commercial trip limit. Additionally, Amendment 46 would establish a new rebuilding time period for the Gulf of Mexico (Gulf) gray triggerfish stock. The purpose of this proposed rule

is to implement management measures to assist in rebuilding the Gulf gray triggerfish stock and achieve optimum yield (OY).

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 amendment identified by "NOAA-NMFS-2017-0080" 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-2017-0080*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Lauren Waters, 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 Amendment 46, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/am46_gray_trigger/documents/pdfs/gulf_reef_am46_gray_trigg_final.pdf.

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

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes gray triggerfish, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C 1801 et seq.).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are 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, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to rebuild overfished stocks.

Status of the Gray Triggerfish Stock

The first Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for gray triggerfish was completed in 2006 (SEDAR 9). SEDAR 9 indicated that the gray triggerfish stock was both overfished and possibly undergoing overfishing. Subsequently, Amendment 30A to the FMP established a gray triggerfish rebuilding plan beginning in the 2008 fishing year (73 FR 38139, July 3, 2008). In 2011, a SEDAR 9 update stock assessment for gray triggerfish determined that the gray triggerfish stock was still overfished and was undergoing overfishing, and had not made adequate progress toward rebuilding. As a result of the SEDAR 9 update and to end overfishing, the final rule for Amendment 37 to the FMP revised

the gray triggerfish commercial and recreational sector annual catch limits (ACLs) and annual catch targets (ACTs), revised the gray triggerfish recreational sector accountability measures (AMs), revised the gray triggerfish recreational bag limit, established a commercial trip limit for gray triggerfish, and established a fixed closed season for the gray triggerfish commercial and recreational sectors (78 FR 27084, May 5, 2013). Additionally, Amendment 37 revised the rebuilding plan and projected that the stock would be rebuilt in 5 years, or by the end of 2017 fishing year.

Since implementation of Amendment 37 in 2013, commercial harvest has not exceeded the commercial ACL, while the recreational sector has exceeded the recreational ACL or adjusted recreational ACL (that resulted from a ACL overage adjustment) in the 2013, 2014, 2015, and 2016 fishing years. The most recent stock assessment for gray triggerfish was completed and reviewed by the Council's Scientific and Statistical Committee (SSC) in October 2015 (SEDAR 43). SEDAR 43 indicated that the gray triggerfish stock was not experiencing overfishing but remained overfished and would not be rebuilt by the end of 2017 as previously projected. On November 2, 2015, NMFS notified the Council that the gray triggerfish stock was not making

adequate progress toward rebuilding, and the Council subsequently began development of Amendment 46 to establish a new rebuilding time period and other management measures to achieve OY and rebuild the stock.

Management Measures Contained in this Proposed Rule

For gray triggerfish, this proposed rule would revise the recreational fixed closed season, recreational bag limit, recreational minimum size limit, and commercial trip limit. NMFS and the Council are proposing the changes to the recreational management measures to help constrain recreational landings to the recreational ACT to avoid triggering accountability measures (AMs) resulting in an in-season closure or post-season payback that would occur if landings exceed the recreational ACL. NMFS and the Council are proposing the increase in the commercial trip limit to allow those commercial fishermen who encounter gray triggerfish to harvest more fish per trip while continuing to constrain commercial landings to the commercial ACT.

Recreational Seasonal Closure

The current recreational seasonal closure for gray triggerfish in the Gulf is from June 1 through July 31, and was established in Amendment 37 to protect gray triggerfish during the peak spawning season and help constrain landings to the recreational

ACT (78 FR 27084, May 5, 2013). However, as explained above, recreational landings have exceeded the recreational ACL or adjusted ACL the last 4 years. This proposed rule would establish an additional recreational fixed closed season for gray triggerfish from January 1 through the end of February, which is expected to reduce recreational landings and help rebuild the stock within the rebuilding time period established in Amendment 46.

Recreational Bag Limit

The current recreational bag limit was set in Amendment 37 and is a 2-fish per person per day limit within the overall 20-fish aggregate reef fish bag limit. This proposed rule would reduce the recreational gray triggerfish bag limit to 1 fish per person per day within the 20-fish aggregate reef fish bag limit.

As described in Amendment 46, from 2013 through 2015, approximately 10 percent of recreational trips with reef fish landings harvested 2 gray triggerfish within the 20-fish aggregate bag limit. NMFS expects the proposed change to the bag limit to reduce recreational landings by 15 percent, which will help constrain harvest to the recreational ACT to allow the sector to remain open through the end of the fishing year.

Recreational Size Limit

The current recreational minimum size limit for gray triggerfish is 14 inches (35.6 cm), fork length (FL), and was established in Amendment 30A to the FMP (73 FR 38139, July 3, 2008). The proposed rule would increase the minimum size limit to 15 inches (38.1 cm), FL. Increasing the recreational minimum size limit would increase the gray triggerfish spawning potential by maintaining larger-sized fish, which are more fecund, in the stock, and is expected to help slow recreational harvest.

Commercial Trip Limit

The current commercial trip limit is 12 fish per trip, and was established in Amendment 37 to help constrain commercial harvest to the commercial ACT and avoid an in-season closure as a result of the AMs being triggered (78 FR 27084, May 5, 2013). This proposed rule would increase the trip limit to 16 fish per trip.

As described in Amendment 46, since implementation of the 12 fish commercial trip limit in 2013, commercial landings have been consistently below the commercial ACT. Analysis of commercial trips demonstrated that 80 percent of trips caught 10 gray triggerfish or less. This indicates that gray triggerfish is primarily a non-target species by the commercial sector and

that increasing the commercial trip limit would likely result in only a small change in the weight projected to be landed during a fishing year. However, increasing the commercial trip limit would allow those fishermen who encounter the species the opportunity to harvest more fish. This would help achieve OY for the stock while continuing to constrain commercial landings to the commercial ACT.

Measures in Amendment 46 not in this Proposed Rule

In addition to the measures proposed to be implemented through this proposed rule, Amendment 46 contains actions to set a rebuilding timeframe and to consider alternatives for the commercial and recreational ACTs and ACLs.

Rebuilding Time Period and Commercial and Recreational ACTs and ACLs

Amendment 37 established a 5-year rebuilding time period, expiring in 2017, and the current gray triggerfish commercial and recreational ACTs and ACLs. The current commercial ACT is 60,900 lb (27,624 kg), round weight, and the commercial ACL is 64,100 lb (29,075 kg), round weight. The current recreational ACT is 217,000 lb (98,475 kg), round weight, and the recreational ACL is 242,200 lb (109,406 kg), round weight. Amendment 46 would establish a new rebuilding time period for

the Gulf gray triggerfish stock as a result of the stock status determined through SEDAR 43, and maintain the current commercial and recreational ACLs and ACTs.

The Council's SSC reviewed SEDAR 43 and recommended alternative rebuilding time periods of 8, 9, or 10 years and the acceptable biological catch (ABC) yield streams for each period. There is a 60 percent probability of rebuilding the stock within these time periods if landings are appropriately constrained to the recommended catch levels. In Amendment 46, the Council considered these rebuilding time periods and their associated catch levels, as well as a 6-year period, which would be the time needed to rebuild the stock in the absence of fishing mortality. The Council determined that the 9-year rebuilding time period was as short as possible, taking into account the status and biology of the stock and the needs of the associated fishing communities. Although the ABC recommendation associated with the 9-year time period allowed for an increase in harvest, the Council chose to adopt a more conservative approach and maintain the current commercial and recreational ACLs and ACTs for gray triggerfish that were set through the final rule for Amendment 37 (78 FR 27084, May 9, 2013).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification follows.

A description of this proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule would directly affect commercial and recreational fishing for gray triggerfish in Gulf Federal waters. Anglers are not considered small entities as that term is defined in the RFA (5 U.S.C. 601(6)). Consequently, estimates

of the number of anglers directly affected by the rule and the impacts on them are not provided here.

NMFS estimates an average of 223 commercial fishing vessels harvest gray triggerfish in Gulf Federal waters annually, and the number of businesses that own these vessels ranges from 166 to 223. The average vessel harvested 164 lb (74.4 kg), gutted weight, of gray triggerfish annually with a dockside value of \$331 (2015 dollars), and that average vessel's annual dockside revenue from all landings is \$158,804 (2015 dollars).

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 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 its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. Based on the average annual revenue for a vessel that lands gray triggerfish, it is concluded that most to all of the businesses that harvest gray triggerfish from the Gulf are small businesses.

Amendment 46 would establish a rebuilding time period of 9 years or by the end of 2025, and this revised time period would have no direct impact on any small business.

The proposed rule would retain the current commercial ACL and commercial ACT for gray triggerfish, which have been in effect since 2013 (78 FR 27084, May 9, 2013). These *status quo* measures would have no additional impact on any small business.

The proposed rule would increase the commercial trip limit for gray triggerfish. A 12-fish trip limit has been in effect since 2013, and this proposed rule would allow for up to four more gray triggerfish to be landed per trip. The average weight of a commercially sized gray triggerfish is estimated to be 4.113 lb (1.866 kg), gutted weight. In 2015, the average dockside price of gray triggerfish was \$2.12 per pound, gutted weight. At that price, the proposed rule could increase dockside revenue to as much as \$34.88 per trip. It is estimated that the average annual beneficial impact would range from \$0 to \$135 per vessel, which represents from 0.00 percent to 0.08 percent of the average vessel's annual dockside revenue from all landings.

Therefore, this proposed rule would not have a significant economic impact on a substantial number of small entities, and

an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gray triggerfish, Gulf, Recreational.

Dated: September 18, 2017.

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, 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 § 622.34, revise paragraph (f) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(f) *Seasonal closures for gray triggerfish.* The recreational sector for gray triggerfish in or from the Gulf EEZ is closed from January 1 through the end of February, and from June 1 through July 31, each year. During a recreational closure, the bag and possession limits for gray triggerfish in or from the Gulf EEZ are zero. The commercial sector for gray triggerfish in or from the Gulf EEZ is closed from June 1 through July 31, each year. During the period of both the commercial and recreational closure, all harvest or possession in or from the Gulf EEZ of gray triggerfish is prohibited and the sale and purchase of gray triggerfish taken from the Gulf EEZ is prohibited.

3. In § 622.37, revise paragraph (c)(1) to read as follows:

§ 622.37 Size limits.

* * * * *

(c) * * *

(1) *Gray triggerfish*. (i) For a person not subject to the bag limit specified in § 622.38(b)(5)—14 inches (35.6 cm), fork length.

(ii) For a person subject to the bag limit specified in § 622.38(b)(5)—15 inches (38.1 cm), fork length.

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4. In § 622.38, revise paragraph (b)(5) 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 1 fish may be gray triggerfish and no more than 10 fish may be vermilion snapper.

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5. In § 622.43, revise paragraph (b) to read as follows:

§ 622.43 Commercial trip limits.

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(b) *Gray triggerfish*. Until the commercial ACT (commercial

quota) specified in § 622.39(a)(1)(vi) is reached--16 fish. See § 622.39(b) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

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