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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 141104927-4927-01]

RIN 0648-XG564

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Resources of the Gulf of Mexico; Commercial Reef Fish
Fishery of the Gulf of Mexico; 2019 Red Grouper Commercial Quota
Retention**

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

ACTION: Temporary rule; withholding of red grouper allocation.

SUMMARY: NMFS intends to withhold a portion of the red grouper commercial quota from the Individual Fishing Quota Program for Grouper and Tilefishes (IFQ) for the 2019 fishing year as a result of a proposed commercial quota reduction. The Gulf of Mexico Fishery Management Council (Council) requested that NMFS reduce the Gulf of Mexico (Gulf) red grouper commercial and recreational annual catch limits (ACLs) and associated annual catch targets (ACTs) through a temporary rule to provide increased protections to the stock. The commercial red grouper quota is equivalent to the commercial ACT. NMFS is currently evaluating the Council's request and may implement, in early

2019, a temporary rule to reduce the red grouper ACLs and ACTs. Because red grouper is managed under an IFQ program, NMFS distributes IFQ allocation to the program shareholders on January 1 of each year. After NMFS distributes the applicable commercial quota to shareholders, it cannot be recalled. Therefore, in anticipation of the possible commercial quota reduction, NMFS will withhold distribution of 59.4 percent, equivalent to 4.78 million lb (2.17 million kg), gutted weight, of red grouper IFQ allocation on January 1, 2019. If the quota reduction is not implemented by June 1, 2019, the withheld quota will be distributed to the shareholders. This action is necessary to protect the red grouper resource and to effectively manage the IFQ program in 2019.

DATES: This rule effective 12:01 a.m., local time, January 1, 2019, until 12:01 a.m., local time, June 1, 2019.

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 includes red grouper and is managed under the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

All weights in this temporary rule are in gutted weight.

The current red grouper commercial ACT (commercial quota) is 7,780,000 lb (3,528,949 kg) and the commercial ACL is 8,190,000 lb (3,714,922 kg). Under the IFQ program for Gulf grouper and tilefish species, NMFS distributes allocation to shareholders on January 1 each year. However, regulations at 50 CFR 622.22(a)(4), authorize NMFS to withhold distribution of IFQ allocation on January 1 in the amount equal to an expected reduction in the commercial quota.

The Council's Scientific and Statistical Committee (SSC) recently reviewed the results of an interim analysis performed by the Southeast Fisheries Science Center and recommended that the Council reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. In addition, there have been recent decreases in red grouper landings and public testimony at the October Council meeting expressed concern about the status of the red grouper stock. Therefore, at its October 2018 meeting, the Council began developing a framework action to reduce the ACLs and ACTs. In the meantime, the Council requested that NMFS publish an interim or emergency rule to temporarily reduce the red grouper commercial and recreational ACLs and associated ACTs consistent with a red grouper stock ACL of 4.60 million lb (2.09 million kg), or the 2017 total red grouper landings, whichever is less. The 2017

combined red grouper commercial and recreational landings were approximately 4.16 million lb (1.89 million kg). Therefore, NMFS, is considering whether to issue an interim or emergency rule to reduce the red grouper ACLs and ACTs consistent with a stock ACL of 4.16 million lb (1.89 million kg).

If NMFS issues the interim or emergency rule, the commercial ACL for 2019 would be 3.16 million lb (1.43 million kg). This is approximately a 59.4 percent reduction from the current commercial ACL of 8.19 million lb (3.71 million kg). The commercial ACT is 95 percent of the ACL, and would be 3.00 million lb (1.36 million kg).

Based on the Council's request, NMFS expects a reduction in the red grouper quota to occur after January 1, 2019. Therefore, consistent with 50 CFR 622.22(a)(4) NMFS is withholding 4.78 million lb (2.17 million kg) of the red grouper commercial quota when allocation is distributed to shareholders on January 1, 2019. If a final rule implementing the quota reduction is not effective by June 1, 2019, NMFS will distribute the withheld allocation to the shareholders.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of red grouper in the Gulf reef fish fishery and

is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.22(a)(4) and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to withhold a portion of the red grouper commercial quota constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the ability to withhold a percentage of the commercial quota as specified at 50 CFR 622.22(a)(4) has already been subject to notice and public comment. All that remains is to notify the public of the amount of the applicable commercial quota to be withheld on January 1, 2019. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the red grouper stock and effectively manage the Gulf IFQ program.

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

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

Dated: December 11, 2018.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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