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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190213109-9385-02]

RIN 0648-BI63

Temporary Rule to Establish Management Measures for Red Grouper in the Gulf of Mexico

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

ACTION: Final temporary rule; emergency action.

SUMMARY: NMFS issues an emergency rule as requested by the Gulf of Mexico Fishery Management Council (Council) to address concerns that the Gulf of Mexico (Gulf) red grouper stock may be in decline. This emergency rule reduces the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs). This emergency rule is effective for 180 days, although NMFS may extend this emergency rule's effectiveness for a maximum of an additional 186 days. The intended effect of this emergency rule is to provide a temporary reduction in Gulf red grouper harvest levels to protect the stock from overharvest while the Council develops a framework action to reduce the red grouper catch limits on a more long-term basis.

DATES: This final temporary rule is effective on *[insert date of publication in the FEDERAL REGISTER]*, through *[insert date 180 calendar days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which include an environmental assessment (EA), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage Gulf reef fish, including red grouper, under the Fishery Management Plan for Reef Fish Resources of the Gulf (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). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

On March 5, 2019, NMFS published a proposed temporary rule for emergency action in the **Federal Register** and requested public comment (84 FR 7864). The proposed emergency rule and the EA outline the rationale for the actions contained in this final emergency rule. A summary of the management measures described in the EA and

implemented through this emergency rule is provided below.

All weights in this emergency rule are in gutted weight. The current red grouper commercial and recreational ACLs and ACTs were implemented through a framework action to the FMP in 2016 (81 FR 70365, October 12, 2016). These values were based on a red grouper stock ACL equal to 10.70 million lb (4.85 million kg). The current sector allocation for red grouper is 76 percent commercial and 24 percent recreational, and the commercial and recreational ACTs reduce the sector-specific ACLs by 95 percent and 92 percent, respectively. The current red grouper commercial ACL is 8,190,000 lb (3,714,922 kg) and the commercial ACT (commercial quota) is 7,780,000 lb (3,528,949 kg). The current red grouper recreational ACL is 2,580,000 lb (1,170,268 kg) and the recreational ACT is 2,370,000 lb (1,075,014 kg).

Currently, the red grouper stock is not considered to be overfished or undergoing overfishing. However, recent information suggests the condition of the red grouper stock has declined. Information supporting this conclusion includes reduced commercial and recreational landings, an interim analysis of the stock, testimony from fishermen at Council meetings, and recent red tide events in the eastern Gulf. These factors caused the Council to request emergency action to reduce the red grouper ACLs and ACTs while

it considers a longer-term reduction through a framework action to the FMP. The Council requested that NMFS reduce the Gulf red grouper stock ACL for the 2019 fishing year to 4.60 million lb (2.09 million kg), as recommended by the Council's Scientific and Statistical Committee (SSC), or the 2017 total red grouper landings, whichever is less.

The 2017 combined red grouper commercial and recreational landings (approximately 4.16 million lb (1.89 million kg)) are less than the SSC's recommendation. Therefore, NMFS implements this final emergency rule to reduce the red grouper commercial and recreational ACLs and ACTs consistent with a stock ACL of 4.16 million lb (1.89 million kg). This emergency rule is effective for 180 days, although NMFS may extend the emergency rule's effectiveness for a maximum of an additional 186 days. This would allow for sufficient time for the Council and NMFS to develop and implement a new framework action to manage the red grouper stock for the 2020 fishing year and beyond.

Measures Contained in This Final Emergency Rule

For red grouper, this emergency rule revises the red grouper stock ACL to 4.16 million lb (1.89 million kg). Applying the commercial allocation of 76 percent to the stock ACL of 4.16 million lb (1.89 million kg) results in a commercial ACL of 3.16 million lb (1.43 million kg). The commercial ACT is set at 95 percent of the

commercial ACL, or 3.00 million lb (1.36 million kg).

Because commercial red grouper is managed under an individual fishing quota (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 this final emergency rule reducing the commercial quota, NMFS withheld distribution of 59.4 percent, equivalent to 4.78 million lb (2.17 million kg) of red grouper IFQ allocation through a temporary rule effective on January 1, 2019 (83 FR 64480, December 17, 2018). If the commercial quota reduction implemented through this final emergency rule is not effective by June 1, 2019, the withheld commercial quota will be redistributed to the shareholders.

For the recreational sector, 24 percent of the 4.16 million lb (1.89 million kg) revised total stock ACL results in a recreational ACL of 1.00 million lb (0.45 million kg). The recreational ACT is set at 92 percent of the recreational ACL, or 0.92 million lb (0.42 million kg).

Emergency Rule Criteria

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists, and this final emergency rule is promulgated

under these criteria. Specifically, NMFS' policy guidelines require that an emergency:

(1) Result from recent, unforeseen events or recently discovered circumstances; and

(2) Present serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS has determined that reducing the red grouper 2019 commercial and recreational ACLs and ACTs for 2019 meets the three criteria required for an emergency rule. The new red grouper interim analysis developed by the NMFS Southeast Fisheries Science Center (SEFSC) and subsequent SSC recommendation were presented to the Council at its October 2018 meeting and constitute recently discovered circumstances. In addition, public testimony at the October Council meeting expressed concern about the status of the red grouper stock, noting that red grouper appear to be scarcer in abundance than in previous years. The severe red tide event that occurred in summer and fall 2018 off the Florida west coast was also

unforeseen and may have adversely affected the red grouper stock. Although the impacts of this recent red tide are unknown, the 2009 Southeast Data Assessment and Review (SEDAR) 12 update assessment and 2015 SEDAR 42 assessment indicated that a similar 2005 red tide event depressed the red grouper spawning stock biomass. The SEDAR 61 red grouper stock assessment is presently underway and NMFS expects to present the results to the Council's SSC in July 2019.

Without this emergency rule, the red grouper ACLs and ACTs could not be effectively reduced for the 2019 fishing year. This could present a serious conservation problem if the red grouper stock is in decline, as the reduction in landings, public comment, and interim analysis suggest.

Based on the Council's request for an interim or emergency rule, in its December 17, 2018, temporary rule, NMFS withheld the IFQ allocation equal to this emergency rule's reduction in the commercial ACT (quota) (83 FR 64480). This final emergency rule meets the third criteria for an emergency because it would reduce the commercial quota to be effective prior to June 1, 2019. This would provide protection to the red grouper stock while the Council and NMFS develop and implement a framework action that will address the new information about the stock, including the SEDAR 61 assessment, for the 2020 fishing year and beyond.

Comments and Responses

NMFS received 17 comments on the proposed temporary rule for emergency action. The majority of the comments supported the action. Some comments supporting the action also contained suggestions for additional management measures that are outside the scope of the Council's request for interim or emergency action such as seasonal closures, reduced recreational bag limits, and state management of the red grouper recreational sector. No changes to this final rule were made as a result of public comment. Comments that were specific to the proposed temporary rule for emergency action are summarized and responded to below.

Comment 1: The emergency action is not of a long enough duration to provide sufficient protection to the red grouper stock.

Response: NMFS agrees that long-term measures may be needed to protect Gulf red grouper stock. The Council requested emergency action to address concerns regarding the Gulf red grouper stock and reduce the catch levels for 2019. The Council developed more long-term measures through a framework action that would continue the ACL and ACT reductions contained in this emergency rule in 2020 and beyond. The Council approved this framework action at its April 2019 meeting. NMFS will evaluate the framework action for consistency with the FMP, Magnuson-Stevens Act, and other applicable law, and

will publish a proposed rule if appropriate.

Comment 2: The red grouper stock is healthy and so neither the commercial nor recreational catch levels need to be reduced.

Response: NMFS disagrees. Several factors support this emergency action. At their October 2018 meeting, the Council received a recommendation from its SSC to reduce the red grouper commercial and recreational ACLs and ACTs beginning in the 2019 fishing year. This recommendation was based on a NMFS SEFSC analysis that suggested the Gulf red snapper stock may be in decline. In addition, fishermen expressed concern about the condition of the red grouper stock because recent harvests have been well below the current catch levels. Finally, the Council noted the severe red tide conditions that occurred in the summer and fall of 2018 off the Florida west coast. The red grouper stock has been shown to be adversely affected by past red tide events similar to the event that occurred in 2018. Therefore, the Council concluded, and NMFS agrees, that this action should be taken to reduce the red grouper catch levels for 2019.

Comment 3: NMFS should not reduce catch levels through this emergency rule. If the red grouper stock cannot support a two-fish daily recreational bag limit, then NMFS should close commercial fishing for red grouper.

Response: A complete closure of the commercial sector is beyond

the scope of the action requested by the Council and implemented through this emergency rule. The commercial sector is managed under an IFQ program, which allows for the harvest of red grouper as long as IFQ participants have allocation available. However, NMFS notes that the catch levels established through this rule are equal to 2017 harvest levels and recreational red grouper fishing did not close in 2017. Therefore, NMFS expects the recreational season to remain open throughout 2019 under the current 2-fish red grouper recreational bag limit.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to provide increased protection for the Gulf red grouper stock and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is being taken pursuant to the emergency provision of Magnuson-Stevens Act and is exempt from review by the Office of Management and Budget.

NMFS published the proposed temporary emergency rule on March 5, 2019 (84 FR 7864), and prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed action. The IRFA concluded

that the action would have a significant adverse impact on the average annual 330 small commercial fishing businesses and their combined 376 federally permitted fishing vessels that harvest red grouper from the Gulf. The comment period for the proposed rulemaking closed on March 20, 2019.

A final regulatory flexibility analysis (FRFA) parallels the IRFA and must also include a summary of significant issues raised by public comments in response to the IRFA, any changes in the action in response to those comments or new information, a description of the steps the agency took to minimize the adverse economic impact on small entities, and why it selected the alternative adopted.

No comments were received on the IRFA or on the economic impacts of the rule on small entities more generally. NMFS has not received any new information that would affect its previous determination. As a result, the estimates and conclusions of the IRFA have not changed.

This rule will reduce the red grouper quota in 2019 to 3.00 million lb (1.36 million kg). NMFS considered two other alternatives to the rule: either no change in the quota or a reduction to 3.32 million lb (1.51 million kg). The no-action alternative has no short-term impacts on small businesses, but was not selected because it allows for declining status of the stock. The second non-selected

alternative has smaller short-term costs than the selected alternative, but it may not provide for sufficient protection of the stock.

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. As part of the 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.

This final emergency rule responds to the best scientific information available. The AA finds that the need to immediately implement this action constitutes good cause to waive the 30-day delay in this final emergency rule's effectiveness, pursuant to the authority set forth in 5 U.S.C. 553(d) (3), as such procedure for this final emergency rule would be contrary to the public interest.

Delaying the effectiveness of this emergency rule for 30 days would be contrary to the public interest because of the need to implement this action before June 1, 2019, in order to protect the red grouper stock. If the reduction in the ACL is not effective by June 1, additional allocation will be released to the current red

grouper shareholders. Once released, the allocation cannot be recalled, and the reduction in the catch levels cannot be implemented for 2019.

Accordingly, the 30-day delay in effectiveness of the measures contained in this emergency rule is waived.

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf of Mexico, Red grouper, Quotas.

Dated: May 14, 2019.

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, suspend paragraph (a)(1)(iii)(C) and add paragraph (a)(1)(iii)(D) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(D) *Red grouper*—3.00 million lb (1.36 million kg).

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3. In § 622.41, suspend paragraph (e) and add paragraph (r) to read as follows:

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

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(r) *Red grouper*—(1) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The applicable commercial ACL for red grouper, in gutted weight, is 3.16 million lb (1.43 million kg).

(2) *Recreational sector.* (i) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (r)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (r)(2)(i) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (r)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (r)(2)(iv) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the length

of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

(iii) If red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (r) (2) (iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (r) (2) (i) and (ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (r) (2) (ii) of this section, by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iv) The recreational ACL for red grouper, in gutted weight, is 1.00 million lb (0.45 million kg). The recreational ACT for red grouper, in gutted weight, is 0.92 million lb (0.42 million kg).

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