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*Acting Executive Director, Pension Benefit Guaranty Corporation.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 060322083-6147-02; I.D. 032006C]

RIN 0648-AU04

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Recreational Grouper Fishery Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the bag limit provisions of a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule will establish a recreational bag limit for Gulf red grouper of one fish per person per day and prohibit the captain and crew of a vessel operating as a charter vessel or headboat from retaining any Gulf grouper, i.e., establish a zero bag limit for captain and crew. The intended effect of this final rule is to help maintain recreational landings at levels consistent with the red grouper rebuilding plan.

**DATES:** This final rule is effective July 17, 2006.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA), are available from Andy Strelcheck, NMFS, Southeast Regional Office, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail [Andy.Strelcheck@noaa.gov](mailto:Andy.Strelcheck@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Andy Strelcheck, telephone 727-824-5305; fax 727-824-5308; e-mail [Andy.Strelcheck@noaa.gov](mailto:Andy.Strelcheck@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Council recommended and NMFS published a proposed rule to implement the regulatory amendment and requested public comment on the proposed rule through May 1, 2006 (71 FR 16275, March 31, 2006). In addition to the measures contained in this final rule, the proposed rule included a February 15 to March 15 recreational closure for red grouper, gag, and black grouper. NMFS expects a new stock assessment for gag to be completed in July 2006 that might contain new information pertinent to evaluating the need for the seasonal closure. Also, the Florida Fish and Wildlife Conservation Commission expressed concerns about implementation of the seasonal closure. Therefore, NMFS is implementing the bag limit and captain and crew provisions in this final rule but will defer possible implementation of the seasonal closure until the new gag assessment is completed. If the seasonal closure is warranted based on the results of the gag stock assessment, another final rule will be published for that action. The seasonal closure provision has been removed from this final rule. The rationale for the measures in the regulatory amendment is provided in the preamble to the proposed rule and is not repeated here. A summary of the public comments received by NMFS on the proposed rule and NMFS' responses are provided below.

#### Comments and Responses

NMFS received a total of 8 different comments from 12 commenters. Following is a summary of the comments received on the proposed rule and NMFS' responses.

*Comment 1:* Eight commenters opposed the February 15 to March 15 recreational seasonal closure and believed the closure period would severely impact the livelihood of charter boat captains, crew, and their families.

*Response:* NMFS expects a new stock assessment for gag to be completed in July 2006 that might contain new information pertinent to evaluating the need for the seasonal closure for red grouper, gag, and black grouper. Therefore, NMFS intends to defer possible implementation of the seasonal closure until the new gag assessment is completed. If the seasonal closure is warranted based on the results of the gag stock assessment, the closure may

be implemented via appropriate rulemaking.

*Comment 2:* Two commenters opposed prohibiting for-hire captain and crew from retaining bag limits of grouper while under charter. Two commenters were in favor of prohibiting for-hire captain and crew from retaining bag limits of grouper.

*Response:* With a reduction in the red grouper bag limit to one fish per person per day, there is a greater incentive for captain and crew on for-hire vessels to retain fish and supplement the landings of their clients, negating some of the benefit of the lower red grouper bag limit. Although past regulations allowed captains and crew to socially and economically benefit from the enjoyment of fishing and supplying their families with fresh fish, continuing to allow captain and crew to retain bag limits reduces the effectiveness of the red grouper bag limit. Implementing this measure increases the likelihood that red grouper landings reduction targets are reached, as specified in the rebuilding plan for red grouper. Not implementing this measure may result in more severe management reductions with accompanying increased adverse economic impacts to captains and crew. Additionally, prohibiting for-hire captains and crew from retaining bag limits of grouper while under charter is considered equitable because commercial fishermen would be prohibited from retaining bag limits of reef fish while commercially fishing if Amendment 18A to the FMP is implemented.

*Comment 3:* Two commenters were in favor of reducing the bag limit from two to one red grouper per person per day.

*Response:* The reduction in red grouper bag limit is part of management measures to return recreational red grouper landings to levels specified in the rebuilding plan. Reducing the red grouper bag limit to one is estimated to reduce landings of red grouper by 29.7 percent.

*Comment 4:* One commenter suggested creating a closed season of September 15 to October 15 instead of February 15 to March 15.

*Response:* The seasonal closure was proposed for February 15 to March 15 because the commercial seasonal closure occurs at this time and includes important spawning seasons for red, black, and gag grouper. The Council also considered seasonal closures during April-May and August and was presented with analyses for seasonal closures in September and October. A September 15 to October 15 seasonal closure would result in similar, although slightly greater, reductions in

harvest than the preferred February 15 to March 15 seasonal closure. However, a closure during fall would not provide the added benefits of protecting red, gag, and black grouper during spawning or closing the recreational fishery at the same time as the commercial fishery. NMFS intends to defer possible implementation of the recreational seasonal closure until the new gag assessment is completed in summer 2006.

*Comment 5:* Three commenters each suggested one of the following topics: (1) Better enforcement of charter boats that fish in Federal waters without permits; (2) purchase of all charter boat businesses by the government to relieve the economic strain of regulations on fishermen; and (3) prevention of supposed toxic material dumping by phosphate plants as a measure to prevent fish mortality.

*Response:* The regulatory amendment only considered reducing the bag limit from two to one red grouper per person per day, prohibiting for-hire captain and crew from retaining bag limits of grouper while under charter, and creating a seasonal closure from February 15 to March 15. The regulatory amendment did not consider the topics listed in the above comment because other measures were considered to be more appropriate. Therefore, this comment is beyond the scope of the regulatory amendment and this rule.

#### Classification

The Administrator, Southeast Region, NMFS, determined the regulatory amendment is necessary for the conservation and management of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the analyses follows.

This rule will reduce the daily recreational red grouper bag limit and eliminate the captain and crew daily grouper bag limit. The purpose for this regulatory amendment is to implement management measures for the Gulf of Mexico grouper fishery that will restrict recreational red grouper landings to levels specified in the red grouper rebuilding plan. The Magnuson-Stevens

Act provides the statutory basis for this final rule.

The proposed rule contained a February 15 to March 15 recreational seasonal closure for red grouper, gag, and black grouper. In response to public comment and to allow for evaluation of the results of a new stock assessment for gag expected to be completed in July 2006, consideration of implementation of the seasonal closure will be deferred until the new assessment is completed.

No duplicative, overlapping, or conflicting Federal rules have been identified.

A moratorium on the issuance of new charter vessel/headboat (for-hire) permits for reef fish has been in effect since June 16, 2003, and, currently, approximately 1,625 unique vessels are permitted to operate in this fishery. The for-hire fishery is comprised of charter vessels, which charge fees on a per-vessel basis, and headboats, which charge fees on an individual angler basis. The average charter vessel is estimated to generate \$76,960 in annual revenue and \$36,758 in annual "profit" (computed as gross revenue minus costs; costs exclude depreciation, fixed costs, and returns to owner/operators). The comparable figures for an average headboat are \$404,172 in annual gross revenue and \$338,209 in annual profits. Some vessels in the for-hire fleet also participate in the commercial fisheries. However, information on the average revenues generated from operation as a commercial vessel and the impacts of these revenues on the overall economic performance of the business operation are unknown.

Although the rule will not directly affect support industries, potential reductions in fishing effort and associated expenditures may have indirect impacts on hotels, restaurants, gear and bait shops, and other associated businesses. It is not possible to enumerate or characterize these businesses.

The rule will not change current reporting, recordkeeping and other compliance requirements under the FMP. These requirements include permit qualification criteria and participation in data collection programs if selected by NMFS. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills, and, therefore, are deemed not to be onerous.

The Small Business Administration defines a small business in the for-hire

fishery sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$6.5 million. Given the economic profile of the for-hire fleet presented above, NMFS determined that all for-hire fishing entities that could be affected by this final rule are small business entities. Because all of these entities could be affected, NMFS determined that the final rule will affect a substantial number of small entities.

The determination of "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is whether the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. All for-hire entities affected by the rule are considered small entities, so the issue of disproportionality does not arise in the present case. The profitability question is whether the regulations significantly reduce profit for a substantial number of small entities. For-hire operations, specifically charter boats, will bear the primary burden of the rule, although spill-over impacts are expected in associated industries such as hotels, marinas, and bait and tackle shops. For-hire operations may experience a reduction in bookings, resulting in reduced receipts from for-hire fees, tips, gear rental, food or beverages, and fish-cleaning. No trip cancellations were projected due to the reduced red grouper bag limit because most grouper trips have not historically landed either the former red grouper or aggregate grouper daily bag limit. Approximately 13,000 trips per year, on average, are expected to be affected by the reduced red grouper bag limit. Although few of these trips are expected to be cancelled due to the reduced bag limit, they represent approximately \$1.57 million in for-hire fees (approximately \$1,000 per vessel), or approximately 1 percent of average gross revenues and 3 percent of average net revenues per vessel. No financial impacts would accrue to trips that are not cancelled as a result of the reduced bag limit. The impact of the rule on associated industries cannot be determined.

Six alternatives, including the status quo, were considered to the proposed red grouper bag limit and seasonal closure. The status quo would have allowed continued landing overages in the recreational sector and would, therefore, not meet the Council's objectives because continued overages would not allow the fishery to meet rebuilding goals. Additionally, for the

reasons stated above, the rule does not include the proposed seasonal closure.

The second alternative would have reduced the red grouper daily bag limit to one fish per angler or three fish per vessel, whichever is less. This alternative is more restrictive than the bag limit in the final rule and, therefore, would result in greater adverse economic impacts due to greater loss of consumer surplus and greater likelihood of trip cancellation.

The third alternative would have increased the red grouper recreational minimum size limit to 22 inches (55.9 cm). An increase in the minimum size limit, however, would be expected to increase bycatch and discard mortality, which is inconsistent with the Council's objective of minimizing bycatch and discard mortality. Thus, this alternative would not meet the Council's objectives.

The fourth alternative would have reduced the red grouper recreational bag limit within the aggregate grouper limit to one per person per day and closed the season for all grouper during August. This alternative would have resulted in greater reductions in consumer surplus and potential foregone expenditures, therefore increasing the adverse economic impacts relative to the final rule.

The fifth alternative would have reduced the red grouper recreational bag limit within the aggregate limit to one per person per day and closed the season for all grouper during April through May. This alternative would also have resulted in greater reductions in consumer surplus and potential foregone expenditures than the final rule.

The sixth alternative would have reduced the red grouper bag limit within the aggregate limit to one per person per day and increased the minimum recreational size limit to 21 inches (53.3 cm). Similar to an increase of the minimum size limit to 22 inches (55.9 cm), excessive bycatch mortality was expected to accrue to this alternative.

The final alternative to the red grouper bag limit would have reduced the red grouper bag limit within the aggregate grouper limit to one fish per angler or three fish per vessel per day, whichever is less, except for reef fish-permitted for-hire vessels with a U.S. Coast Guard Certificate of Inspection. For these vessels, the resultant vessel limit would be one red grouper per two paying passengers. This alternative is more restrictive than the rule and would result in greater adverse economic impacts than the rule.

One alternative, the status quo, was considered for the 0-fish captain and crew grouper bag limit. The status quo, which would allow captain and crew a bag limit equal to that of the recreational angler, in combination with the other actions, would not achieve the necessary red grouper harvest reductions and would not, therefore, meet the Council's objectives. The 0-fish captain and crew bag limit constrains the potential harvest capacity aboard for-hire vessels, limits allowable bag limits to paying clients who are fishing recreationally, and contributes additional reduction in fishing mortality.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 8, 2006,

**James W. Balsiger,**

*Acting 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, 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, the suspensions of paragraphs (b)(1)(ii) and (b)(1)(v) are lifted; paragraphs (b)(1)(viii) and (b)(1)(ix) are removed; and paragraph (b)(1)(ii) is revised to read as follows:

#### **§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper -5 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day or 1 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat—their bag limit is zero.

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