

2000, 80,000 ac (33,000 ha) in 2001, 128,000 ac (52,000 ha) in 2002, 294,000 ac (119,000 ha) in 2003, 1,005,000 ac (407,000 ha) in 2004, 575,000 ac (233,000 ha) in 2005, 924,000 ac (374,000 ha) in 2006, and 725,000 ac (294,000 ha) in 2007. To provide some perspective, if the current estimate from Table 1 of approximately 2.1 million ac (850,000 ha) of occupied habitat in the United States is used, enough poison has been sold by this single facility since 2004 to poison all occupied habitat in the United States with enough remaining to poison an additional 1 million ac (400,000 ha). This scenario does not include the possibility of individuals stockpiling poison, or applying it at rates greater than 1/3 pound per acre.

Prairie dogs were extirpated from Arizona through poisoning campaigns that occurred in the early 1900s (Van Pelt 2007). As noted in the Population Estimates section of this document, that extirpation took place during a relatively unregulated period of large-scale extermination efforts using a highly toxic poison (Compound 1080).

Drought is a natural and cyclical occurrence within the range of the black-tailed prairie dog to which the animal has adapted (Forrest 2005, p. 528). It has been noted that, in at least some instances, occupied habitat tends to increase during periods of drought, and densities decrease, because animals spread out in search of food (Young 2008, p. 5). However, no information presented by the petitioners, or in our files, quantifies the effect of drought, singly or in conjunction with other threats, on the species rangewide.

The impacts of stochastic events and climate change on prairie dog populations are speculative. No information presented by the petitioners, or available in our files, quantifies these effects. No information on the direct relationship between climate change and population trends is available. Currently, black-tailed prairie dogs occupy, in fragmented populations, 2.1 million acres across 11 States; therefore, it is unlikely that stochastic events pose a threat to the species. In addition, extensive rangeland remains available for potential expansion of black-tailed prairie dog habitat (U.S. Department of Agriculture 2000, pp. 18–24). Therefore the threat of stochastic events does not appear to be significant.

#### Summary of Factor E

On the basis of our evaluation, we determined that the petition presents substantial information to indicate that listing the black-tailed prairie dog as a

threatened or endangered species may be warranted due to poisoning of black-tailed prairie dogs.

We determined that the petition does not present substantial information indicating that listing the black-tailed prairie dog may be warranted due to intolerance to or misconceptions about prairie dogs. We also determined that the petition does not present substantial information indicating that listing the black-tailed prairie dog may be warranted due to stochastic events, drought, or climate change.

#### Finding

We have assessed information provided by the petitioners and readily available in our files. On the basis of our evaluation, we find that the petition presents substantial information indicating that listing the black-tailed prairie dog under the Act may be warranted based on threats associated with Factor C (sylvatic plague), Factor D (inadequate Federal and State regulations), and Factor E (poisoning). Therefore, we are initiating a status review to determine whether listing the black-tailed prairie dog under the Act is warranted.

We determined that an emergency listing is not warranted at this time, because available information regarding Statewide populations indicates stable to increasing trends since 1961. However, if at any time we determine that emergency listing of the black-tailed prairie dog is warranted, we will initiate an emergency listing.

The petitioners also request that critical habitat be designated for the species concurrent with final listing under the Act. We consider the need for critical habitat designation when listing species. If we determine in our 12-month finding following the status review of the species that listing the black-tailed prairie dog is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

#### References Cited

A complete list of all references cited in this document is available, upon request, from the South Dakota Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, South Dakota Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 23, 2008.

**Rowan W. Gould,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. E8–28528 Filed 12–1–08; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 070719384–81468–03]

RIN 0648–AV80

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

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

**ACTION:** Temporary rule; interim measures; request for comments.

**SUMMARY:** This final rule implements temporary measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This final rule reduces the commercial quota for gag, establishes a gag bag limit within the grouper aggregate bag limit, and extends the recreational closed season for gag. In addition, if Federal regulations applicable to gag, red snapper, gray triggerfish, or greater amberjack are more restrictive than state regulations, this rule requires vessels with Federal reef fish permits to comply with Federal regulations regardless of where such fish are harvested. The intended effect is to reduce overfishing of gag and increase compliance with Federal regulations designed to end overfishing or rebuild overfished reef fish stocks in the Gulf.

**DATES:** This rule is effective January 1, 2009 through May 31, 2009. Comments must be received no later than 5 p.m., eastern time, on January 2, 2009.

**ADDRESSES:** You may submit comments on this temporary rule, identified by “0648–AV80, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

• Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

• Fax: 727-824-5308; Attention: Peter Hood.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0291" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of documents supporting this rule may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, telephone: 727-551-5784, fax: 727-824-5308, e-mail: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Gag are a part of the shallow-water grouper fishery of the Gulf of Mexico and are managed under the Fishery Management Plan (FMP) for the Reef Fish Fishery of the Gulf of Mexico. The FMP was prepared by the Gulf of Mexico Fishery Management Council (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.

### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure 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 specify their strategy to rebuild overfished stocks to a sustainable level within a

certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable. This temporary rule addresses these requirements for gag, red snapper, gray triggerfish, and greater amberjack on an interim basis while the Council develops more permanent measures in Amendment 30B to the FMP.

The most recent gag stock assessment completed in 2006 concluded that the stock is not overfished, but is undergoing overfishing. Following a re-analysis in 2007, overfishing was still determined to be occurring. The Council's Reef Fish Scientific and Statistical Committee (SSC) concurred with the overfishing determination at its May 2008 meeting. This temporary rule is necessary to reduce overfishing of gag by implementing temporary management measures while the Council develops more permanent measures to rebuild the gag stock to more sustainable levels. Although the gag stock was not considered to be overfished under any of the definitions of the minimum stock size threshold considered by the Council in Amendment 30B, the stock size was recognized to be below the stock size associated with harvesting the stock at OY ( $B_{OY}$ ). Therefore, these temporary management measures are designed to reduce overfishing and facilitate stock rebuilding toward  $B_{OY}$ .

In Amendment 30B, the Council, based on advice from the SSC, is proposing to set the 2009 total allowable catch (TAC) for gag at 3.38 million lb (1.53 million kg). This value is based on the fishing mortality rate associated with harvesting OY. Under the Council's plan, TAC will increase to 3.62 million lb (1.64 million kg) in 2010, and again to 3.82 million lb (1.73 million kg) in 2011. TAC would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking. The Council also has proposed in Amendment 30B an interim allocation of gag between the recreational and commercial fisheries based on the average share during the years 1986 through 2005. For gag, the allocation would be 61 percent recreational and 39 percent commercial.

NMFS and the Council analyzed these proposed interim measures and the measures contained in Amendment 30B in a single environmental impact statement. On August 8, 2008, a notice of availability of the draft environmental impact statement (DEIS) for this action and Amendment 30B was published (73 FR 46269). The Council took final action on the measures contained in Amendment 30B at their August 2008 meeting and submitted it for Secretarial

review in September 2008. The notice of availability of the final environmental impact statement (FEIS) published on October 24, 2008 (73 FR 63470), and the wait period ended on November 24, 2008. The rationale for these temporary measures is provided in the DEIS, FEIS, and the preamble to this temporary rule.

### Management Measures Established by This Temporary Rule

#### *Commercial Quota for Gag*

Consistent with the Council's proposed 2009 TAC in Amendment 30B and the proposed allocation between the recreational and commercial fisheries, this temporary rule sets the commercial quota for gag at 1.32 million lb (598,742 kg), which is equal to the 2009 quota proposed in Amendment 30B. This quota is consistent with the annual catch target (ACT) and annual catch limit (ACL) guidance provided in NMFS' proposed rule on Magnuson-Stevens Act provisions, ACLs, and national standard guidelines (73 FR 32526, June 9, 2008).

#### *Recreational Measures for Gag*

For the recreational fishery, this temporary rule establishes a new gag bag limit of 2 fish within the 5-fish aggregate grouper bag limit and an extended recreational closed season for gag from February 1-March 31. These recreational measures are estimated to reduce gag landings by 26 percent and are consistent with ACTs and ACLs proposed in Amendment 30B which are consistent with guidance provided in NMFS' proposed rule on Magnuson-Stevens Act provisions, ACLs, and national standard guidelines (73 FR 32526, June 9, 2008).

### Provision to Enhance Regulatory Effectiveness of Measures

#### *Addressing Species Undergoing Overfishing*

NMFS and state fishery management agencies usually work cooperatively to implement consistent regulations in Federal and state waters, thus enhancing the effectiveness of enforcement and management of the fisheries. However, there are some situations in which Federal and state regulations differ. When there are less restrictive regulations in state waters, the effectiveness of Federal regulations diminishes. Therefore, if Federal regulations applicable to gag, red snapper, gray triggerfish, or greater amberjack are more restrictive than state regulations, this temporary rule requires any vessel with a Federal commercial permit for Gulf reef fish or a Federal charter vessel/headboat permit for Gulf

reef fish, as a condition of their permit, to comply with such Federal regulations, regardless of where such fish are harvested, i.e., in state or Federal waters. These species are undergoing overfishing. This measure will reduce overfishing and improve the effectiveness of Federal management measures and enforcement. The Council is proposing this requirement for all reef fish species in Amendment 30B.

#### Future Action

NMFS finds that this temporary rule is necessary to reduce overfishing of gag and increase compliance with Federal regulations designed to end overfishing of red snapper, greater amberjack, and gray triggerfish. NMFS issues this temporary rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This temporary rule may be extended for an additional 186 days, as authorized by section 305(c) of the Magnuson-Stevens Act, provided the public has had an opportunity to comment on the rule and provided that the Council is actively preparing proposed regulations to address these overfishing issues on a permanent basis. The Council is preparing an amendment to address, on a permanent basis, gag overfishing issues and increased compliance with Federal regulations designed to end overfishing of red snapper, greater amberjack, gray triggerfish and other reef fish species in the Gulf.

#### Classification

The Administrator, Southeast Region, NMFS, (RA) has determined that this temporary rule is necessary to reduce overfishing of gag and other reef fish species in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment would be contrary to the public interest. This temporary rule addresses overfishing of public fishery resources. In order to obtain the target reductions in harvest, adequately address overfishing, and protect public fishery resources, these measures need to be effective by the start of the fishing year in 2009. Delaying action to reduce overfishing of gag, red snapper, greater amberjack, and gray triggerfish in the

Gulf of Mexico to provide further notice and opportunity for public prior to implementation would allow continued adverse impacts on the associated fishery resources, and increase the likelihood of a loss in long-term productivity from the component of the reef fish fishery these species represent. Additionally, this would increase the likelihood of more severe restrictions on these species in the future, which would result in additional adverse social and economic impacts on the associated fishery participants.

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

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

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

Dated: November 26, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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 § 622.4, paragraph (a)(2)(v) is suspended, and paragraphs (a)(1)(iv) and (a)(2)(xiv) are added to read as follows:

#### § 622.4 Permits and fees.

(a) \* \* \*

(1) \* \* \*

(iv) If Federal regulations in subparts A, B, or C of this part that are applicable to gag, red snapper, greater amberjack, or gray triggerfish in the Gulf of Mexico are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

(2) \* \* \*

(xiv) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations in

subparts A, B, or C of this part that are applicable to gag, red snapper, greater amberjack, or gray triggerfish in the Gulf of Mexico are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where such fish are harvested. See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

\* \* \* \* \*

3. In § 622.34, paragraph (u) is suspended and paragraphs (v) and (w) are added to read as follows:

#### § 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(v) *Seasonal closure of the recreational fishery for red grouper and black grouper.* The recreational fishery for red grouper and black grouper in or from the Gulf EEZ is closed from February 15 to March 15, each year. During the closure, the bag and possession limit for red grouper and black grouper in or from the Gulf EEZ is zero.

(w) *Seasonal closure of the recreational fishery for gag.* The recreational fishery for gag in or from the Gulf EEZ is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

4. In § 622.39, paragraphs (b)(1)(ii) and (b)(1)(v) are suspended and paragraphs (b)(1)(viii) and (b)(1)(ix) are added to read as follows:

#### § 622.39 Bag and possession limits.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(viii) 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, 1 red grouper per person per day, or 2 gag 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. The bag limit for such captain and crew is zero.

(ix) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i), (iii), (iv), (vi), (vii), and (viii) of this section and excluding dwarf sand perch and sand perch--20.

\* \* \* \* \*

5. In § 622.42, add paragraph (a)(1)(vii) to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(vii) Gag -1.32 million lb (0.60 million kg), gutted weight, that is, eviscerated but otherwise whole.

\* \* \* \* \*

[FR Doc. E8-28616 Filed 12-1-08; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 0810091344-81346-01]

RIN 0648-XL23

**Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2009 and 2010 Harvest Specifications for Groundfish**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 2009 and 2010 harvest specifications, reserves and apportionments, and Pacific halibut prohibited species catch for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2009 and 2010 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by January 2, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit

comments, identified by RIN 0648-XL23, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.

- *Mail:* P.O. Box 21668, Juneau, AK 99802.

- *Fax:* (907) 586-7557.

- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (Final EIS) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from NMFS at the addresses above or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Copies of the final 2007 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the Gulf of Alaska (GOA), dated November 2007, are available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510 or from the Council's Web site at <http://alaskafisheries.noaa.gov/npfmc>.

**FOR FURTHER INFORMATION CONTACT:** Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907-481-1780, or e-mail at [tom.pearson@noaa.gov](mailto:tom.pearson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

These proposed specifications are based in large part on the 2007 SAFE

reports. In December 2008, the Council will consider a 2008 SAFE report to develop its recommendations for the final 2009 and 2010 acceptable biological catch (ABC) amounts. Anticipated changes in the final specifications from the proposed specifications are identified in this notice for public review.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut prohibited species catch (PSC) amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The proposed specifications in Tables 1 through 17 of this document satisfy these requirements. For 2009 and 2010, the sum of the proposed TAC amounts is 279,264 mt. Under § 679.20(c)(3), NMFS will publish the final 2009 and 2010 specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2008 meeting, and (3) considering information presented in the Final EIS and the final 2008 SAFE report prepared for the 2009 and 2010 groundfish fisheries.

**Other Actions Potentially Affecting the 2009 and 2010 Harvest Specifications**

NMFS published a proposed rule to implement Amendment 77 to the GOA FMP in the **Federal Register** on September 24, 2008 (73 FR 55010), with comments invited through November 17, 2008. If approved, Amendment 77 would remove dark rockfish from the pelagic shelf rockfish (PSR) complex in the GOA FMP in order for the State of Alaska (State) to assume management of dark rockfish. This action is necessary to allow the State to implement more responsive, regionally based management measures than are currently possible under the FMP. The effect on the proposed 2009 and 2010 harvest specifications for PSR, if Amendment 77 is approved, would be to reduce the overfishing limit (OFL), ABC, and TAC amounts listed in Table 1. The OFL for PSR would be reduced from 6,294 mt to 5,695 mt. The ABCs and TACs for PSR would be reduced from 986 mt to 804 mt in the Western Regulatory Area; from 3,566 mt to 3,339 mt in the Central Regulatory Area; from 247 mt to 230 mt in the West Yakutat District; and from 5,140 mt to 4,690 mt