

- (1) Liquidated damages for late completion.
- (2) Liquidated damages for labor violations.
- (3) Amount withheld for improper payment of labor wages.
- (4) The amount of unilateral change orders covering defects and omissions.

#### **PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Revise section 552.232–72 to read as follows:

##### **552.232–72 Final Payment Under Building Services Contracts.**

As prescribed in 532.904(c), insert the following clause:

##### **Final Payment Under Building Services Contracts (MAR 2012)**

Before final payment is made, the Contractor shall complete and furnish the Contracting Officer with GSA Form 1142, Release of Claims, releasing all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 622**

[Docket No. 100217095–2081–04]

**RIN 0648–AY56**

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 32**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement management measures described in Amendment 32 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 32) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule adjusts the commercial gag quota and recreational annual catch target (ACT) for 2012

through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32; adjusts the shallow-water grouper (SWG) quota; adjusts the commercial and recreational sector annual catch limits (ACLs) for gag and red grouper; adjusts the commercial ACL for SWG; establishes a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish individual fishing quota (IFQ) program in the Gulf of Mexico (Gulf); sets the recreational gag fishing season from July 1 through October 31; reduces the gag commercial size limit to 22 inches (59 cm) total length (TL); and modifies the gag and red grouper accountability measures (AMs). In addition, Amendment 32 establishes gag commercial ACTs and a 10-year gag rebuilding plan consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule is intended to end overfishing of gag, allow the gag stock to rebuild, and adjust red grouper management measures to allow the harvest of optimum yield (OY).

**DATES:** This rule is effective March 12, 2012.

**ADDRESSES:** Electronic copies of Amendment 32, which includes a final environmental impact statement, a regulatory flexibility act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, Southeast Regional Office, NMFS, telephone 727–824–5305; email: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On October 27, 2011, NMFS published a notice of availability for Amendment 32 and requested public comment (76 FR 66672). NMFS published a proposed rule for Amendment 32 on November 2, 2011 and requested public comment (76 FR 67656). During the comment period for the proposed rule published on November 2, 2011, NMFS identified an inconsistency in the regulatory text regarding the AMs for recreational gag and red grouper that needed correction. To correct this inconsistency, NMFS published a second proposed rule on January 12, 2012 (77 FR 1910), to revise

the process for applying overage adjustments in the recreational AMs for gag and red grouper. Each of the proposed rules and Amendment 32 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management measures implemented through this final rule adjust the commercial gag quota and recreational ACT for 2012 through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32; adjust the SWG quota; adjust the commercial and recreational sector's ACLs for gag and red grouper; adjust the commercial ACL for SWG; establish a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish IFQ program in the Gulf; set the recreational gag fishing season from July 1 through October 31; reduce the gag commercial size limit to 22 inches (59 cm) TL; modify the gag and red grouper AMs; and revise the process for applying overage adjustments in the recreational AMs for gag and red grouper.

#### **Comments and Responses**

NMFS received 26 comment letters with a total of 13 separate comments on Amendment 32 and the two proposed rules. Five of the comments were on the second proposed rule. Comments were received from both individuals and organizations. Comments from two non-governmental organizations (NGOs) supported most of the management measures contained in the first proposed rule. One Federal agency indicated they had no comments on Amendment 32 or the rule. Three of the comments on the second proposed rule did not specifically address the proposed revision to the overage adjustment for the recreational gag and red grouper AMs contained in the second proposed rule. Comments related to the actions contained in the amendment or the proposed rules are summarized and responded to below.

*Comment 1:* Alternative gag recreational seasons, beyond the proposed season of July 1 through October 31, should be considered. Gag recreational seasons suggested were a fall/winter season, a spring and a winter season, a summer season synchronized with other species such as red snapper, and a 6-month season. Also suggested was reducing the gag bag limit to one fish.

*Response:* The Council selected the July 1 through October 31 season because it sets the longest fishing season that is consistent with the reductions

needed to adhere to the 10-year rebuilding plan. This decision was based on public testimony with many preferring a summer/fall season. The Council did consider other seasons including a fall season and a split winter and spring season. The reason the Council did not select these alternatives is that catch rates are much higher at these times and would only allow for an approximate 60-day season under the assumptions used to model season length.

The Council did initially consider a one-fish bag limit during the development of Amendment 32. However, this was discounted because the gains in season length were minimal (generally less than 15 days). A small gain in season length relative to the reduction in the bag limit from two to one is due to the fact that many fishermen do not catch their bag limit under the current two-fish bag limit. If all fishermen were to return with their bag limit, then gains in the season length from reducing the bag limit would be much greater.

*Comment 2:* The proposed gag recreational season is not conservative enough to constrain harvests to the ACT.

*Response:* The gag recreational season allows for total gag removals to be reduced sufficiently to end overfishing and allow the stock to rebuild within the 10-year rebuilding plan. Two baselines were considered to determine the range of effects of different management measures. Under the 2009 baseline, lower reductions are needed and under the 2006–2008 baseline, higher reductions are needed. The July 1 through October 31 fishing season is sufficient to achieve target harvest levels (yields based on the fishing mortality rate associated with harvesting OY) under the 2009 baseline and achieve rebuilding targets (yields based on the fishing mortality rate needed to rebuild the stock in 10 years) under the 2006–2008 baseline. In evaluating alternative management measures, the Council selected a strategy within the range provided by the baselines, namely the July 1 through October 31 gag recreational season that balances the ability for the stock to recover while minimizing adverse effects on the recreational sector. These reductions also assume that gag fishing effort will increase by 50 percent during the recreational fishing season compared to past years when the season was longer. The Council did consider that a doubling of fishing effort could occur, but determined this possibility overestimated effort shifting. Should the effort increase be greater than 50 percent

and the ACL is exceeded, then recreational AMs would be triggered and mitigate the effects of the overage.

*Comment 3:* Gag populations appear to be abundant, bringing into question the data used for the stock assessment.

*Response:* 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. In addition, the Magnuson-Stevens Act requires fishery managers to specify their strategy for rebuilding overfished stocks to a sustainable level within a certain time frame. The most recent stock assessment of gag indicated the stock was overfished and undergoing overfishing. Therefore, a rebuilding plan for gag is required. The gag rebuilding plan specifies annual harvest levels and management measures implemented through Amendment 32 must constrain harvest to these levels.

Stock assessments are conducted under the scientifically peer-reviewed Southeast Data, Assessment, and Review (SEDAR) process, which was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR seeks improvements in the scientific quality of stock assessments and supporting information available to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. SEDAR is organized around three workshops. First, the data workshop documents, analyzes, and reviews the data sets to be used for assessment analyses. Second, the assessment workshop develops and refines quantitative population analyses and estimates population parameters. The final workshop is conducted by a panel of independent experts who review the data and the assessment and recommend the most appropriate values of critical population and management quantities. The 2006 gag assessment, 2009 update assessment, and 2010 assessment reruns were conducted within the SEDAR process. The 2010 assessment reruns were performed to better account for discarded fish. These assessments were used to assist in developing the management measures contained in Amendment 32. All workshops and Council-initiated meetings to review the assessment were open to the public and included constituent participation on the various

SEDAR panels to ensure the transparency of the data and how it was applied in the assessments. In addition, the Council's Scientific and Statistical Committee (SSC) reviewed assessment results and made recommendations to the Council about the adequacy of the assessments and the acceptable biological catch. The Council took all of this information into consideration when selecting preferred alternatives in Amendment 32.

*Comment 4:* Regionalized gag management should be considered to allow a greater proportion of the gag harvest to occur in areas where gag are more abundant.

*Response:* Considering regionalized management with measures such as seasonal closures, bag limits, and size limits is outside the scope of this rulemaking because such an approach would not directly reduce overfishing. However, the Council has examined regionalized management for reef fish species such as gray triggerfish and red snapper. One impediment to developing regionalized management measures is that fine scale geographic data are needed to evaluate the effects of the measures. These data are not available at this time; however, NMFS is working to improve data collection efforts so regionalized management may be an option in the future.

In the course of developing long-term management measures in Amendment 32, the Council did consider seasonal-area closures for grouper species. This is a type of regionalized management. However, the Council did not select seasonal-area closures for gag in Amendment 32 because of potential adverse social and economic impacts and they were not necessary to rebuild the stock.

*Comment 5:* Gag should be included in multi-species bag limits and seasons so that fishermen have the opportunity to harvest a variety of fish species. Species suggested for a multi-species bag limit for gag and other grouper include red snapper and greater amberjack.

*Response:* Although the Council did not consider changing the existing multi-species bag limits, the Council did consider the fishing seasons for other targeted species when selecting the gag seasonal closure. Part of the rationale for selecting a gag summer season is that it may overlap with the red snapper season, which begins on June 1 each year. The Council also considered public testimony, which was not in favor of multi-species seasons. For-hire operators desire to have some targeted species available for harvest year-round

so that they can market trips to their customers.

*Comment 6:* The amount of area closed should be increased to protect gag during their spawning season and to reduce gag bycatch.

*Response:* The Council decided not to add any new area closures in Amendment 32 because it determined that a new area closure could result in more negative social and economic impacts than measurable biological benefits. As described in Amendment 32, closing a particular area can provide biological and ecological benefits. However, because of effort shifting outside the closed area, these benefits are difficult to quantify. In general, closing a fishing area, particularly a large fishing area, remains controversial. The Council received many negative comments regarding additional closed areas because of issues such as effort shifting and inter-sector competition.

*Comment 7:* The commercial minimum size limit for gag should not be reduced and more research should be conducted on the consequence of reducing the minimum size limit for gag before implementing a reduction.

*Response:* As described in Amendment 32, grouper minimum size limits are the greatest factor contributing to bycatch of SWG species. Size limits are intended to protect immature fish and reduce fishing mortality. For gag, yield-per-recruit analyses were conducted through the SEDAR process to identify the sizes that best balance the benefits of harvesting fish at larger sizes against losses due to natural mortality. The gag size where the yield-per-recruit was maximized was less than the proposed commercial minimum size limit of 22 inches (55.9 cm), TL, and the current recreational minimum size limit of 22 inches (55.9 cm), TL. Although decreasing the minimum size limit for either commercial or recreational gag positively benefits yield-per-recruit and reduces bycatch, it also negatively affects spawning potential. However, the Council determined the reduced minimum size limit will likely provide a net positive benefit to the stock, and delaying taking such action would be detrimental to the health of the stock.

*Comment 8:* The trigger for activating recreational inseason AMs should be the more precautionary ACT rather than the higher ACL.

*Response:* The Magnuson-Stevens Act requires that ACLs be implemented for each fishery and measures to ensure accountability. The Magnuson-Stevens Act does not require ACTs. The National Standards 1 guidelines (74 FR 3178, January 16, 2009), state that when an ACL is exceeded or projected to be

exceeded, then AMs should be implemented to “correct or mitigate the overage.” NMFS’ guidance views ACTs as a type of AM, particularly in the case of stocks or sectors that do not have inseason AMs. The ACT, which is usually set below the ACL, acts as a buffer. This is because managing a stock or sector at the ACT, or lower harvest level, reduces the probability that the ACL will be exceeded.

Amendment 32 proposes inseason AMs for recreational gag and red grouper that close the recreational sector if an ACL is projected to be exceeded or is exceeded within that fishing year. Therefore, in the case of gag and red grouper, ACTs are not necessary. However, as an added precaution, gag and red grouper recreational management measures are based on fishing at  $F_{OY}$  (the ACT level) which is below the fishing mortality rate (F) associated with the ACL. Given this additional level of protection, the Council and NMFS determined that it was not necessary to set the AM trigger at the ACT level.

Amendment 32 also provides additional protection for recreational gag and red grouper under the revisions to the AMs. If the gag or red grouper recreational ACL is exceeded, and gag or red grouper are overfished, then an overage adjustment would be applied, further reducing the subsequent year’s recreational ACL and reducing the gag or red grouper recreational fishing season by the amount necessary to ensure gag or red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

*Comment 9:* The gag stock should be rebuilt in 7 years as opposed to the proposed 10-year rebuilding plan.

*Response:* As mentioned in Amendment 32, the management measures set by the Council for the recreational and commercial sectors should rebuild the stock within 7 years. However, given management uncertainties and uncertainties regarding stock assessment projections more than a few years in the future, the Council selected a 10-year rebuilding plan. This longer time frame allows for fluctuations in catches and provides fishing communities with greater socioeconomic benefits.

*Comment 10:* More restrictive measures should be applied to the gag commercial sector. These include reducing the commercial quota so more fish are available to the recreational sector, restricting the commercial sector to deeper waters to fish, and restricting the commercial sector to gag fishing only when the recreational sector is open.

*Response:* Revising commercial and recreational sector allocations is beyond the scope of Amendment 32 and this rulemaking. Amendment 30B to the FMP set the current allocation of 39 percent commercial and 61 percent recreational. This allocation may be revised as the Council develops Amendment 28 to the FMP to address grouper allocations.

With regards to moving the commercial sector to deeper waters, the Council did not consider this action in Amendment 32. However, some commercial operators are already required to fish farther offshore than recreational anglers. Recent regulations restrict longline vessels to deeper waters for a portion of the year to reduce the number of incidental sea turtle captures. These measures prohibit the use of bottom longline gear shoreward of a line approximating the 35-fathom depth contour from June through August. For the remainder of the year, bottom longlines are prohibited inside a line approximating the 20-fathom depth contour.

The commercial sector is not subject to seasonal restrictions because it is managed under an IFQ program. In this program, individual fishermen are given an allocation of gag based on the commercial quota and the number of IFQ shares owned by the fisherman. This individual allocation allows commercial fishermen more flexibility in how they can fish, including fishing year-round if they still have allocation remaining. If the commercial sector was not allowed to keep gag when the recreational sector was closed, dead discards of gag would increase. This is because gag would be incidentally caught as commercial fishermen target other species. The likelihood these incidentally caught fish would survive is lower than for the recreational sector because the commercial sector generally fishes at greater depths. Therefore, by allowing the commercial sector to keep gag year-round if an individual fisherman still has allocation, any gag above the minimum size limit are counted towards the quota and not wasted.

*Comment 11:* Taking final action on the commercial minimum size limit for gag was in violation of the Magnuson-Stevens Act because the SSC did not review “all proposed management actions” in the development of Amendment 32.

*Response:* Section 302(g)(1)(A) of the Magnuson-Stevens Act states, “Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation,

and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan." As part of the development of Amendment 32, the SSC reviewed and accepted both the SEDAR gag benchmark assessment and 2009 assessment update. These assessments provided the data for the biological and economic analyses contained in Amendment 32. Therefore, the SSC did review the relevant scientific information needed to develop the amendment. Although the SSC might have provided some additional insight if they had reviewed all the actions in Amendment 32, there is no obligation under the Magnuson-Stevens Act for this review. Specific to the action to reduce the gag commercial minimum size limit, the data used in assessing the effects of changing the minimum size limit came directly from the 2009 update assessment and subsequent reruns of this update assessment, which were accepted by the SSC. Further, the minimum size limit analysis was determined by NMFS to be based upon the best scientific information available.

*Comment 12:* Economic analyses are not representative of individual charter vessel operators and so individual estimates of net operating revenues (NOR) due to gag management measures are underestimated.

*Response:* Analyses used to evaluate the economic impacts of the management measures are based on the average performance of affected charter vessels. Therefore, the analyses are not intended to be representative of particular for-hire vessels that target gag. A more complete discussion of this comment can be found in the Classification section of this rule.

*Comment 13:* The economic impacts of the gag management measures are underestimated because the estimates of the percentage of trips by for-hire anglers that target gag in the Gulf used to evaluate performance of for-hire vessels are too low and not representative of individual charter vessel operators.

*Response:* The dependence of fishing for individual species such as gag by specific for-hire vessels cannot be determined with available data. Some for-hire vessels, as described in the IRFA, are likely more dependent on trips that target gag than other for-hire vessels. Thus, NMFS agrees that the economic impact of the management measures for vessels that are highly dependent on targeting gag is greater than those that do not. However, the economic analyses looked at for-hire

vessels in general and are not specific to particular vessels (a more complete discussion of this comment can be found in the Classification section of this rule). It should be noted that the Council did account for some effort shifting by the recreational sector during the months that recreational fishing for gag occurs. During these months, the number of trips targeting gag will likely increase and the dependence of for-hire vessels on gag fishing will also likely increase. The Council considered three effort shifting scenarios and concluded that doubling of effort was too high an assumption. Accordingly, the Council chose to assume a 1.5 effort shift for the purpose of evaluating the alternatives but also recognized that the full range of projected effort shifting should be taken into consideration because an exact number could not be predicted.

#### Changes From the Proposed Rule

NMFS revised the regulatory text of the proposed rule in this final rule in several places. In § 622.20, NMFS renumbered the paragraphs because a final rule implementing revisions to the Gulf red snapper and Gulf grouper/tilefish IFQ programs, that published November 4, 2011 (76 FR 68339), reorganized and renumbered the paragraphs in § 622.20. The revision to § 622.39, contained in the proposed rule was removed in this final rule because a final rule to implement a red grouper regulatory amendment published November 2, 2011 (76 FR 67618), revised the bag limit for red grouper; therefore, no change to this section is necessary. In § 622.49, the amendatory instruction was revised to reflect that the heading for § 622.49 was revised in a final rule implementing the Generic ACLs/AMs Amendment for the Gulf (Generic ACL Amendment) (76 FR 66021, October 25, 2011). Also in § 622.49, NMFS amended the term "target catch level" to read "annual catch target" or "ACT", which is the language used in Amendment 32, and which is consistent with the language used in the regulatory text for other Gulf and South Atlantic species with ACLs, AMs, and target catches. NMFS also clarified the regulatory text in § 622.49 by adding the term "of this section" when citing sections of 50 CFR part 622.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this rule and Amendment 32 are necessary for the conservation and management of the reef fish fishery and are 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.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see ADDRESSES). A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The preamble of the proposed rule and this rule provide a statement of the need for and objectives of this rule, and it is not repeated here.

Two public comments provided by one commenter raised issues related to the IRFA. The first comment claims that the \$2,000 estimate of the average annual NOR per charter vessel from trips targeting gag is arbitrary and capricious because it is not representative of the commenter's charter vessel's operations. The commenter indicates that his vessel operates in state waters, specializes in the harvest of gag, and thus gag is responsible for a significant portion of his business. As the IRFA states, the \$2,000 is an estimate of the average NOR per charter vessel from trips targeting gag and is therefore not intended to be representative of all charter vessels that target gag. The commenter's description of his operation suggests his charter vessel is above average with respect to the NOR generated from trips targeting gag. As such, NMFS agrees that the NOR estimate is not representative of the commenter's charter vessel operation. However, based on the available data, the \$2,000 estimate of NOR per charter vessel is accurate on average and thus NMFS disagrees it is arbitrary and capricious.

The second comment from this commenter questions NMFS' estimate that 3 percent of for-hire angler trips in the Gulf target gag and, specifically, asserts the estimate is too low. The commenter indicates that 65–70 percent of his charter vessel's customers target gag and suggests that estimate applies to other for-hire vessels on the west coast of Florida. As stated in the IRFA, for-hire vessel dependence on fishing for individual species such as gag cannot be determined with available data. Further,

the IRFA indicates that some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels. Thus, NMFS agrees that the commenter's charter vessel operation is very dependent on trips that target gag based on the information provided by the commenter. However, given available data, it is unknown whether the commenter's estimate applies to many other for-hire charter vessel operations on the west coast of Florida. Further, the comment is not contrary to NMFS' estimate that 3 percent of all for-hire angler trips target gag. For these reasons, no changes were made to the proposed rule as a result of these comments.

This rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting 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 has combined annual receipts not in excess of \$4 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is \$7 million (NAICS code 713990, recreational industries).

This rule is expected to directly affect commercial fishing vessels whose owners possess gag or red grouper fishing quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper and tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 875 entities specifically received gag shares and an initial allocation of the commercial sector's gag quota in 2010. These 875 entities are expected to be directly affected by the actions to reduce the gag commercial quota to 86 percent of the ACT to account for dead discards, modify the percentages of red grouper and gag allocation that can be converted into multi-use allocation, and reduce the commercial size limit for gag. Of these 875 entities, 815 also received red grouper shares and an initial allocation of the commercial sector's red grouper quota in 2010.

Of the 875 entities that initially received gag shares, 215 were not commercially fishing in 2008 or 2009 and thus had no commercial fishing revenue during these years. On average,

these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of gag in 2010, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel that subsequently received commercial gag fishing quota shares was approximately \$606,000 (2008 dollars).

The average charterboat is estimated to earn approximately \$88,000 (2008 dollars) in annual revenue, while the average headboat is estimated to earn approximately \$461,000 (2008 dollars). Based on these values, all commercial and for-hire fishing vessels expected to be directly affected by this rule are determined to be small business entities for the purpose of this analysis.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately \$50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of snapper, mackerel, dolphin, and wahoo landings. On average, in 2010, these vessels received an initial allocation of 540 lb (245 kg) of gag quota.

The remaining 521 commercially active fishing vessels did have landings of gag in 2008 or 2009. Their average annual gross revenue from commercial fishing was approximately \$71,000 (2008 dollars) between the 2 years. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009, respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat, though not significantly, dependent on revenue from gag landings. These vessels' average initial gag allocation in 2010 was 2,121 lb (964 kg). Therefore, on average, their 2008 gag landings were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately \$156,000 (2008 dollars) in 2008 and 2009. Revenue from gag

landings decreased from approximately \$15,900 to \$8,400 in 2009 and thus these vessels became relatively less dependent on gag landings. These vessels are highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009, respectively. Revenue from deep-water grouper (DWG) landings decreased only slightly, from approximately \$36,000 in 2008 to \$31,000 in 2009, and thus these vessels became relatively more dependent on revenue from DWG landings. Their average initial 2010 allocation of gag was approximately 5,507 lb (2,503 kg) while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009, respectively. Thus, vessels that now have a bottom longline endorsement have harvested less than that allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the exclusive economic zone (EEZ) by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to 1 year after expiration. Because of the extended permit renewal period, numerous permits may be expired but still renewable at any given time of the year during the renewal period after the permit's expiration. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that state; however, vessels would be subject to any applicable state permitting requirements. Although the permit does not distinguish between headboats and charter vessels, it is estimated that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Given that nearly 99 percent of target effort for gag and 97 percent of the economic impacts from the recreational sector for gag in the Gulf reef fish fishery are in west Florida, it is assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) in Florida are expected to be directly affected by the action to

establish a recreational gag fishing season of July 1 through October 31.

Establishing a rebuilding plan for gag is an administrative action and is therefore not expected to generate direct, adverse economic effects on commercial or for-hire entities. Thus, the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less is not expected to reduce profits for commercial or for-hire entities.

NOR are assumed to be representative of profit for for-hire vessels. It is assumed that 823 for-hire vessels (780 charter vessels and 43 headboats) participate in the recreational gag component of the Gulf reef fish fishery. Estimates of NOR from recreational fisheries other than gag, and thus across all fisheries in which these charter vessels and headboats participate, are not currently available. However, on average, NOR for charter vessels from trips targeting gag are estimated to be approximately \$1.56 million per year while NOR for headboats from trips targeting gag are estimated to be \$91,300 per year. NOR for all trips targeting gag are estimated to be approximately \$1.65 million per year. The average annual NOR from trips targeting gag are estimated to be \$2,000 per charter vessel and \$2,124 per headboat.

When the length of the recreational gag season is reduced and the daily bag limit for gag set at zero, some trips that formerly targeted gag will instead target other species while other trips that formerly targeted gag will be cancelled. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from trips cancelled as a result of the shortened season length. Information regarding the number of trips cancelled as a result of the shortened season is not currently available. Thus, this analysis assumes all of the current for-hire trips targeting gag will be cancelled when the recreational sector is closed. Because some of these trips would probably not be cancelled, this assumption is expected to overestimate the actual reduction in NOR associated with a shorter season. Thus, the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

Under the action to establish a recreational gag fishing season of July 1 through October 31, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately \$1,304,000 and \$76,000, respectively, and thus NOR for all trips targeting gag is estimated to be approximately \$1,380,000. The average

annual losses in NOR from trips targeting gag are estimated to be \$1,672 and \$767 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 84 percent and 36 percent per charter vessel and headboat, respectively.

The action to establish a recreational gag fishing season of July 1 through October 31 is not expected to affect profit from trips not targeting gag for charter vessels and headboats. For-hire vessel dependence on fishing for individual species cannot be determined with available data. Although some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels, overall, about 3 percent of for-hire angler trips are estimated to target gag. As a result, although the action would be expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips nor would they, by extension, be expected to account for a substantial portion of total for-hire NOR.

For the action to increase the recreational bag limit for red grouper from two fish to four fish, the number of trips in all recreational fishing modes is assumed to remain the same regardless of any change in the red grouper bag limit. As such, no changes to producer surplus in the for-hire sector are expected. Thus, the action is not expected to reduce profits for for-hire entities.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn profit from commercial fishing in those 2 years. For the action to reduce the commercial gag quota to 86 percent of the ACT to account for dead discards, their average allocation of gag in 2012 would be reduced from 421 lb (191 kg) to 362 lb (165 kg), or by approximately 59 lb (27 kg). Using the average 2008 price of \$3.52 per lb, this loss in allocation could potentially represent a loss of nearly \$208 (2008 dollars) in gross revenue per entity. Using the 2010 average price of \$1.00 per lb of gag allocation, this loss in allocation could potentially represent a loss of \$59 (2008 dollars) in net revenue per entity. For 8 of these 215 entities that also possess longline endorsements, their average allocation of gag in 2012 would be reduced from 1,512 lb (687 kg) to 1,300 lb (591 kg), or by 212 lb (96 kg). Thus, their potential losses in gross revenue and net revenue, estimated to be \$746 and \$212 (2008 dollars), respectively, are expected to be somewhat higher.

However, in general, these potential losses in gross revenue and net revenue would only be realized if these 215 entities not only become active in commercial fishing but also specifically intend to harvest gag in 2012 and at a level greater than their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings, and thus gross revenue, if these entities intend to harvest at levels greater than their reduced allocation. Alternatively, these losses in gross and net revenue could be due to these entities' inability to sell the allocations they are losing from the action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of these potential losses in gross and net revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue, net revenue, and profits from commercial fishing in general and specifically for gag.

Similarly, for the 139 entities with gag shares that participated in commercial fisheries other than gag, they earned approximately \$50,800 in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, because they did not have any gag landings, none of their gross revenue and thus none of their potential profits were the result of gag harvests. Under the action to reduce the commercial gag quota to 86 percent of the ACT to account for dead discards, their average allocation of gag in 2012 would be reduced from 260 lb (118 kg) to 224 lb (102 kg), or by 36 lb (16 kg). Using the average 2008 price of \$3.52 per lb, this loss in allocation could potentially represent a loss of \$127 (2008 dollars) in gross revenue per entity. Using the 2010 average price of \$1.00 per lb of gag allocation, this loss in allocation could potentially represent a loss of approximately \$36 (2008 dollars) in net revenue per entity.

However, these potential losses in gross and net revenue could only lead to a loss in profits if these 139 entities intend to commercially harvest gag in 2012 and at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings if these entities intend to harvest at levels above their reduced allocation. Thus, for example, if these vessels intended to harvest gag in 2012 at a level equivalent to their 2012 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately 0.3 percent in gross revenue, which could

in turn reduce net revenue and profits. Alternatively, losses in gross and net revenue could be due to these entities' inability to sell the allocations being lost from this action, though this possibility presumes that a demand for these allocations exists.

For the 521 entities with gag shares that commercially harvested gag in 2008 or 2009, they earned approximately \$71,000 (2008 dollars) in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat but not significantly dependent on revenue from gag landings. For the action to reduce the commercial gag quota to account for dead discards, these vessels' 2012 gag allocations would be reduced from 1,022 lb (465 kg) to 879 lb (400 kg), or 143 lb (65 kg) on average. As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of \$3.52 per lb, it is estimated that these vessels could lose nearly \$143 (2008 dollars), or approximately 0.7 percent, in annual gross revenue on average. Using the 2010 average price of \$1.00 per lb of gag allocation, this loss in allocation would represent a loss of \$143 (2008 dollars) in net revenue per entity. Because net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

However, 52 of these 521 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual gross revenue was approximately \$156,000 (2008 dollars) in 2008 and 2009, with gag landings accounting for approximately 8 percent of that gross revenue. These vessels are highly dependent on revenue from red grouper rather than gag landings. For the action to reduce the commercial gag quota, their allocation of gag in 2012 would decrease from 2,749 lb (1,250 kg) to 2,364 lb (1,075 kg), or by 385 lb (175 kg). As these vessels have harvested at average levels near their 2010 allocation in recent years, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of \$3.52 per lb, it is estimated that these vessels could lose \$385 (2008 dollars), or approximately 0.9 percent, in annual gross revenue on average. Using the 2010 average price of

\$1.00 per lb of gag allocation, this loss in allocation would represent a loss of approximately \$385 (2008 dollars) in net revenue per entity. Because net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

No additional economic effects would be expected to result from the revised SWG quota because the updated SWG quota simply reflects the reduction in the commercial gag quota, the effects of which have already been discussed.

Given the action to establish a rebuilding plan for gag, the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag would be suspended under the action to modify the percentages of red grouper and gag allocation that can be converted into multi-use allocation. Because red grouper is not under a rebuilding plan at this time, gag shareholders would be allowed to convert 8 percent of their gag allocation into multi-use allocation and thus no adverse economic effects are expected. However, minimal adverse economic effects are expected as a result of commercial fishing entities not being allowed to convert 4 percent of their red grouper allocation into multi-use allocation. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. Given the action to reduce the commercial gag quota due to dead discards, it is possible these entities will exhaust their gag and gag multi-use allocations. Gross revenue from gag landings is greater than gross revenue from an equivalent amount of red grouper landings because gag commands a relatively higher market price. Thus, gross revenue from commercial fishing and therefore profits per vessel could be slightly lower than if the conversion were allowed to continue.

For the action to reduce the commercial size limit for gag from 24 inches (61 cm) to 22 inches (56 cm) total length, commercial fishing entities would be allowed to retain more and discard less of the gag they catch and thus are expected to experience increased economic benefits relative to the status quo. However, if commercial fishermen prefer to harvest larger gag due to a higher market demand for larger fish, then additional high-grading may be possible because the commercial sector is managed under the IFQ program. As such, few additional gag may be retained and thus the potential increases in gross revenue, net revenue,

and profits per vessel are likely minimal.

Establishing AMs is an administrative action and is therefore not expected to generate direct, adverse economic effects on commercial or for-hire entities. Direct, adverse economic effects would only occur if and when the AMs are actually triggered. This action would replace current AMs established in Amendment 30B to the FMP with the current IFQ program because an IFQ functions as an AM. This action would also add an overage adjustment and an in-season closure to the current AMs for the recreational sector when the gag or red grouper stocks are overfished and in a rebuilding plan. Because red grouper is not overfished or in a rebuilding plan, this action does not currently apply to the red grouper component of the reef fish fishery. The action to establish a recreational fishing season of July 1 through October 31 for gag is expected to restrain landings in the gag recreational sector well below its 2012 ACL, and in fact is intended and expected to constrain landings below the 2012 recreational ACT. In turn, the probability an overage adjustment or in-season closure will be required in 2013 is also minimal. Thus, the action to establish new AMs for the commercial and recreational sectors of the gag, red grouper, and SWG component of the Gulf reef fish fishery is not expected to reduce profits for commercial or for-hire entities.

Three alternatives, including the status quo, were considered for the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less. In the absence of all fishing mortality, including bycatch mortality, the shortest possible time in which the gag stock can rebuild is 5 years. Under the Magnuson-Stevens Act, the maximum time allowed for rebuilding the gag stock is 10 years. In the Generic ACL Amendment, the ACLs are based on yields that are projected to rebuild the stock in 10 years, and the ACTs are based on yields that are projected to rebuild the stock in 7 years.

The first alternative, the status quo, would not have established a rebuilding plan for gag. The fishing mortality rate for gag has shown an increasing trend over time and fishing mortality rates in recent years are not consistent with rebuilding or maintaining the gag stock at its maximum sustainable yield level. Moreover, because the gag stock has been determined to be overfished and undergoing overfishing, this alternative

does not comply with the Magnuson-Stevens Act.

The second alternative would have established a rebuilding plan that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 7 years or less. Seven years is the estimated time to rebuild if the stock is managed at a fishing rate corresponding to OY ( $F_{OY}$ ) rather than the rate corresponding to a 10-year rebuilding plan ( $F_{rebuilding}$ ). Although the yields under a 7-year rebuilding plan would eventually catch up to those for a 10-year plan, the initial catch targets in the early years would be less during a 7-year rebuilding plan relative to a 10-year rebuilding plan. Thus, this alternative would potentially imply more restrictive regulations and thus more adverse indirect economic effects in the short-term relative to rebuilding the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less.

The third alternative would have established a rebuilding plan that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 5 years. If this alternative were adopted, strong measures to reduce bycatch of gag in other fisheries would also need to be considered. Because a total elimination of discard mortality is unlikely to be achieved, this alternative would likely result in the stock being slightly under the rebuilding target at the end of 5 years. Most importantly, this alternative would require a complete closure of the gag component of the Gulf reef fish fishery for at least 5 years. Therefore, this alternative would eliminate all net revenue from the commercial sector and all consumer and producer surplus from the recreational sector for at least 5 years and, as such, would lead to the most restrictive regulations and, thus, considerably greater adverse indirect economic effects in the short-term relative to rebuilding the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less.

Four alternatives, including the status quo, were considered for the action to establish a recreational gag fishing season of July 1 through October 31. The first alternative, the status quo, would maintain a year-round gag recreational fishing season, with the exception of the current February 1 to March 31 closed season for SWG. This alternative would be expected to result in a 14 percent reduction in gag removals relative to the 2006–2008 baseline and a 1 percent increase in gag removals relative to the 2009 baseline. As such, this alternative does not achieve the necessary

reduction in removals to rebuild the gag stock, contrary to the Council's goals and objectives and the Magnuson-Stevens Act.

The second alternative, which would establish a gag recreational season of September 16 through November 15, would reduce gag removals by 60 percent relative to the 2009 baseline, which exceeds the ACT reduction of 47 percent. Relative to the 2006–2008 baseline, this alternative also reduces removals by 60 percent. Therefore, this alternative does not fully meet the ACT of 61 percent relative to the 2006–2008 baseline, but does exceed the ACL and rebuilding yield reduction level of 53 percent. This alternative is more conservative biologically than the preferred alternative, but only allows a 61-day fishing season as opposed to the 123-day fishing season allowed during a recreational gag fishing season of July 1 to October 31.

The third alternative, which would establish a gag recreational season of January and April, would reduce removals by 52 percent, which exceeds the ACT reduction of 47 percent. Relative to the 2006–2008 baseline, this alternative reduces removals by 56 percent. This alternative does not fully meet the ACT of 61 percent relative to the 2006–2008 baseline, but it does exceed the ACL and rebuilding yield reduction level of 53 percent. This alternative is similar to the second alternative in that it allows 61 days of fishing, and thus is shorter than the 123-day fishing season allowed under a recreational gag fishing season of July 1 through October 31, but it splits the season into two segments to provide more fishing opportunities. Biologically, this alternative is as conservative as the action.

The fourth alternative would also establish a gag recreational season of July 1 through October 31 as the action. However, rather than maintain the current 22 inch (56 cm) recreational minimum size limit, it would implement a 22–30 inch (56–76 cm) slot limit. Although this alternative would achieve a larger reduction in removals, a larger percentage of those removals would consist of dead discards. Further, a portion of those additional dead discards would consist of larger fish above the slot limit. These larger fish produce more eggs in spawning season. Thus, this alternative could negatively impact the spawning potential ratio and in turn the rate of rebuilding.

Two alternatives, including the status quo, were considered for the action to increase the recreational bag limit for red grouper from two fish to four fish, reducing it by one fish in the

subsequent year if the recreational ACL is exceeded. The first alternative, the status quo, would retain the current recreational bag limit for red grouper of two fish. The recreational ACL for red grouper has not been met in recent years. Recreational red grouper landings averaged less than 1 million lb (454,545 kg) between 2006 and 2009. Further, the recreational ACL was recently increased from 1.51 million lb (686,364 kg) to 1.72 million lb (781,818 kg) in the final rule to implement a Gulf red grouper regulatory amendment (76 FR 67618, November 2, 2011), which would create a larger difference between the ACL and the expected catch in 2012. Additional increases in the red grouper recreational ACL are planned through 2016. This alternative would not allow for-hire entities to increase their landings per trip even though the recreational sector's harvest has been and is expected to be well below its allocation. As such, opportunities to increase the economic value of red grouper harvests in the recreational sector would be unnecessarily foregone.

The second alternative would increase the recreational bag limit for red grouper from two fish to three fish. This alternative would allow for-hire entities to increase their landings per trip, but would not enhance their opportunities to increase the economic value of red grouper harvests to the same extent as increasing the recreational bag limit for red grouper to four fish. Such opportunities should be enhanced as much as possible given the large difference between the recreational sector's ACL and the expected catch according to the current bag limit. Like the action's preferred alternative to increase the recreational bag limit for red grouper from two fish to four fish, this alternative includes an adaptive feedback mechanism that would adjust the bag limit if the recreational sector exceeds its ACL, though it would not be a two-stage process.

Two alternatives, including the status quo, were considered for the action to reduce the gag commercial quota to 86 percent of the ACT to account for dead discards. The first alternative, the status quo, would not adjust the gag commercial quota to account for dead discards. This alternative would set the gag commercial quota at the current ACT. The ACT assumes dead discards in the commercial sector will be reduced by the same proportion as landings. If this assumption is not valid, then total removals of gag will exceed the harvest levels projected in the assessment. The ACT provides a buffer against reaching the ACL, but this buffer



may not be sufficient to offset increased removals due to dead discards.

The second alternative would reduce the gag commercial quota to 47 percent of the ACT to account for dead discards. This alternative represents the worst case scenario, under which dead discards are assumed to remain at their 2006–2008 level. Analyses associated with the 2011 gag interim rule indicated that, if dead discards remain at their 2006–2008 levels, the gag commercial quota would need to be reduced to 47 percent of the ACT in order to compensate for the increased removals. Although this alternative would provide the greatest allowance for dead discards and, thus, the highest likelihood of rebuilding the gag stock successfully, it is based on the unlikely assumption that dead discards will remain at their 2006–2008 levels. Longline vessels have historically landed about 34 percent of the commercial gag harvest. As a result of the longline endorsement requirements implemented in 2010, the number of reef fish longline vessels has decreased substantially. Of the 908 initial grouper/tilefish shareholders in 2010, 293 vessels used bottom longline or trap gear for commercial reef fish harvesting purposes between 1999 and 2007. However, only 62 of these vessels qualified for the bottom longline endorsement. Given the substantial reduction in the number of longline vessels, dead discards are expected to be considerably less now and in the future compared to their 2006–2008 levels. As such, reducing the gag commercial quota to 47 percent of the ACT would unnecessarily impose more significant economic and social impacts on commercial harvesters and associated communities relative to reducing the gag commercial quota to 86 percent of the ACT.

Two alternatives, including the status quo, were considered for the action to modify the percentage of red grouper allocation that can be converted into multi-use allocation if a rebuilding plan for gag is in effect. The first alternative, the status quo, would allow 4 percent of the red grouper allocation to be converted into multi-use allocation at the beginning of each year. With this alternative, the amount of red grouper multi-use allocation could exceed the available gag commercial quota, thereby leading to harvests that exceed the ACL. Such a result is contrary to the purposes of the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less and is therefore inconsistent with the Magnuson-Stevens Act and National Standard 1 Guidance.

The second alternative would base the amount of red grouper multi-use allocation on the buffer between the gag ACL and ACT. Subsequent ACLs and ACTs may be set by the ACL/ACT control rule implemented as a result of the Generic ACL Amendment. Furthermore, the gag ACL is set at the level where there is only a 50-percent probability of meeting the target to rebuild the gag stock in 10 years or less. Thus, this alternative will reduce the probability of the rebuilding plan being successful.

One alternative, the status quo, was considered for the action to modify the percentage of gag allocation that can be converted into multi-use allocation if a rebuilding plan for red grouper is in effect. With this alternative, 8 percent of the gag allocation would be converted into multi-use allocation. If a rebuilding plan for red grouper is necessary in the future, this alternative could result in red grouper harvests that would exceed the future commercial ACL, which would in turn trigger AMs and reduce the ability of the red grouper stock to rebuild.

Three alternatives, including the status quo, were considered for the action to reduce the commercial gag minimum size limit from 24 inches (61 cm) to 22 inches (56 cm) in TL. The first alternative, the status quo, would maintain the commercial gag minimum size limit at 24 inches (61 cm) TL. The size at 50-percent female maturity is approximately 24 inches (61 cm) TL. With this alternative, regulatory discards due to the minimum size limit would continue at the current rate, which is contrary to the Council's goal of reducing gag discards.

The second alternative would reduce the commercial gag minimum size limit from 24 inches (61 cm) to 20 inches (51 cm) TL. Until a commercial fisherman's IFQ allocation is reached, this alternative is expected to reduce total gag discards by 62 percent for the vertical line component of the commercial sector and by 47.2 percent for the longline component. At the same time, the number of gag needed to fill an IFQ allocation is expected to increase by 29.7 percent for the vertical line component and by 0.9 percent for the longline component. This alternative has a greater likelihood of creating a price differential by size, which would in turn likely result in additional high-grading as fishermen attempt to maximize the economic return on their IFQ shares. Additional high-grading would lead to higher rather than lower levels of gag discards, which is contrary to the Council's goals.

The third alternative would eliminate the minimum size limit and thus would effectively require that all commercially caught gag be retained regardless of size. As a result, this alternative would also effectively require that each commercial fisherman possess sufficient gag allocation to cover all harvest of gag. Grouper sizes in the commercial sector have been recorded as small as 11 inches (28 cm) prior to the implementation of size limits, but the numbers landed are few below 18 inches (46 cm). At a minimum size limit of 18 inches (46 cm), the expected reduction in total gag discards is 79.9 percent for the vertical line component and 66.7 percent for the longline component. At the same time, the increase in number of gag needed to fill an individual's allocation of gag is expected to be 38.2 percent for the vertical line component and 1.3 percent for the longline component. At minimum size limits less than 18 inches (46 cm), these values will change little because both gears become less selective for gag at smaller sizes. To the extent a market demand for larger fish exists, this alternative is likely to create a price differential for larger size fish. Given the limited amount of gag allocation expected to be distributed with the gag commercial quota, this alternative could encourage high-grading by commercial fishermen, which would lead to higher levels of gag discards, contrary to the Council's goals.

Four alternatives, including the status quo, were considered for the action to expand the current time and area closures off the west coast of Florida. The first alternative would expand the current closed areas of Madison-Swanson and the Edges by approximately 70 square miles (181 square km). Four options were considered in this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. The percentage of gag and red grouper commercial landings coming from this area ranges from 0.55 percent for gag and 0.06 percent of red grouper with the third option to 1.25 percent and 0.39 percent for gag and red grouper, respectively, with the fourth option. These numbers indicate it is unlikely

that gag and particularly red grouper are being targeted in this area. Thus, the expected reduction in gag bycatch is relatively small and, thus, so are the biological benefits.

The second alternative would expand the current closed areas of Madison-Swanson and the Edges by approximately 244 square miles (632 square km). Four options were considered in this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. Gag bycatch is expected to increase as a result of the action to reduce the Gulf gag commercial quota and the resulting reduction in the gag to red grouper quota ratio. The percentage of gag and red grouper commercial landings coming from this area ranges from 3.23 percent for gag and 0.26 percent of red grouper in the third option to 5.92 percent and 0.93 percent for gag and red grouper, respectively, in the fourth option. If this alternative was selected, by limiting where recreational fishermen may harvest, the adverse economic and social effects incurred as a result of the July 1 through October 31 recreational fishing season would be amplified, particularly from the fourth option. Furthermore, the Council determined that these additional adverse economic and social effects on the recreational sector outweighed the biological benefits to the gag stock.

The third alternative would modify the seasonal closure dates of The Edges 40 fathom contour area, which is approximately 390 square miles (1,010 square km) in size and currently prohibits all fishing from January 1 through April 30 and allows all fishing from May 1 through December 31. Four options were also considered under this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. This alternative would close a larger area than the other alternatives

that would expand the existing closures. Because The Edges 40 fathom contour area is relatively large, the percentage of gag and red grouper commercial landings coming from it is greater than under the other alternatives that would expand the existing closures, ranging from 4.13 percent for gag and 0.57 percent of red grouper for the third option to 8.92 percent and 2.41 percent for gag and red grouper, respectively, for the fourth option. Thus, the expected reduction in gag bycatch is greater than for the other alternatives that would expand the existing time area closures. If this alternative was selected, by limiting where recreational fishermen may fish, the adverse economic and social effects incurred as a result of the July 1 through October 31 recreational fishing season would be amplified, particularly from the fourth option. Furthermore, the Council determined that these additional adverse economic and social effects on the recreational sector outweighed the biological benefits to the gag stock.

The fourth alternative would modify the seasonal closure dates for the Madison Swanson and Steamboat Lumps closed areas, which cover approximately 219 square miles (567 square km). At present, these closures prohibit all fishing from November 1 through April 30, but allow surface trolling for species other than reef fish from May 1 through October 31. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. Because Madison Swanson and Steamboat Lumps have been closed to reef fish fishing for an extended time period, no data are available to determine how much harvesting activity may occur in these areas. As such, it is not possible to determine the potential effects from closing them for a longer time period and, thus, considerable uncertainty exists regarding those potential effects. However, it is highly likely that the biological benefits to the gag stock would be minimal at best.

One alternative, the status quo, was considered for the action to replace the current AMs for the commercial sector of gag, red grouper, and the SWG component of the Gulf reef fish fishery with the IFQ program. By retaining the current AMs, this alternative would

close the commercial SWG sector if commercial landings of red grouper, gag, or SWG reach or are projected to reach their respective quotas. As such, these measures are inconsistent with the Council's management goals and objectives for the commercial sector of the Gulf reef fish fishery, as reflected by the IFQ program. Furthermore, the need for additional AMs appears to be unnecessary because commercial landings have been less than the quotas for all individual species and species complexes managed under the IFQ program.

Three alternatives, including the status quo, were considered for the action to establish additional AMs for the recreational harvest of gag and red grouper. The first alternative, the status quo, would retain the existing AMs for the recreational harvest of gag and red grouper. The current AMs do not include in-season management measures or an overage adjustment if either the gag or red grouper stocks are determined to be overfished. The gag stock is currently overfished. Thus, this alternative would allow the recreational ACLs to be exceeded before taking action, which could have short-term negative effects on the red grouper stock and particularly the gag stock.

The second alternative would add an overage adjustment to the existing AMs if gag or red grouper are determined to be overfished. This alternative would provide some benefit to the gag and red grouper stocks if they are under a rebuilding plan. Given the plan to establish a rebuilding plan for gag, this alternative would be expected to apply immediately to the gag recreational sector. If the recreational ACL is exceeded, the overage adjustment would mitigate any damage done to a stock's recovery by reducing the ACL for the following year by the size of the overage or by some other level depending on what the best available science indicates will place the stock back on its rebuilding path. However, relative to establishing additional AMs for the recreational harvest of gag and red grouper, this alternative would not allow in-season closures as a result of projections indicating the recreational sector will exceed its red grouper or gag ACL. Thus, this alternative would allow the recreational ACLs to be exceeded before taking action, which could have short-term negative effects on the red grouper stock and particularly on the gag stock.

The third alternative would add in-season AMs to the existing AMs that would allow the gag or red grouper recreational fishing seasons in the Gulf to close early if necessary. This

alternative would provide some benefit to the gag and red grouper stocks. However, this alternative does not add an overage adjustment as per National Standard 1 guidance. Moreover, by not requiring an overage adjustment, this alternative would allow overages to occur from one year to the next if the in-season closures are implemented after the ACL has been exceeded. If these overages consistently occur over time, the cumulative effect could be sufficient to preclude rebuilding if a stock is under a rebuilding plan. As such, this alternative is not as beneficial to the red grouper and gag stocks as establishing additional AMs for the recreational harvest of gag and red grouper that include an overage adjustment.

List of Subjects in 50 CFR Part 622

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

Dated: February 7, 2012.

Alan D. Risenhoover,

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 § 622.20, paragraphs (a)(5)(i) and (ii) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

- (a) \* \* \*
(5) \* \* \*

(i) Red grouper multi-use allocation.

(A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

Red Grouper multi-use allocation (in percent) = 100 \* [Gag ACL—Gag commercial quota]/Red grouper commercial quota

(B) However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero. Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain

conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred.

(ii) Gag multi-use allocation. (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

Gag multi-use allocation (in percent) = 100 \* [Red grouper ACL—Red grouper commercial quota]/Gag commercial quota

(B) However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero. Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section.

3. In § 622.34, paragraph (v) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(v) Seasonal closure of the recreational sector for gag. The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through June 30 and November 1 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

4. In § 622.37, the heading of paragraph (d)(2)(iii) is revised and paragraph (d)(2)(v) is added to read as follows:

§ 622.37 Size limits.

\* \* \* \* \*

- (d) \* \* \*
(2) \* \* \*
(iii) Black grouper— \* \* \*
(v) Gag—22 inches (55.9 cm), TL.
\* \* \* \* \*

5. In § 622.42, paragraphs (a)(1)(iii)(A) and (B) and paragraph (a)(1)(vi) are revised to read as follows:

§ 622.42 Quotas.

- (a) \* \* \*
(1) \* \* \*
(iii) \* \* \*

(A) SWG combined. (1) For fishing year 2012—6.347 million lb (2.879 million kg).

(2) For fishing year 2013—6.648 million lb (3.015 million kg).

(3) For fishing year 2014—6.875 million lb (3.118 million kg).

(4) For fishing year 2015 and subsequent fishing years—7.069 million lb (3.206 million kg).

(B) Gag. (1) For fishing year 2012—0.567 million lb (0.257 million kg).

(2) For fishing year 2013—0.708 million lb (0.321 million kg).

(3) For fishing year 2014—0.835 million lb (0.378 million kg).

(4) For fishing year 2015 and subsequent fishing years—0.939 million lb (0.426 million kg).

\* \* \* \* \*

(vi) Gray triggerfish—106,000 lb (48,081 kg), round weight.

\* \* \* \* \*

6. In § 622.49, the headings and first sentences of paragraphs (a)(1)(i) and (ii), the heading and first and last sentences in paragraph (a)(2)(i), paragraph (a)(2)(ii), and paragraphs (a)(3) through (5) are revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability measures (AMs).

- (a) \* \* \*
(1) \* \* \*

(i) Commercial sector. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(v), the Assistant Administrator for Fisheries, NOAA, (AA) will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

(ii) Recreational sector. If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(2)(ii), 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. \* \* \*

(2) \* \* \*

(i) Commercial sector. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \* The commercial ACL for 2010 and

subsequent fishing years is 138,000 lb (62,596 kg).

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register reducing the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational target catch for that following fishing year. The recreational ACL for 2010 and subsequent fishing years is 457,000 lb (207,291 kg). The recreational ACT for 2010 and subsequent fishing years is 405,000 lb (183,705 kg). Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) *Shallow-water grouper (SWG) combined.* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial SWG. The commercial ACL for SWG, in gutted weight, for 2012 and subsequent fishing years is 8.04 million lb (3.65 million kg).

(ii) [Reserved]

(4) *Gag.* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial gag. The applicable commercial ACLs for gag, in gutted weight, are 0.788 million lb (0.357 million kg) for 2012, 0.956 million lb (0.434 million kg) for 2013, 1.100 million lb (0.499 million kg) for 2014, and 1.217 million lb (0.552 million kg) for 2015 and subsequent fishing years.

(ii) *Recreational sector.* (A) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (a)(4)(ii)(D) 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 gag 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. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) 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 target catch is unnecessary. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(C) In addition to the measures specified in paragraphs (a)(4)(ii)(A) and (B) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(4)(ii)(D) of this section, and gag are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 and the ACT for that following year 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.

(D) The applicable recreational ACLs for gag, in gutted weight, are 1.232 million lb (0.559 million kg) for 2012, 1.495 million lb (0.678 million kg) for 2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years. The recreational ACTs for gag, in gutted weight, are 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013, 1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(5) *Red grouper.* (i) *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, for 2012 and subsequent fishing years is 6.03 million lb (2.735 million kg).

(ii) *Recreational sector.* (A) 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 (a)(5)(ii)(D) 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.

(B) If red grouper are not overfished, and in addition to the measures specified in paragraph (a)(5)(ii)(A) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) 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 (a)(5)(ii)(D) 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 bag limit by one fish and reduce the length of the recreational SWG 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. The minimum red grouper bag limit for 2014 and subsequent fishing years is two fish.

(C) In addition to the measures specified in paragraphs (a)(5)(ii)(A) and (B) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, and red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, 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 and the ACT for that following year 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.

(D) The recreational ACL for red grouper, in gutted weight, is 1.90 million lb (0.862 million kg) for 2012

and subsequent fishing years. The recreational ACT for red grouper, in gutted weight, is 1.730 million lb (0.785 million kg) for 2012 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120131078-2207-01]

RIN 0648-XA913

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gulf of Maine Winter Flounder Catch Limit Revisions

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

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

**SUMMARY:** NMFS issues this final emergency rule under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action implements new stock status determination criteria for Gulf of Maine (GOM) winter flounder and associated increases in GOM winter flounder catch limits based on the most recent and best available scientific information. This action increases fishing year (FY) 2011 GOM winter flounder catch levels, including Overfishing Levels (OFLs), Acceptable Biological Catches (ABCs), Annual Catch Limits (ACLs), ACL components, and sector Annual Catch Entitlements (ACEs). The ACL components include sub-ACLs for the common pool and sectors. This action is intended to provide additional fishing opportunities, consistent with the Northeast (NE) Multispecies Fishery Management Plan (FMP) and the Magnuson-Stevens Act.

**DATES:** Effective February 7, 2012, through April 30, 2012. Comments must be received by March 12, 2012.

**FOR FURTHER INFORMATION CONTACT:** Melissa Vasquez, Fishery Policy Analyst, (978) 281-9166, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

### Background

This final emergency rule implements emergency measures, authorized by section 305(c) of the Magnuson-Stevens Act, to revise current GOM winter flounder catch limits immediately. On May 1, 2010, NMFS implemented catch limits developed by the New England Fishery Management Council (Council) under Framework Adjustment (FW) 44 (75 FR 18356; April 9, 2010) for all groundfish stocks, including GOM winter flounder, for FY 2010 through 2012. The catch levels specified by FW 44 included OFLs, ABCs, ACLs, and ACL components, including sub-ACLs for the common pool and sectors. On June 15, 2011, NMFS published (76 FR 34903) adjusted ACL subcomponents and adjusted sector ACEs for FY 2011 in order to reflect changes to the sector membership prior to the start the 2011 FY.

The FW 44 catch levels for all stocks, including GOM winter flounder, were based upon the most recent scientific information available at that time, *i.e.*, the stock assessments conducted by the Groundfish Assessment Review Meeting (GARM III) in 2008. The GARM III rejected the GOM winter flounder assessment due to its high degree of uncertainty, but concluded that there was a strong probability that the GOM winter flounder stock was overfished. As a result, the FY 2010-2012 catch levels in FW 44 were set at 75 percent of recent catches from 2006-2008; an annual ABC of 239 mt was set for FY 2010, 2011, and 2012.

A new peer reviewed benchmark stock assessment review (SARC 52) was completed for the winter flounder complex in June 2011, and the final summary report was completed in September 2011. The review committee accepted an assessment that provided an estimate of stock size and a proxy for  $F_{MSY}$ . The overfishing threshold was derived using F 40 percent (0.31) as a proxy for  $F_{MSY}$ , and 0.23 as the corresponding threshold exploitation rate. Based on this information, the estimate of fishing mortality in 2010 was 0.03 (13 percent of  $F_{MSY}$ ). Reviewers were able to determine from the data that the stock is not undergoing overfishing, but could not make an estimate of target biomass and, therefore, could not determine whether the stock is in an overfished condition.

The Council developed updated groundfish specifications, including updates for GOM winter flounder, for FY 2012-2014 through FW 47 to the NE Multispecies FMP. Using information from the new GOM winter flounder assessment, at its September 2011

meeting, the Council's Scientific and Statistical Committee (SSC) recommended an annual ABC of 1,078 mt for FY 2012-2014, a substantially higher amount than the currently specified FY 2010-2012 ABC of 239 mt. This recommendation was approved by the Council in November 2011 as part of FW 47, which is targeted for implementation, if approved, for FY 2012 (May 1, 2012).

Through a letter sent November 21, 2011, the Council requested, based on the new assessment results, that the Secretary of Commerce (Secretary) use emergency authority to increase the FY 2011 GOM winter flounder commercial ACL for the remainder of the 2011 FY out of concern that the current FY 2011 ACL may be unnecessarily constraining on the groundfish fishery. Recent catch information indicates that catches of this stock are higher than last year and may lead to lost opportunities for groundfish fishermen if the quota is reached before the end of the FY. Catch of GOM winter flounder as of January 7, 2012, indicated that nearly 56 percent of the FY 2011 commercial groundfish fishery sub-ACL has already been caught, with sectors having caught nearly 57 percent of their sub-ACL for this stock. During FY 2010, nearly 75 percent of the annual GOM winter flounder catch was harvested after November. This suggests that if those catch rates were to continue during FY 2011, the majority of the groundfish fishery would likely have to stop fishing in the GOM to avoid exceeding the sub-ACL for this stock by the end of FY 2011 (April 30, 2012), resulting in potentially substantial lost economic yield for the groundfish fishery.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) pursuant to section 305(c) of the Magnuson-Stevens Act specify three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency 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 policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a