

Public Hearing

We will convene a public hearing to provide background information and accept public comments on the proposed listing of the Nassau grouper under the ESA. We will accept both oral and written comments regarding the proposed listing decision during the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jason Reuter, (727) 824-5350, at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 17, 2014.

Donna S. Wieting,

Director, Office of Protected Resources,
National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140728622-4622-01]

RIN 0648-BE44

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would revise the recreational accountability measures (AMs) and establish a recreational annual catch target (ACT) for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). The purpose of this proposed rule is to help achieve optimum yield (OY) for the Gulf red snapper resource and better ensure red snapper recreational landings do not exceed the recreational quota established in the rebuilding plan, in accordance with sections 303(a)(15) and

407(d) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(15); 16 U.S.C. 1883(d)).

DATES: Written comments must be received on or before December 22, 2014.

ADDRESSES: You may submit comments on the proposed rule, identified by “NOAA-NMFS-2014-0120” by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2014-0120, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html.

FOR FURTHER INFORMATION CONTACT:

Peter Hood, Southeast Regional Office, NMFS, telephone 727-824-5305; email: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through 622 regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

In 2013, the most recent Southeast Data, Assessment, and Review (SEDAR) benchmark assessment for Gulf red

snapper (SEDAR 31), determined that the red snapper stock in the Gulf is no longer undergoing overfishing. However, it remains overfished and is in the 14th year of a 31-year rebuilding plan that began in 2001 and that will remain in place through 2032. Beginning in the 2008 fishing year, following a substantial reduction in the quota in Amendment 27 to the FMP (73 FR 5117, January 29, 2008), NMFS began projecting the season length of the recreational season on an annual basis based on a June 1 start date. However, due to difficulties in monitoring the recreational harvest and projecting the recreational season length, recreational quota overages have occurred regularly even though the recreational quota has been increasing annually since 2010.

The Magnuson-Stevens Act requires the use of annual catch limits (ACLs) and AMs to end and prevent overfishing. For red snapper, NMFS determined the existing commercial and recreational quotas are functionally equivalent to sector ACLs, and the sum of the quotas is functionally equivalent to the stock ACL. Additionally, the commercial individual fishing quota (IFQ) program serves as an AM for the commercial sector. The recreational AM is currently an in-season closure based on annual projections of the recreational season length.

The current recreational quota, implemented through a 2013 framework amendment (78 FR 57318, September 18, 2013), is 5.390 million lb (2.445 million kg), round weight. The red snapper recreational season begins on June 1, each year. NMFS determines the length of the red snapper recreational season in advance of June 1, and announces the closure date in the **Federal Register**. Previously, this closure was based on projections of when the recreational quota would be caught, but for 2014, projections were based on an ACT that is 20 percent below the quota; this modification was implemented through an emergency rule (79 FR 27768, May 15, 2014).

In September 2013, individual commercial fishermen and two commercial fishing interest groups filed a lawsuit challenging the rules implementing red snapper quotas for the 2013 fishing year and setting the 2013 recreational red snapper fishing season. In March 2014, the Court ruled in favor of the plaintiffs (*Guindon v. Pritzker*, 2014 WL 1274076; *D.D.C. Mar. 26, 2014*), finding in pertinent part that NMFS failed to require adequate AMs to prohibit the retention of fish after the recreational quota had been harvested and address any overages.

To address the Court's decision and reduce the probability that the recreational sector would exceed its quota, the Council requested and NMFS issued an emergency rule for the red snapper recreational sector (79 FR 27768, May 15, 2014). The emergency rule implemented an AM that based the season length on an annual catch target (ACT) that was set 20 percent below the recreational quota. Although the emergency rule established a recreational AM for 2014, permanent recreational AMs are still needed for the 2015 and subsequent fishing years.

Management Measures Contained in This Proposed Rule

If implemented, this proposed rule would establish a red snapper recreational ACT and revise the red snapper recreational AMs to support management efforts to maintain landings within the recreational quota and to mitigate any recreational quota overages should they occur.

Red Snapper Recreational ACT and Season Length

This proposed rule would establish a red snapper recreational ACT by applying a buffer to the recreational quota that is based on the Council's ACL/ACT control rule developed in the Generic ACL/Amendment (76 FR 82044, December 29, 2011). The ACL/ACT control rule establishes a process for determining the appropriate target catch levels that account for management uncertainty in maintaining catches at or below the ACL. The control rule is intended to be applied separately to the recreational and commercial sectors because each sector has different levels of management uncertainty. The control rule recommends no buffer be applied to the quota for the red snapper commercial sector because the sector is managed by an IFQ program, has accurate landings data, and has not exceeded its quota in the last 7 years of the IFQ program being in effect. For the recreational sector, the control rule recommends applying a 20 percent buffer to the quota primarily because of the recreational quota overages in 3 of the last 4 years. Applying the 20 percent buffer to the quota results in an ACT of 4.312 million pounds.

This proposed rule would also revise the procedure for determining the recreational season length (closure date). Beginning with the 2015 fishing year, the red snapper recreational season closure date would be based on the recreational ACT instead of the recreational quota. Using the ACT to set the season length is an in-season AM that reduces the probability of

exceeding the recreational quota during a fishing year from 50 percent to 15 percent.

Red Snapper Recreational Post-Season AM

This rule would revise the recreational AMs to also include a quota overage adjustment (payback) should the recreational quota be exceeded while the red snapper stock is overfished. If red snapper are overfished and the recreational quota is exceeded, then in the year following the overage, the recreational quota would be reduced by the amount of the recreational quota overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. The recreational ACT would also be reduced to maintain the 20 percent buffer between the ACT and the adjusted quota. This post-season AM is consistent with the National Standard 1 guidelines for stocks that are in a rebuilding plan, as is the case for Gulf red snapper.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

This rule, if implemented, would be expected to directly affect federally permitted for-hire vessels operating in the Gulf reef fish fishery. The for-hire

sector is comprised of charter boats and headboats (party boats). Although charter boats tend to be smaller in length, on average, than headboats, the key distinction between the two types of operations is how the fee is determined. On a charter boat trip, the fee charged is for the entire vessel, regardless of how many passengers are carried, whereas the fee charged for a headboat trip is paid per individual angler.

A Federal Gulf charter/headboat permit has been required for reef fish since 1996 and the sector currently operates under a limited access permit system. In 2013, there were 1,190 valid (non-expired) or renewable Gulf of Mexico Charter/Headboat Reef Fish Permits. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after expiration. Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the federally permitted vessel as either a headboat or a charter boat. Operation as either a headboat or charter boat is not restricted by the Federal permitting regulations, and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to NMFS' Headboat Survey (HBS). Participation in the HBS is based on determination by the NMFS Southeast Fisheries Science Center (SEFSC) that the vessel primarily operates as a headboat. In 2013, seventy Gulf vessels were registered in the HBS. As a result, 1,120 of the vessels with a valid or renewable reef fish charter/headboat permit are expected to operate as charter boats. The average charter boat is estimated to earn approximately \$83,000 (2013 dollars) in gross annual revenue and the average headboat is estimated to earn approximately \$251,000 (2013 dollars) in gross annual revenue.

The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in finfish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$20.5 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is \$7.5 million (NAICS code 487210, recreational industries).

Based on the revenue figures above, all for-hire vessels expected to be

directly affected by this rule are determined for the purpose of this analysis to be small business entities.

Because all entities expected to be affected by this rule are small entities, NMFS has determined that this rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Establishing an ACT, which serves as the basis for estimating the length of the recreational red snapper fishing season, is expected to reduce net operating revenues (the return used to pay all labor wages, returns to capital, and owner profits) of all Gulf reef fish for-hire vessels (charter and headboats) by a combined total of approximately \$2.286 million (2013 dollars) in the first year this rule is implemented. If there are no recreational quota overages, this amount will be the annual net operating revenue loss to the for-hire vessels. If recreational quota overages occur in a fishing year, and red snapper are overfished, net operating revenues would further decrease in the following fishing year with the application of 100 percent of the recreational ACL overage reduction from the following year's quota. In effect, establishing a payback provision would tend to increase the potential losses in net operating revenue to the for-hire vessels.

An important feature associated with the payback provision is the uncertainty of the occurrence and level of overages. Under the proposed buffer of 20 percent for deriving the ACT from the recreational ACL, the probability of exceeding the quota is estimated at 15 percent. At this probability level, the occurrence of an overage is relatively low. However, should an overage occur, the overage level could be insignificant or could be substantial. If the ACL overage is low, the net operating revenue loss to the for-hire vessels would be approximately equivalent to the amount estimated above (\$2.286 million). If the ACL overage is substantial, it could result in setting the ACT at zero the following year. In this case, net operating revenue loss to the for-hire vessels could be relatively substantial, with some unknown number of for-hire businesses possibly exiting the industry as a result of revenue loss. The year after that overage adjustment, however, the recreational ACL and the corresponding ACT would be restored as there would be no overages in the previous year if the ACT had been set at zero. Assuming no increases in the recreational red snapper

quota, for-hire vessels would continue to lose the amount of net operating revenue estimated above. A recreational quota increase would alleviate some of the losses to the for-hire vessels.

Given the uncertainty discussed above, it cannot be ascertained whether the effects of the rule on the net operating revenues of for-hire vessels would be significant. The public, therefore, is encouraged to address this issue during the public comment period.

The following discussion analyzes the alternatives that were not selected as preferred by the Council. Five alternatives, including the preferred alternative (as fully described in the preamble), were considered for setting a red snapper recreational ACT. The first alternative, the no action alternative, would not establish an ACT. This alternative is associated with the highest probability of exceeding the recreational quota and so would not address the need to better control the recreational harvest to the sector's quota. The other three alternatives would establish an ACT by applying a buffer of 30 percent, 40 percent, or 60 percent to the quota. Relative to the preferred alternative, each of these three alternatives would result in a lower ACT and therefore greater loss in net operating revenues for the for-hire component of the recreational sector.

Three alternatives, including the preferred alternative (as fully described in the preamble), were considered for establishing a payback provision in case of recreational ACL overages. It is noted that the payback provision only applies when red snapper are overfished. The first alternative, the no action alternative, would not establish a payback provision. This alternative would not address the need to mitigate for overages that may negatively impact the rebuilding plan. The second alternative would establish a 100 percent recreational ACL payback provision, similar to the preferred alternative, and in addition would further reduce the adjusted ACT in the following season by 100 percent, 50 percent, or 30 percent of the quota overage. The adjusted ACT is derived by applying the 20 percent buffer to the ACL after the recreational ACL is reduced by the amount of overage. This alternative, together with any of its additional options to further reduce the following season's overage adjusted ACT, would be expected to result in higher net operating revenue losses for the for-hire sector.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Quotas, Red snapper.

Dated: November 18, 2014.

Eileen Sobeck,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.41, paragraph (q) is added to read as follows:

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

* * * * *

(q) *Red snapper*—(1) *Commercial sector.* [Reserved]

(2) *Recreational sector.* (i) The AA will determine the length of the red snapper recreational fishing season based on when recreational landings are projected to reach the recreational ACT specified in paragraph (q)(2)(iii) of this section, and announce the closure date in the **Federal Register**. This will serve as an in-season accountability measure. On and after the effective date of the recreational closure notification, the bag and possession limit for red snapper is zero.

(ii) In addition to the measures specified in paragraph (q)(2)(i) of this section, if red snapper recreational landings, as estimated by the SRD, exceed the applicable quota specified in § 622.39(a)(2)(i), and red snapper 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 to reduce the recreational quota by the amount of the quota overage in the prior fishing year, and reduce the recreational ACT specified in paragraph (q)(2)(iii) of this section (based on the buffer between the ACT and the quota specified in the FMP), unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACT for red snapper is 4.312 million lb (1.956 million kg), round weight.

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