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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 211006-0204]

RIN 0648-BK36

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

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). For Gulf of Mexico (Gulf) lane snapper, this proposed rule would modify the annual catch limit (ACL) and revise an accountability measure (AM). The purposes of this proposed rule are to prevent overfishing of lane snapper and achieve optimum yield (OY). This proposed rule would also make minor administrative changes to replace outdated NMFS website addresses and language about required software for the Individual Fishing Quota (IFQ) programs.

DATES: Written comments must be received by November 2, 2021.

ADDRESSES: You may submit comments on the proposed rule identified by “NOAA-NMFS-2021-0073” by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter [NOAA-NMFS-2021-0073] in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Dan Luers, NMFS Southeast Regional Office, 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), 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).

Electronic copies of the framework action, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/>.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727-824-5305, email: daniel.luers@noaa.gov.

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

Background

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. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Unless otherwise noted, all weights in this proposed rule are in round weight.

Lane snapper occur in estuaries and shelf waters of the Gulf, and are particularly abundant off south and southwest Florida. Lane snapper in the Gulf exclusive economic zone (EEZ) are managed as a single stock with a stock ACL of 301,000 lb (136,531 kg) that was implemented in 2012 (76 FR 82044; December 29, 2011). This stock ACL is based on average landings from 1999 through 2008. The Council has also established a stock annual catch target (ACT) that is set 14 percent below the ACL, at 259,000 lb (117,480 kg), but the ACT is not codified in the regulations and is not linked to any specific

management action, such as a closure. The fishing season is open year-round, January 1 through December 31. However, the current AM for lane snapper specifies that if combined commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year, if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year.

In 2016, a Southeast Data, Assessment, and Review (SEDAR) stock assessment (SEDAR 49 2016, “SEDAR 49”) was completed for lane snapper and determined that the size of the lane snapper stock was similar to previous estimates. The Council’s Scientific and Statistical Committee (SSC) reviewed SEDAR 49, accepted the assessment as the best scientific information available, and made recommendations to the Council to revise the catch limits. However, because the catch limits based on SEDAR 49 were similar to the established catch limits, the Council decided not to act on the SSC’s recommendation.

As described in this framework action, Gulf lane snapper landings exceeded the stock ACL each year from 2016 through 2019. In 2017, NMFS notified the Council that landings in 2017 exceeded the overfishing limit (OFL), resulting in overfishing. Subsequently, NMFS estimated that 2018 landings did not exceed the 2018 OFL, but did exceed the ACL, and that a closure would be needed in 2019 should the ACL be projected to be met. On December 13, 2019, NMFS closed fishing for lane snapper for the remainder of the year based on a projection that the ACL would be caught. Despite this closure, the ACL was exceeded in 2019. Review of recent landings data indicate this ACL was also exceeded in 2020.

In 2019, in response to landings data that indicated lane snapper experienced overfishing in 2017 and exceeded its ACL in 2018, the Council requested that the NMFS Southeast Fisheries Science Center provide an updated, interim analysis to include landings data from 2015–2018 (SEDAR 49 Update 2019). However, the updated analysis used recreational catch estimate values that were calculated using landings from the previous Marine Recreational Information Program (MRIP) Coastal Household Telephone Survey rather than the newer MRIP Fishing Effort Survey (FES). Thus, the Council’s SSC requested that the recreational data used to calculate the estimated catch limits for lane snapper be converted to values directly comparable to those collected

in the new MRIP–FES as recommended by NMFS. This updated analysis was provided in 2020.

The SEDAR 49 Update indicated that the Gulf lane snapper stock size had increased. In addition, the OFL and acceptable biological catch (ABC) for lane snapper had previously been calculated using recreational data from the Marine Recreational Fisheries Statistics Survey (MRFSS). MRFSS was replaced by MRIP, and the conversion to MRIP–FES values resulted in an approximate doubling of recreational catch and effort estimates. Thus, based on the results of the SEDAR 49 Update and the conversion of the recreational survey from MRFSS to MRIP–FES, the SSC recommended an increase in the lane snapper OFL and ABC.

The increases recommended by the SSC were from 358,000 lb (162,386 kg) to 1,053,834 lb (478,011 kg) for the OFL, and from 301,000 lb (135,531 kg) to 1,028,973 lb (466,734 kg) for the ABC. In the framework action, the Council adopted the SSC's recommendations. The Council also decided to set the ACL be equal to the new ABC, and remove the ACT because it has not been used for management since its implementation.

Despite landings exceeding the lane snapper ACL each year from 2016 through 2019, NMFS closed the harvest of lane snapper only once under the current AM, which requires a closure when the ACL is met or projected to be met during the year following an ACL overage. Thus, the Council decided to modify the AM to require an in-season closure in any year during which NMFS projects that the ACL is met. However, the proposed increase in the Gulf lane snapper ACL may be substantial enough to allow harvest through the full year.

Management Measures Contained in This Proposed Rule

If implemented, this proposed rule would revise the ACL for the Gulf lane snapper stock. The framework would also modify the AM to require NMFS to implement a closure during the current fishing year if landings meet or are projected to meet the revised ACL.

Annual Catch Limit

This proposed rule would increase the lane snapper stock ACL from 301,000 lb (136, 531 kg) to 1,028,973 lb (466,734 kg).

Accountability Measure

If implemented, this proposed rule would modify the AM such that if annual landings in a given year reach or are projected to reach the revised ACL, NMFS would implement a seasonal

closure to prohibit harvest of lane snapper by the commercial and recreational sectors for the remainder of the fishing year.

Management Measures Contained in This Proposed Rule Not in the Framework Action

In addition to the measures described in the lane snapper framework action, this proposed rule would correct the NMFS Southeast Regional Office (SERO) website address in the two sections of the regulations that specify permit requirements and make several administrative changes to NMFS's IFQ Program regulations.

Current regulations at 50 CFR 622.4 and 622.20 have an obsolete website address that may prevent the public from accessing information about fishing permits, including the forms to obtain necessary permits. This proposed rule would update this website address in the regulations.

To manage the Gulf red snapper and Gulf grouper-tilefish IFQ programs (also called the SERO Catch Share Programs), NMFS hosts a public-facing website to display information, including landings. The website also provides customer support through online applications to join the SERO Catch Share Programs, and allows the public to participate in the programs. As part of a recent update to the internet platform used by NMFS, the website address for the SERO Catch Share Programs changed, making the website address listed in the Code of Federal Regulations incorrect. Thus, the previous website address will be replaced by the updated SERO Catch Share Programs website address, which is listed for Gulf red snapper in 50 CFR 622.21(b)(11)(i) and 622.21(b)(11)(i)(A), and for Gulf grouper-tilefish species, at 50 CFR 622.22(b)(11)(i) and 622.22(b)(11)(i)(A) of this proposed rule.

In addition, current regulations at 50 CFR 622.21(a)(3) and 622.22(a)(3), specify particular internet browser software that IFQ participants may use. Because technology changes quickly, NMFS has determined that it is impracticable to require named versions of software. To address this issue, NMFS proposes to replace the references to the specific software in 50 CFR 622.21(a)(3) and 622.22(a)(3) with a general requirement that the internet browser software used be up-to-date, no matter the brand (e.g., Microsoft Edge, Google Chrome, Apple Safari).

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 framework action, 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.

The public comment period will be open for 15 days to accelerate the rulemaking process while allowing the public adequate time to comment on the proposed measures. NMFS has determined that a 15-day comment period is appropriate because components of this proposed rule, if adopted, should be made effective as soon as possible in order for fishermen to reap the benefits of the increase in the ACL for lane snapper in the Gulf.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule would apply to all federally-permitted commercial vessels and recreational anglers that fish for or harvest lane snapper in Federal waters of the Gulf. It would not directly apply to or regulate charter vessels and headboats (for-hire vessels). For-hire vessels sell fishing services to recreational anglers. The proposed changes to the lane snapper management measures would not directly alter the services sold by these vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this proposed rule would be a consequence of a behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA. Furthermore, for-hire captains and crew are allowed to retain lane snapper under the recreational bag limit; however, they are not allowed to sell these fish. As such, for-hire captains and crew would be directly affected only as recreational anglers. Recreational anglers who would be directly affected by this proposed rule are not considered small entities under the RFA and are, therefore,

outside the scope of this analysis (5 U.S.C. 603). Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)–(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on commercial vessels will be further discussed.

As of April 26, 2021, there were 827 limited access valid or renewable commercial Gulf reef fish permits. On average from 2014 through 2018, there were 315 federally permitted commercial vessels each year with reported landings of lane snapper in the Gulf. Their average annual vessel-level gross revenue from all species for 2014 through 2018 was approximately \$154,000 (2018 dollars) and lane snapper accounted for less than 0.2 percent of this revenue. The maximum annual revenue from all species reported by a single one of the commercial vessels that landed Gulf lane snapper from 2014 through 2018 was approximately \$2.33 million (2018 dollars).

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) 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 \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are small entities based on the NMFS size standard. No other small entities would be directly affected by this proposed rule.

This proposed rule would modify the stock ACL for lane snapper based on the March 2020 SEDAR 49 assessment update, corresponding recommendations from the Council's SSC, and determinations by the Council. The new ACL of 1,028,973 lb (466,734 kg), would be managed using recreational catch and effort data from MRIP–FES as opposed to MRFSS. Additionally, the framework action would remove the ACT for lane snapper. Under this proposed rule, NMFS projects that the lane snapper fishing season in future years would be year-round; a substantial increase in season length relative to an estimated closure date of August 19 under the *status quo* (in years that AM closures are in effect and timely). A longer

season would be expected to provide commercial fishing businesses greater fishing opportunities throughout the year. In addition, the increase in the ACL, and corresponding projected increase in the season length, would be expected to increase commercial landings by 12,362 lb (5,607 kg), per year, resulting in an annual increase in ex-vessel revenue of \$30,658 (2018 dollars). Divided by the number of commercial vessels with reported landings of lane snapper from 2014 through 2018, this would be an average increase of approximately \$97 per vessel per year.

This proposed rule would also modify the closure AM such that, if annual landings in a given year meet or are projected to meet the ACL, NMFS would prohibit harvest of lane snapper by the commercial and recreational sectors for the remainder of the fishing year. Currently, if the ACL is exceeded in a given fishing year, NMFS will prohibit harvest of lane snapper in the subsequent fishing year if landings meet or are projected to meet the stock ACL. This proposed change to the lane snapper AM could affect the timing of closures, potentially increasing their frequency and forgoing some commercial harvest that may have occurred in excess of the lane snapper stock ACL under the *status quo*. However, because the proposed stock ACL is approximately double the size of the current ACL (ignoring the influence of the adjustment in the recreational data collection from MRFSS to MRIP–FES because this just accounts for the difference in recreational reporting), no fishing season closure would be expected to occur. As a result, the proposed change in the AM will likely result in slightly positive economic impacts (with an average increase in ex-vessel revenue of \$97 per vessel per year, as noted above) for the affected small entities in the fishing year. In addition, should any negative economic effects associated with closures that result from application of the proposed change in the AM arise in future fishing years, NMFS expects that would be offset by the benefits of the increased catch limits proposed in this rulemaking. In addition, lane snapper comprises only a small percentage of the aggregate ex-vessel revenue earned by those small entities directly affected by this proposed rule. Therefore, this proposed rule would not have a significant economic impact on a substantial number of small entities.

Several administrative items contained in this proposed rule, which are not part of the proposed framework action, are as follows: (1) Updates to the

IFQ portal website address, (2) updates to the website address listed in 50 CFR 622.21(b)(11)(i), 622.21(b)(11)(i)(A), 622.22(b)(1), and 622.22(b)(11)(i) to access the online application for the IFQ program, (3) updates to the SERO website address in 50 CFR 622.4 and 622.20, and (4) changes to web browser requirements in 50 CFR 622.21(a)(3) and 622.22(a)(3). These proposed changes are being made in order to replace obsolete website addresses with new website addresses and to correct outdated information related to web browser requirements. All of these are administrative changes only and are not expected to have any direct economic effects on any small entities.

In summary, the information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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 proposed rule.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gulf, Individual fishing quota, Lane snapper, Reef fish.

Dated: October 12, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR part 622 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 § 622.4, revise the fifth sentence in paragraph (g)(1) to read as follows:

§ 622.4 Permits and fees—general.

* * * * *

(g) * * *

(1) * * * Application forms and instructions for renewal are available

online at <https://www.fisheries.noaa.gov/southeast/resources-fishing/permits-applications->

and-forms-southeast or from the RA (Southeast Permits Office) at 1-877-376-4877, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time. * * *

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■ 3. In § 622.20, revise the third sentence in paragraph (a)(1)(ii) to read as follows:

§ 622.20 Permits and endorsements.

(a) * * *

(1) * * *

(ii) * * * The application form and instructions are available online at https://www.fisheries.noaa.gov/southeast/resources-fishing/permits-applications-and-forms-southeast.

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■ 4. Amend § 622.21 by:

■ a. Revising the second sentence in paragraph (a)(3)(i);

■ b. Revising the third sentence in paragraph (b)(1); and

■ c. Revising the first sentence in paragraphs (b)(11)(i) and (b)(11)(ii)(A).

The revisions read as follows:

§ 622.21 Individual fishing quota (IFQ) program for Gulf red snapper.

(a) * * *

(3) * * *

(i) * * * The computer must have current, up-to-date browser software installed, which may be downloaded from the internet for free. * * *

* * * * *

(b) * * *

(1) * * * An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for Gulf red snapper as

specified in paragraph (a)(3)(i) of this section, online via the NMFS IFQ website https://secatchshares.fisheries.noaa.gov/, may establish a vessel account through that IFQ account for that permitted vessel.

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(11) * * *

(i) * * * A current participant in the red snapper IFQ program must complete and submit the application for an IFQ Account that is available on the website https://secatchshares.fisheries.noaa.gov, to certify status as a U.S. citizen or permanent resident alien. * * *

(ii) * * *

(A) To establish an IFQ account, a person must first complete the application for an IFQ Account that is available on the website https://secatchshares.fisheries.noaa.gov. * * *

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■ 5. Amend § 622.22 by:

■ a. Revising the second sentence in paragraph (a)(3)(i);

■ b. Revising the third sentence in paragraph (b)(1); and

■ c. Revising the first sentence in paragraph (b)(11)(i).

The revisions read as follows:

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

(a) * * *

(3) * * *

(i) * * * The computer must have current, up-to-date browser software installed, which may be downloaded from the internet for free. * * *

* * * * *

(b) * * *

(1) * * * An owner of a vessel with a commercial vessel permit for Gulf reef

fish, who has established an IFQ account for the applicable species, as specified in paragraph (a)(3)(i) of this section, online via the NMFS IFQ website https://secatchshares.fisheries.noaa.gov, may establish a vessel account through that IFQ account for that permitted vessel.

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(11) * * *

(i) A current participant in the Gulf grouper and tilefish IFQ program must complete and submit the application for an IFQ Account that is available on the website https://secatchshares.fisheries.noaa.gov, to certify status as a U.S. citizen or permanent resident alien. * * *

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■ 6. In § 622.41, revise paragraph (k) to read as follows:

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

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(k) Lane snapper. If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in this paragraph (k), the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. The stock ACL for lane snapper is 1,028,973 lb (466,734 kg), round weight.

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