

11. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *First Report and Order and Further Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060322083-6288-03; I.D. 032006C]

RIN 0648-AU04

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

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the seasonal closure provisions of a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone (EEZ). The intended effect of this final rule is to help maintain recreational landings at levels consistent with the red grouper rebuilding plan while minimizing potential shift of fishing effort to associated grouper species.

DATES: This final rule is effective December 18, 2006.

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

FOR FURTHER INFORMATION CONTACT:

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

In accordance with the FMP's framework procedure, the Council recommended and NMFS published a proposed rule to implement a regulatory amendment that included a recreational bag limit for Gulf red grouper of one fish per person per day, a zero grouper bag limit for captain and crew of a vessel operating as a charter or headboat, and a February 15 to March 15 seasonal closure of the recreational fishery for gag, red grouper, and black grouper. NMFS requested public comment on the proposed rule through May 1, 2006 (71 FR 16275, March 31, 2006). However, in response to public comment expressing concern about the proposed seasonal closure and because a pertinent, new gag assessment was pending, NMFS separated the proposed management measures into two final rules—one addressing the bag limit provisions, and one addressing the seasonal closure. The bag limit provisions were published in a final rule (71 FR 34534, June 15, 2006) which became effective July 17, 2006. Implementation of the final rule containing the seasonal closure was deferred pending the results of the new gag assessment.

This final rule establishes a February 15 to March 15 seasonal closure of the recreational fishery for gag, red grouper, and black grouper. The seasonal closure will help restrict recreational red grouper landings to levels specified in the rebuilding plan and will prevent or minimize increases in fishing mortality on gag and black grouper that could result from a shift in fishing effort due to the more restrictive red grouper bag limit. A new stock assessment for gag completed in July 2006 indicates the Gulf of Mexico gag stock is undergoing overfishing. Thus, this seasonal closure also contributes to necessary reductions in fishing mortality for gag. The closure is consistent with the existing seasonal closure of the commercial fishery for gag, red grouper, and black grouper and would make the closure more equitable for both user groups and should help improve compliance and enforceability. In addition, the closure will provide further protection for these species

because it occurs during important spawning periods for all three species. Black grouper are included in the seasonal closure, in part, because they are similar in appearance to gag and, therefore, difficult for fisherman to distinguish from gag. If black grouper were not included in the closure, compliance with the closure, and therefore the closure's effectiveness would be compromised. For all of these reasons, NMFS believes the seasonal recreational closure for gag, red grouper, and black grouper is warranted.

Additional rationale for the measures in the regulatory amendment is provided in the preamble to the proposed rule and is not repeated here. A summary of public comments and NMFS' responses on the bag limit provisions of the proposed rule are provided in the final rule published June 15, 2006 (71 FR 34534). A summary of public comments received by NMFS on the seasonal closure provisions of the proposed rule and NMFS' responses are provided below. Comments and NMFS' responses to those comments regarding the economic impacts of the closed season are provided under the Classification section of this document.

Comments and Responses

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

Response: A 34- to 45-percent reduction is needed to return recreational red grouper landings to levels specified in the rebuilding plan. The February 15 to March 15 closure, when combined with bag limit provisions published in a final rule (71 FR 34534) on June 15, 2006, is estimated to reduce red grouper landings by 34 percent and gag and black grouper landings by 7 percent. The closure includes important spawning seasons for all three species and would overlap the 1-month commercial fishery grouper closure. Prohibiting harvest of all three species will prevent effort shifting from occurring and reduce fishing mortality. Relative to the other closure alternatives considered by the Council, this alternative would result in the fewest cancelled trips and forgone revenues of the closure alternatives considered by the Council.

Comment 2: One commenter suggested creating a closed season of September 15 to October 15 instead of February 15 to March 15.

Response: The seasonal closure was proposed for February 15 to March 15

because the commercial seasonal closure occurs at this time and includes important spawning seasons for gag, red grouper, and black grouper. The Council also considered seasonal closures during April-May and August and was presented with analyses for seasonal closures in September and October. A September 15 to October 15 seasonal closure would result in similar, although slightly greater, reductions in harvest than the preferred February 15 to March 15 seasonal closure. However, a closure during fall would not provide the added benefits of protecting gag, red grouper, and black grouper during spawning seasons or closing the recreational fishery at the same time as the commercial fishery.

Classification

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

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

A FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. As discussed in the proposed rule (71 FR 16275, March 31, 2006), NMFS separated the management measures into two final rules -one addressing the bag limit provisions which published June 15, 2006 (71 FR 34534), and this final rule which addresses the recreational seasonal closures. The IRFA addressed all of the proposed management measures. The FRFA for the June 15, 2006 final rule included discussion of all alternatives for the bag limit provisions and the seasonal closure but focused primarily on the impacts of the bag limit provisions. The following FRFA summary for this final rule restates the discussion of all alternatives but focuses primarily on the analysis of the seasonal closure contained in this final rule.

This final rule will establish a February 15 to March 15 recreational seasonal closure for red grouper, gag, and black grouper. The purpose of this regulatory amendment is to implement management measures for the Gulf of Mexico grouper fishery that will restrict recreational red grouper landings to levels specified in the red grouper rebuilding plan. The Magnuson-Stevens

Act provides the statutory basis for this final rule.

Eight comments were received from the public on the economic impacts of the closed season component of the proposed rule. As previously discussed, although consideration of the seasonal closure was deferred, no changes were made in the final rule as a result of these comments. The comments stated that the closure would severely impact the livelihood of charter boat captains, crew, and their families. NMFS agrees that the closure will likely result in reduced bookings and trip receipts. Estimates of the expected impacts have been provided in the assessment and are summarized below. The low red grouper bag limit and bycatch problems associated with adjusting the minimum size limit, however, necessitate closure to achieve the harvest reduction goals. Single species closure raises additional bycatch problems. The seasonal closure specified by the final rule is expected to result in the fewest cancelled trips and forgone revenues of the closure alternatives considered by the Council while providing the added unquantifiable benefits of spawning season protection for the three species.

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

In June 2003, a moratorium was placed on the issuance of new charter vessel/headboat (for-hire) permits for reef fish. The moratorium was replaced by a limited access system which became effective on June 15, 2006. Currently, approximately 1,625 unique vessels are permitted to operate in this fishery. The for-hire fishery is comprised of charter vessels, which charge fees on a per-vessel basis, and headboats, which charge fees on an individual angler basis. The average charter vessel is estimated to generate \$76,960 in annual revenue and \$36,758 in annual "profit" (computed as gross revenue minus costs; costs exclude depreciation, fixed costs, and returns to owner/operators). The comparable figures for an average headboat are \$404,172 in annual gross revenue and \$338,209 in annual profits. Some vessels in the for-hire fleet also participate in the commercial fisheries. However, information on the average revenues generated from operation as a commercial vessel and the impacts of these revenues on the overall economic performance of the business operation are unknown.

Although the rule will not directly affect support industries, potential reductions in fishing effort and associated expenditures may have indirect impacts on hotels, restaurants,

gear and bait shops, and other associated businesses. Sufficient data are not available to enumerate or characterize these businesses.

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

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

The determination of "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is whether the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. All for-hire entities affected by the rule are considered small entities, so the issue of disproportionality does not arise in the present case. The profitability question is whether the regulations significantly reduce profit for a substantial number of small entities. For-hire operations, specifically charter boats, will bear the primary burden of the rule, although spill-over impacts are expected in associated industries such as hotels, marinas, and bait and tackle shops. For-hire operations may experience a reduction in bookings, resulting in reduced receipts from for-hire fees, tips, gear rental, food or beverages, and fish-cleaning. The seasonal closure contained in this final rule is estimated to result in a reduction of for-hire fees of up to \$2.52 million (approximately \$1,550 per vessel) due to cancellation of trips during the closed season, or approximately 2 percent of average gross revenues and 4 percent of average

net revenues per vessel. Sufficient data are not available to determine the precise impact of this final rule on associated industries, but it can be expected that some decline in revenues would occur.

As mentioned in the introduction to this FRFA summary, the following discussion of alternatives includes discussion of the bag limit provisions implemented via the June 15, 2006 final rule (71 FR 34534) and the seasonal closure implemented by this final rule. Six alternatives, including the status quo, were considered to the proposed red grouper bag limit and seasonal closure. The status quo would have allowed continued landing overages in the recreational sector and would, therefore, not meet the Council's objectives because continued overages would not allow the fishery to meet rebuilding goals.

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

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

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

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

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

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

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

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

List of Subjects in 50 CFR Part 622

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

Dated: November 13, 2006.

Samuel D. Rauch III

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 § 622.34, paragraph (o) is revised and paragraph (u) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of where harvested. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

* * * * *

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

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