

Act requires agencies to seek comment on possible small entity-related alternatives, as noted above. We therefore seek comment on alternatives to the proposed rules that would assist small entities while ensuring improved customer support by cable operators for digital cable products purchased at retail.

41. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

#### List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 76 as follows:

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.630 is amended by revising paragraph (a) and Note 1 and 2 to read as follows:

##### **§ 76.630 Compatibility with consumer electronics equipment.**

(a) Cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier.

(1) This prohibition shall not apply in systems in which:

(i) No television signals are provided using the NTSC system; and

(ii) The cable operator offers to its existing basic service tier subscribers (who do not use a set-top box or CableCARD at the time of encryption) the equipment necessary to descramble or decrypt the basic service tier signals (the subscriber's choice of a set-top box or CableCARD) on up to two separate television sets without charge for two years from the date of encryption; and

(iii) The cable operator offers to its existing digital subscribers who have an additional television set currently receiving basic-only service without a set-top box, the equipment necessary to descramble or decrypt the basic service

tier signals on one television set without charge for one year from the date of encryption; and

(iv) The cable operator offers to all existing basic-only subscribers who receive Medicaid the equipment necessary to descramble or decrypt the basic service tier signals on up to two separate television sets without charge for five years from the date of encryption.

(2) Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request for waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state: On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver shall be available for public inspection at (the address of the cable operator's local place of business).

(3) Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

\* \* \* \* \*

Note 1 to § 76.630: 47 CFR 76.1621 contains certain requirements pertaining to a cable operator's offer to supply subscribers with special equipment that will enable the simultaneous reception of multiple signals.

Note 2 to § 76.630: 47 CFR 76.1622 contains certain requirements pertaining to the provision of a consumer

education program on compatibility matters to subscribers.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

#### 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:** Notice of availability; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 32 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 32 proposes to implement a 10-year rebuilding plan for gag; revise the annual catch limits (ACLs) and accountability measures (AMs) for gag, red grouper, and shallow-water grouper (SWG); revise recreational annual catch targets (ACTs) for gag and red grouper; implement a 4-month gag recreational season; adjust the commercial quota for gag and SWG for 2012 through 2015 and subsequent fishing years; adjust multi-use individual fishing quota (IFQ) shares for gag and red grouper; and implement a 22-inch (56-cm) commercial minimum size limit for gag. The intent of Amendment 32 is to end overfishing of gag, allow the gag stock to rebuild, and constrain the harvest of red grouper consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before December 27, 2011.

**ADDRESSES:** You may submit comments on the amendment identified by "NOAA-NMFS-2011-0135" by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

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

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

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0135" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0135" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this notice of availability will not be accepted.

Electronic copies of Amendment 32 may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov>.

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

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To

further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable. The reauthorized Magnuson-Stevens Act, as amended through January 12, 2007, requires the councils to establish ACLs for each stock/stock complex and AMs to ensure these ACLs are not exceeded. Amendment 32 addresses these requirements for gag, red grouper, and the SWG complex.

### Status of Stocks

Southeast Data, Assessment, and Review (SEDAR) stock assessment updates were conducted for gag and red grouper in 2009. For gag, the assessment indicated the gag stock was both overfished and undergoing overfishing. The Council was informed of this status determination in August of 2009. Until Amendment 32 could be completed, the Council requested and NMFS implemented a series of temporary rules to control harvest. For 2011, the gag commercial quota is 430,000 lb (195,045 kg) and the gag recreational season is from September 16 through November 15 (76 FR 31874, June 2, 2011). This most recent temporary rule became effective June 1, 2011.

For red grouper, a 2009 SEDAR assessment update indicated that although the stock continues to be neither overfished nor undergoing overfishing, the stock has declined since 2005. After reviewing a rerun of the assessment update completed in late 2010, the SSC recommended that the overfishing limit for red grouper be set at 8.10 million lb (3.67 million kg) (the equilibrium yield at  $F_{MSY}$  (the fishing mortality associated with harvesting the maximum sustainable yield) and the allowable biological catch (ABC) be set at 7.93 million lb (3.60 million kg) (the equilibrium yield at  $F_{OY}$ ). For 2011, the SSC recommended the harvest could be increased to 6.88 million lb (3.12 million kg). A 2011 regulatory amendment is in the process of being implemented to set total allowable catch (TAC) at 6.88 million lb (3.12 million kg) for 2011, and increase the red grouper TAC and commercial quota annually through 2015. The proposed rule to implement this regulatory amendment published on September 21, 2011 (76 FR 58455) and the final rule is currently being developed.

### Actions Contained in Amendment 32

#### *Gag Rebuilding Plan*

The Council selected a 10-year rebuilding plan in Amendment 32 for gag. This is the maximum time frame allowed under the requirements of the Magnuson-Stevens Act. However, because the Council intends to manage the stock using the  $F_{OY}$  yield stream (based on protocols from Amendment 30B), the stock is projected to be rebuilt in 7 years. Given management uncertainties and uncertainties regarding stock assessment projections more than a few years in the future, a 10-year rebuilding plan would allow for fluctuations in catches and provide leeway to account for the needs of fishing communities when setting catch levels and management measures.

#### *ACLs and ACTs*

Based on the SSC's recommendations for ABCs for gag and red grouper, Amendment 32 would establish sector-specific ACLs and ACTs for each species based on the allocation ratios assigned for the commercial and recreational sectors. The allocation of gag between the commercial and recreational sectors is 39 percent and 61 percent, respectively. Amendment 32 would implement sector-specific ACLs, which when combined would equal to the SSCs recommended ABCs. The sector-specific ACTs for gag are based on the  $F_{OY}$  yield stream which provides lower annual yields than the  $F_{rebuild}$  yields used to determine the ABC and resulting sector ALCs. This results in sector-specific ACTs less than the ACLs, and helps ensure the sector-specific ACLs are not exceeded. Recreational landings would be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. Commercial ACTs are similarly reduced from the commercial ACL because the management strategy follows  $F_{OY}$  yield streams. However, due to the limited amount of gag IFQ allocation available for harvest in the initial years of the gag rebuilding plan, gag bycatch and discards from fishermen targeting red grouper or other fish may be higher than assumed in the assessment projections. Therefore, the Council determined the commercial gag quota should be reduced from the ACT by 14 percent to account for additional dead discards not accounted for in the assessment analyses.

For red grouper, sector-specific ACLs are based on the current 76 percent commercial and 24 percent recreational allocation ratio. The commercial quota (ACT) is being established through a separate rulemaking, the 2011 red

grouper regulatory amendment, which is expected to be effective prior to the implementation of Amendment 32. Amendment 32 would adjust the recreational ACL and ACT in a method similar to the one used for gag. Recreational landings would be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

Because the commercial SWG ACL is the sum of the commercial gag and red grouper ACLs, Amendment 32 would adjust the commercial SWG ACL. Similarly, reductions in the gag quota correspond to reductions in the SWG quota. Therefore, Amendment 32 would adjust the commercial SWG quota.

#### AMs

Amendment 32 proposes to modify the AMs for gag, red grouper, and SWG. AMs are intended to prevent ACLs from being exceeded or mitigate future harvests after ACLs have been exceeded. For the commercial sector, the current AMs were implemented through Amendment 30B to the FMP (74 FR 17603, April 16, 2009), before red grouper, gag and SWG were managed under an IFQ program. Therefore, the current AMs would be triggered if the sector exceeds the respective species' quota. However, the IFQ program Gulf groupers and tilefishes acts as an AM because the overall quota is divided among shareholders and the program includes controls that do not allow shareholders to exceed their individual allocation of the quota. To reduce redundancy in the commercial AMs, Amendment 32 proposes to eliminate the quota-based AM in favor of the existing IFQ program.

Current recreational AMs for gag and red grouper include restricting future increases in harvest and shortened subsequent seasons, should an ACL be exceeded. However, AMs have no provisions for handling overages or in-season adjustments as authorized under the National Standard 1 guidelines (74 FR 3178, January 16, 2009). Amendment 32 proposes to add an overage adjustment and in-season recreational AMs for gag and red grouper. Should gag or red grouper be in a rebuilding plan and the sector ACL is exceeded, the overage adjustment would be equal to the full amount of the overage, unless the best scientific information available shows that a greater, lesser, or no overage adjustment is needed to mitigate the effects of the overage. In addition, Amendment 32 proposes that if gag or red grouper landings are projected to exceed the ACL, as estimated by the Southeast Fisheries Science Center (SEFSC), without regard

to overfished status, the AA would file a notification closing the recreational harvest for the species projected to reach its ACL for the rest of the fishing year on the date the ACL is projected to be harvested.

In addition to these AMs, Amendment 32 proposes an AM for recreational red grouper that incorporates an adaptive management approach should the recreational sector exceed its ACL. The Council has submitted a red grouper regulatory amendment for Secretarial approval, and NMFS has published a proposed rule (September 21, 2011, 76 FR 58455) that includes a red grouper bag limit increase from two to four fish, within the four-fish aggregate grouper bag limit. The adaptive management AM proposed in Amendment 32 would reduce the bag limit from four fish to three fish if, at the end of any season, it is determined that the recreational sector has exceeded the recreational red grouper ACL. The bag limit would be reduced from three fish to two fish if, at the end of any subsequent season, it is determined that the recreational sector has exceeded its ACL again. The minimum bag limit for red grouper would remain at two fish, regardless if the recreational sector exceeded the ACL in subsequent fishing years.

#### Other Commercial Management Measures

To allow for flexibility and to account for varying gag to red grouper quota ratios across the Gulf in the commercial grouper-tilefish IFQ program, at the beginning of each fishing year a percentage of the gag and red grouper allocation is designated as multi-use allocation, valid for harvesting either gag or red grouper. Currently, 4 percent of the red grouper allocation and 8 percent of the gag allocation are designated as multi-use allocation. However, under the red grouper and gag ACLs proposed in Amendment 32, the current multi-use allocations could result in commercial harvest of red grouper or gag exceeding its sector ACL. To prevent this from occurring, Amendment 32 proposes that if a stock is not under a rebuilding plan, the respective multi-use allocation would be based on the difference between the ACL and the ACT. If a stock is under a rebuilding plan, as with gag, then no multi-use allocation would be set aside. Therefore, red grouper multi-use allocation would be set to zero if gag is under a rebuilding plan. The equations used to determine multi-use allocation for gag and red grouper are as follows:

$$\begin{aligned} \text{Gag Multi-use (in percent)} &= 100 * [\text{Red Grouper ACL} - \text{Red Grouper Allocation}] / \text{Gag Allocation} \\ \text{Red Grouper Multi-use (in percent)} &= 100 * [\text{Gag ACL} - \text{Gag Allocation}] / \text{Red Grouper Allocation} \end{aligned}$$

National Standard 9 dictates bycatch and the mortality of unavoidable bycatch should be minimized to the extent practicable. Because the commercial sector fishes in deeper waters on average than the recreational sector, it has a higher discard mortality rate. One possible way to reduce gag regulatory dead discards is to reduce the commercial minimum size limit so that gag that would have been discarded can be retained. To reduce gag discards, Amendment 32 would reduce the minimum size limit of gag from 24 inches (61 cm) to 22 inches (56 cm) TL. This change could reduce discards by approximately 30 percent, and would have the advantage of simplifying enforcement by having a single gag size limit for both sectors.

#### Other Recreational Management Measures

In selecting a recreational management strategy, the Council favored achieving the longest practicable fishing season for gag, while maintaining the current size and bag limits and constraining harvest to the ACT. Therefore, Amendment 32 proposes to set the gag fishing season from June 1 through October 31. The current two-gag bag limit within the four-fish grouper aggregate bag limit and 22-inch (56-cm) TL minimum size limit will remain unchanged.

#### Proposed Rule for Amendment 32

A proposed rule that would implement Amendment 32 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 32 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

#### Consideration of Public Comments

The Council submitted Amendment 32 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 32 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received by 5 p.m. eastern time, on December 27, 2011,

will be considered by NMFS in the approval/disapproval decision regarding Amendment 32.

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

Dated: October 24, 2011.

**Steven Thur,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 100120037-1626-01]

RIN 0648-AY55

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Queen Conch and Reef Fish Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

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

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

**SUMMARY:** NMFS proposes to implement Amendment 2 to the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Amendments 2 and 5), prepared by the Caribbean Fishery Management Council (Council). This proposed rule would: establish annual catch limits (ACLs) and accountability measures (AMs) for queen conch and for all reef fish units or complexes that are classified as undergoing overfishing or that contain sub-units which are classified as undergoing overfishing (*i.e.*, snapper, grouper and parrotfish); allocate ACLs among island management areas and, in Puerto Rico only, among commercial and recreational sectors; revise the composition of the snapper and grouper complexes; prohibit fishing for and possession of three parrotfish species; establish recreational bag limits for snappers, groupers, and parrotfishes; and establish framework procedures for queen conch and reef fish species. Amendments 2 and 5 would also revise management reference points and status determination criteria for queen conch, snappers, groupers, and parrotfishes.

The intended effect of the rule is to prevent overfishing of queen conch and reef fish species while maintaining catch levels consistent with achieving optimum yield (OY).

**DATES:** Written comments must be received on or before November 18, 2011.

**ADDRESSES:** You may submit comments on the proposed rule identified by "NOAA-NMFS-2010-0028," by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Bill Arnold, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2010-0028" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2010-0028" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendments 2 and 5, which include an Environmental Impact Statement (EIS), an initial regulatory flexibility analysis (IRFA), a regulatory impact review, and a fishery impact statement may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/sf.htm>.

**FOR FURTHER INFORMATION CONTACT:** Bill Arnold, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: [Bill.Arnold@noaa.gov](mailto:Bill.Arnold@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In the exclusive economic zone (EEZ) of the U.S. Caribbean, the queen conch fishery is managed under the Fishery Management Plan (FMP) for Queen Conch Resources of Puerto Rico and the

U.S. Virgin Islands (USVI), and the reef fish fishery is managed under the Reef Fish Fishery Management Plan of Puerto Rico and the USVI. These FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

The 2006 reauthorization of the Magnuson-Stevens Act requires that, in 2010, FMPs for the fisheries determined by the Secretary of Commerce to be subject to overfishing establish a mechanism of specifying ACLs at a level that prevents overfishing and helps achieve OY within a fishery. Additionally, FMPs must specify accountability measures to ensure ACLs are not exceeded or mitigate if they are exceeded.

NMFS' 2011 Report on the Status of U.S. Fisheries classifies Caribbean queen conch, Grouper Units 1 and 4, Snapper Unit 1, and parrotfishes as undergoing overfishing.

#### Provisions Contained in This Proposed Rule

##### *Amend the Composition of Stock Complexes*

The snapper and grouper complexes included within the Reef Fish FMP for the U.S. Caribbean are currently composed of four grouper units and four snapper units. Unit composition presently excludes several species of commonly harvested fish and also fails to aggregate species in an ecologically consistent manner.

The black grouper (*Mycteroperca bonaci*) is not included in any of the units although this species is frequently caught by recreational anglers. This rule would add black grouper to Grouper Unit 4 along with other members of that unit with common habitat and depth preferences. Both misty (*Epinephelus mystacinus*) and yellowedge (*E. flavolimbatus*) grouper are presently included in Grouper Unit 4, but these two species are found at water depths much greater than are the other members of Grouper Unit 4. Therefore, the Council and NMFS propose to create a new Grouper Unit 5 that would contain both misty and yellowedge grouper. Finally, the creole-fish (*Paranthias furcifer*) is proposed to be removed from the FMP. An adjusted average of about 15 lb (6.8 kg) of creole-fish was reported to have been landed by the commercial sector between 1983 and 2007, and no recreational landings have been reported between 2000 and