

described in the application submitted under § 217.116 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming period of validity;

(2) Timely receipt (by the dates indicated in the Letter of Authorization issued under this subpart) of the monitoring report required under § 217.115(f); and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 217.114 and the Letter of Authorization issued under §§ 216.106 and 217.117 of this chapter, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 217.118 of this chapter indicates that a substantial modification to the described work, mitigation, monitoring or research undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a period of 30 days for review and seek comment on:

(1) New cited information and data that indicates that the determinations made for promulgating these regulations are in need of reconsideration, and

(2) Proposed changes to the mitigation, monitoring and research requirements contained in these regulations or in the current Letter of Authorization.

#### **§ 217.119 Modifications to Letters of Authorization.**

(a) Except as provided in paragraphs (b) and (c) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 217.118, without modification (except for the period of validity), is not considered a substantive modification.

(b) NMFS in response to new information and in consultation with Eglin AFB, may modify the mitigation or monitoring measures in LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from Eglin AFB's monitoring from the previous year

(either from the EGTRR or other locations).

(2) Results from specific stranding investigations.

(3) Results from general marine mammals and sound research.

(4) Any information that reveals marine mammals may have been taken in a manner, extent, or number not anticipated by these regulations or Letters of Authorization.

(c) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.112(c), a Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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## **DEPARTMENT OF COMMERCE**

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

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

[Docket No. 120907427-3403-01]

RIN 0648-BC51

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

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

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

**SUMMARY:** NMFS proposes regulations 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 vermilion snapper recreational bag limit, revise the yellowtail snapper stock annual catch limit (ACL), and remove the requirement for reef fish vessels to have onboard and use a venting tool. This proposed rule is intended to help achieve optimum yield (OY) and prevent overfishing of vermilion and yellowtail snappers, reduce the regulatory burden to fishers associated

with venting reef fish, and minimize bycatch and bycatch mortality.

**DATES:** Written comments must be received on or before June 6, 2013.

**ADDRESSES:** You may submit comments on this document, identified by "NOAA-NMFS-2013-0038", 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-2013-0038](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2013-0038), 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](http://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, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

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

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

federally managed fish stocks. The Magnuson-Stevens Act also requires that management measures shall, to the extent practicable, minimize bycatch and bycatch mortality. The reauthorized Magnuson-Stevens Act, as amended through January 12, 2007, requires the councils to establish ACLs for each stock/stock complex as well as accountability measures (AMs) to ensure that these ACLs are not exceeded. This proposed rule addresses these requirements by: (1) Establishing a 10-vermillion snapper recreational bag limit within the 20-fish aggregate reef fish bag limit; (2) increasing the Gulf yellowtail snapper ACL from 725,000 lb (328,855 kg), round weight, to 901,125 lb (408,743 kg), round weight; and (3) removing the requirement to have onboard and use venting tools when releasing reef fish. All weights discussed in this proposed rule are in round weight.

#### **Management Measures Contained in This Proposed Rule**

This proposed rule would revise the yellowtail snapper stock ACL, revise the vermillion snapper recreational bag limit, and remove the requirement for a Gulf reef fish vessel to have a venting tool onboard and for it to be used for venting reef fish.

##### *Vermilion Snapper Recreational Bag Limit*

Vermilion snapper are currently included within the Gulf reef fish aggregate recreational bag limit of 20 fish. The Council's Reef Fish Advisory Panel (RFAP) recommended that the Council take action to constrain the recreational harvest of vermillion snapper because of significant recent increases in recreational landings. In 2011, recreational landings were approximately 1.15 million lb (521,631 kg), compared to 457,000 lb (207,292 kg) in 2010. The Council decided that the vermillion snapper bag limit should be restricted to 10 fish within the overall 20-fish aggregate reef fish bag limit to help constrain vermillion snapper recreational harvest.

The Council reasoned that while the proposed 10-fish bag limit would not necessarily reduce the current overall recreational harvest of vermillion snapper, it would serve to prevent the recreational harvest from increasing at a rate that could result in the vermillion snapper stock ACL being met before the end of the fishing year. If this occurred, AMs would be triggered that would close the recreational sector for vermillion snapper for the remainder of the fishing year. Additionally, this proposed bag limit is consistent with

the vermillion snapper bag limit implemented by the Florida Fish and Wildlife Conservation Commission. The revised bag limit would help to constrain recreational harvests to minimize the opportunity for ACL to be exceeded by slowing the rate of potential future increases in the recreational harvest.

##### *Yellowtail Snapper ACL*

In the Gulf, the yellowtail snapper ACL is not allocated between the commercial and recreational sectors but is managed with a single stock ACL. Additionally, because yellowtail snapper in the U.S. comprise a single stock, landings from both the South Atlantic and Gulf regions are combined for stock assessment purposes. The resulting acceptable biological catch (ABC) is allocated among both regions with 75 percent of the ABC assigned to South Atlantic jurisdiction and 25 percent of the ABC to Gulf jurisdiction. Currently, the stock ABC is 2.9 million lb (1.3 million kg), with 725,000 lb (328,855 kg) allocated to the Gulf. This Gulf ABC value is used to determine the Gulf yellowtail snapper stock ACL, where the ACL is equal to the ABC, which was established through the Gulf's Generic ACL/AM Amendment (76 FR 82044, December 29, 2011).

In 2012, the Florida Fish and Wildlife Research Institute (FWRI) conducted a benchmark stock assessment of yellowtail snapper. The assessment was reviewed by the Scientific and Statistical Committees (SSCs) of both the Gulf Council and the South Atlantic Fishery Management Council. The assessment indicated that the yellowtail snapper stock was not overfished or undergoing overfishing. As a result of that stock status and the fact that the yellowtail snapper biomass is greater than what is needed to support harvesting at the maximum sustainable yield, both Councils SSCs determined the yellowtail snapper ABC would be based on equilibrium harvest levels that remain constant and do not fluctuate from year to year. Therefore, the SSCs agreed to set the overall stock ABC at 4.05 million lb (1.94 million kg). Using the 25 percent Gulf allocation of the overall stock ABC, the ABC for the Gulf was determined to be 1.0125 million lb (0.4593 million kg).

The Council considered three alternatives in setting the Gulf yellowtail snapper ACL. These were: (1) Maintaining the ACL at its current level; (2) setting the ACL equal to the Gulf allocation of the ABC; or (3) applying the Council's ACL control rule to the ABC to account for management uncertainty. The Council decided to

apply the ACL control rule which reduced the ACL by 11 percent from the Gulf allocation of the ABC. This resulted in a proposed Gulf stock ACL of 901,125 lb (408,743 kg).

##### *Venting Tools*

A venting tool is a device intended to deflate the abdominal cavity of a fish in order to release the fish with minimal damage. Currently, Gulf reef fishermen must possess venting tools onboard and use them when releasing reef fish. This measure was implemented through Amendment 27 to the FMP (73 FR 5117, January 29, 2008). The venting tool requirement was implemented to reduce bycatch and discard mortality in the reef fish fishery. However, several recent scientific studies have questioned the usefulness of venting tools in preventing discard mortality in fish, particularly those caught in deep waters. In addition, some fish caught in shallow waters may not need to be vented, and attempts at venting may damage fish by improper venting techniques and increased handling time while the fish are out of the water. Finally, the current requirement to use a venting tool may prevent fishermen from using other devices such as fish descenders, which are devices that take the fish back to depth without puncturing them. Because of these factors, the Council voted to remove the venting tool requirement for the Gulf reef fishery. This would provide fishermen with more discretion when they release reef fish but does not prohibit the use of venting tools or other release devices by fishers.

#### **Additional Management Measure Contained in the Framework Action**

Vermilion snapper are not allocated between the commercial and recreational sectors in the Gulf and are managed with a single stock ACL. The current ACL for the Gulf vermillion snapper stock is 3.42 million lb (1.55 million kg) and was set through the the Gulf's Generic ACL/AM Amendment (76 FR 82044, December 29, 2011). This ACL was established based on 1999–2008 landings data and was adjusted to account for scientific and management uncertainty per the Council's ABC and ACL control rules developed in the Generic ACL/AM Amendment.

In 2011, a vermillion snapper update stock assessment was performed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR Update 2011c). This assessment used data up through 2010. The assessment indicated that the stock was not overfished nor undergoing overfishing. Based on the SEDAR update assessment,

the Council's SSC recommended that the vermilion snapper stock ABC be set at 4.41 million lb (2.00 million kg) in 2013, 4.34 million lb (1.97 million kg) in 2014, and 4.33 million lb (1.96 million kg) in 2015, 2016, and subsequent years.

The Council reviewed several alternatives for setting the Gulf vermilion snapper stock ACL that ranged from maintaining it at the current 3.42 million lb (1.55 million kg) to setting it equal to the ABC. The RFAP and public testimony from vermilion snapper fishermen to the Council indicated that the stock condition appeared to be declining in recent years. Given this information, and considering that the last year of data used in the update assessment was 2010, the Council recommended, as a precaution, not to increase the vermilion snapper stock ACL at this time. Therefore the vermilion snapper stock ACL will remain at 3.42 million lb (1.55 million kg).

#### 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 Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if implemented, would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purposes of this rule are: (1) To adjust the ACL for the yellowtail snapper stock consistent with the ABC recommendations of the SSC; (2) set the vermilion snapper recreational bag limit at a level that minimizes the risk of overfishing by the recreational sector; and (3) modify the regulations requiring possession and use of venting tools by the reef fish fishery to minimize bycatch and bycatch mortality. The framework action also considered adjusting the ACL for vermilion snapper; however, the Council voted to retain the current ACL for this species. The need for the proposed actions is to prevent overfishing while achieving the OY of vermilion and yellowtail snapper on a continuing basis and to the extent practicable, and to minimize bycatch

and the mortality of released fish in the reef fish fishery. The Magnuson-Stevens Act provides the statutory basis for the proposed action.

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

The rule would apply directly to businesses in the Finfish Fishing Industry (NAICS 114111) that harvest vermilion snapper and yellowtail snapper in Gulf Federal waters. As of November 2012, there were 814 individuals with a Gulf of Mexico Commercial Reef Fish Permit. These 814 individuals are presumed to represent 814 businesses in the Finfish Fishing Industry that would be affected by this rule. According to SBA Size Standards, a business in the Finfish Fishing Industry is a small business if its annual receipts are less than \$4 million. NMFS presumes for this rule that a substantial number of the 814 businesses are small businesses.

This rule would not establish any new reporting or recordkeeping requirements. The preferred alternative (the no action alternative) for the action to revise the vermilion snapper stock ACL would maintain the vermilion snapper ACL at its current value; therefore, this action would have no beneficial or adverse economic impact beyond the status quo. The preferred alternative for the action to revise the vermilion snapper recreational bag limit would reduce the number of vermilion snapper that recreational fishermen can land within the daily aggregate reef fish recreational bag limit, so it would have no direct impact on commercial fishing businesses. The preferred alternative for the action to revise the yellowtail snapper stock ACL would increase the yellowtail snapper stock ACL from 725,000 lb (328,855 kg) to 901,125 lb (408,743 kg), an increase of 176,125 lb (79,889 kg), which would allow for increased landings of and revenues from yellowtail snapper. The preferred alternative for the reef fish venting tool requirement action would remove the need to have a venting tool onboard and to be used when releasing reef fish. This would then eliminate the time and cost of acquiring, learning how to use, and using a venting tool. Consequently, the combined proposed actions would not have a significant adverse economic impact on a substantial number of small businesses because they are expected to generate a net economic benefit to small businesses.

The alternatives the Council did not select for the action to revise the vermilion snapper stock ACL would increase the ACL for vermilion snapper, which would generate larger short-term

economic benefits, but likely smaller long-term economic benefits than the preferred alternative.

One considered but rejected alternative for the action to revise the yellowtail snapper stock ACL would allow for smaller increases in yellowtail snapper landings, and therefore, would generate smaller potential net economic benefits than the preferred alternative. Another considered but rejected alternative would have allowed for larger increases in yellowtail snapper landings, and would have generated larger potential net economic benefits in the short-run; however, it could have smaller net economic benefits in the long-run.

Lastly, the considered but rejected alternatives for the reef fish venting tool requirements, would retain all or part of the economic costs of complying with the current venting requirement, and therefore would have less economic benefit than the preferred alternative.

This rule would not be expected to significantly reduce the profits of any small entities. Because this rule, if implemented, is not expected to have significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

#### List of Subjects in 50 CFR Part 622

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

Dated: April 30, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, 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, 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 § 622.30, paragraph (c) is removed and the introductory paragraph is revised to read as follows:

#### **§ 622.30 Required fishing gear.**

For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (a) and (b) of this section.

\* \* \* \* \*

■ 3. In § 622.38, paragraph (b)(5) is revised to read as follows:

**§ 622.38 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(5) *Gulf reef fish, combined, excluding those specified in paragraphs (b)(1) through (b)(4) and paragraphs (b)(6) through (b)(7) of this section—20.* In

addition, within the 20-fish aggregate reef fish bag limit, no more than 2 fish may be gray triggerfish and no more than 10 fish may be vermilion snapper.

\* \* \* \* \*

■ 4. In § 622.41, the second sentence of paragraph (n) is revised to read as follows:

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

\* \* \* \* \*

(n) \* \* \* The stock ACL for yellowtail snapper is 901,125 lb (408,743 kg), round weight.

\* \* \* \* \*

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