

period shall be limited to 30 days because the statutory deadline requires a final listing determination by June 10, 2012.

### Obtaining a Copy of the Peer Review Report

You may obtain a copy of the peer review report for review:

Via the Federal eRulemaking Portal <http://www.regulations.gov> at Docket No. NOAA-NMFS-2010-0259.

By visiting the Internet at: <http://alaskafisheries.noaa.gov/protectedresources/seals/ice.htm>.

Documents cited in this notice, including the peer review report, may also be viewed, by appointment, during regular business hours, at the aforementioned address in Juneau, AK (see **ADDRESSES**).

### Public Comments Solicited

Comments and information submitted during the initial comment period on the December 10, 2011 (75 FR 77496), proposed rule should not be resubmitted since they are already part of the record. Comments and information submitted should focus on the information contained in the peer review report listed above. Our final determination of whether the Beringia and Okhotsk DPSs of bearded seals qualify as threatened or endangered under the ESA will take into consideration all comments and information we receive and have previously received during both comment periods. We request that all comments and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please submit any comments to the **ADDRESSES** listed above.

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

Dated: April 2, 2012.

**Alan D. Risenhoover,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 100217095-2197-05]

RIN 0648-AY56

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 32 Supplement

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

**ACTION:** Supplemental proposed rule; request for comments.

**SUMMARY:** NMFS proposes to supplement the regulations that implemented management measures described in Amendment 32 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 32) prepared by the Gulf of Mexico Fishery Management Council (Council). After publication of the final rule for Amendment 32, published on February 10, 2012, NMFS identified inconsistencies in the regulatory text regarding the quotas and annual catch limits (ACLs) for “other shallow water grouper” (Other SWG) that need correction. This rule would revise the regulatory text regarding the quotas and ACLs for Other SWG. Additionally, NMFS proposes revisions to improve clarity of the regulations.

**DATES:** Written comments must be received on or before April 23, 2012.

**ADDRESSES:** You may submit comments on the supplemental proposed rule 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://](http://www.regulations.gov)

[www.regulations.gov](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 rule will not be accepted.

Electronic copies of Amendment 32, which includes a final environmental impact statement (FEIS), a regulatory flexibility analysis, and a regulatory impact review, 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 of Mexico (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

A final rule to implement management measures described in Amendment 32 was published on February 10, 2012 (77 FR 6988). That final rule included measures to:

- Adjust the commercial gag quota and recreational annual catch target (ACT) for 2012 through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32;
- Adjust the shallow-water grouper (SWG) quota;
- Adjust the commercial and recreational sector’s ACLs for gag and red grouper;
- Adjust the commercial ACL for SWG;
- Establish a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish individual fishing quota program in the Gulf;
- Set the recreational gag fishing season from July 1 through October 31;
- Reduce the gag commercial size limit to 22 inches (59 cm) total length (TL); and
- Modify the gag and red grouper accountability measures (AMs).

In planning the publication of the final rule for Amendment 32, NMFS anticipated it would publish before the final rule to implement the ACLs and Accountability Measures Amendment for Reef Fish, Red Drum, Shrimp, and Coral Fisheries of the Gulf of Mexico (Generic ACL Amendment). However, due to a delay in publishing the final rule for Amendment 32, the Generic ACL Amendment final rule published first (76 FR 82044, December 29, 2011) with implementation effective on January 30, 2012. The final rule for the Generic ACL Amendment removed the commercial SWG quotas and commercial SWG ACL and replaced them with separate multi-year commercial Other SWG quotas and stock complex ACLs for Other SWG. Inadvertently, the regulatory text in the Amendment 32 final rule setting the commercial SWG quotas and the commercial ACL for SWG was not modified to reflect the measures established in the Generic ACL Amendment. To correct this inconsistency, the subject supplemental proposed rule would reinstate the commercial Other SWG quotas and the stock complex commercial ACLs for Other SWG, as established in the final rule which implemented the Generic ACL Amendment, as well as remove the commercial SWG quotas and commercial SWG ACL implemented through Amendment 32. In addition, some minor revisions to improve the clarity of the regulations were identified and this rule would correct these issues. First, NMFS proposes to revise the term "other SWG" to read "Other SWG" throughout the 50 CFR part 622 regulations to improve the clarity of the regulations. If implemented, the definition of SWG would be amended to include the definition for Other SWG. In the Gulf, Other SWG would still include black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Second, in two instances in the regulations, sentences within a paragraph are reordered to improve clarity. Third, a sentence is deleted in the regulations, because it is already stated in the preceding paragraph and therefore is redundant.

NMFS requests comments for a period of 15 days regarding these revisions. These revisions will be addressed in a second final rule to implement Amendment 32. No other revisions or changes to the final rule implementing Amendment 32 are included here. All discussion of the management measures contained in Amendment 32, including the AMs, are provided in the proposed rule published on November 2, 2011 (76

FR 67656), the final rule published on February 10, 2012 (77 FR 6988), and in Amendment 32, and are not repeated here.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this supplemental proposed rule is consistent with the FMP, Amendment 32, 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 that this supplemental proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this supplemental proposed rule is discussed in the preamble and not repeated here. The Magnuson-Stevens Act provides the statutory basis for this supplemental proposed rule.

This supplemental proposed rule, if implemented, would be expected to directly affect commercial fishing vessels that harvest Other SWG. Commercial harvest of Other SWG in the Gulf is managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) program. The IFQ program manages harvest through shares and allocation. Shares are a percentage of the commercial quota assigned to each IFQ shareholder and allocation is the actual poundage that each IFQ shareholder or allocation holder is given the opportunity to possess, land, or sell, during a given calendar year. Shareholders are the initial recipients of allocation, which can be transferred (sold) to and used by anyone with a valid commercial Gulf reef fish permit. Because anyone with a valid commercial Gulf reef fish permit can obtain and use Other SWG allocation, all commercial Gulf reef fish permit holders could be affected by this supplemental proposed rule. On February 28, 2012, 908 entities possessed a valid or renewable commercial Gulf reef fish permit. In 2010, however, only 282 commercial entities landed Other SWG in the Gulf. Comparable data for 2011 were not available at the time of this assessment.

No other small entities that would be expected to be directly affected by this

supplemental proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters and recreational services. A business involved in fish harvesting 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 \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Average receipts data for all entities potentially affected by this rule are not available. The average commercial vessel in the Gulf reef fish fishery is estimated to earn approximately \$48,000 (2010 dollars) per year in ex-vessel revenue. Based on this average revenue estimate, all commercial vessels expected to be directly affected by this supplemental proposed rule are determined for the purpose of this analysis to be small business entities.

This supplemental proposed rule, if implemented, would revise the regulatory text regarding the commercial quotas and the stock complex ACLs for Other SWG and would not be expected to reduce profits for a substantial number of small entities. Revision of the commercial quotas for Other SWG would increase the Other SWG commercial quotas by an average of 108,750 lb (49,328 kg), gutted weight (gw), per year over the period 2012–2015, or a total of 435,000 lb (197,312 kg), gw, relative to the status quo. These quota increases would be expected to result in an increase in ex-vessel revenue by an average of approximately \$425,000 (2010 dollars) per year, or approximately \$1.7 million (2010 dollars) total, for all affected commercial fishing businesses. As a result, this supplemental proposed rule, if implemented, would be expected to increase profits to all directly affected small business entities.

Because this supplemental proposed rule, if implemented, would not be expected to have any direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This supplemental proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

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

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

Dated: April 3, 2012.

**Alan D. Risenhoover,**

*Acting 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 § 622.2, the definition for “Shallow-water grouper (SWG)” is revised to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Shallow-water grouper (SWG)* means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Other shallow-water grouper (Other SWG) means, in the Gulf, SWG excluding gag and red grouper (*i.e.*, black grouper, scamp, yellowfin grouper, and yellowmouth grouper). In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as Other SWG as specified in § 622.20(a)(6).

\* \* \* \* \*

3. In § 622.20, paragraph (a) introductory text, the second sentence of paragraph (a)(4), paragraphs (a)(5)(i) and (a)(5)(ii), the second sentence of paragraphs (a)(6), (a)(7), (b)(3)(i), and the first sentence of paragraph (b)(6)(i) are revised to read as follows:

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

(a) *General.* This section establishes an IFQ program for the commercial sectors of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and Other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, speckled hind, and scamp, but only as specified in paragraph (a)(7) of this section. For the purposes of this IFQ program, Other SWG includes black grouper, scamp, yellowfin grouper, yellowmouth grouper, warsaw grouper, and speckled hind, but only as specified in paragraph (a)(6) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are

equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, Other SWG, and tilefishes, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

\* \* \* \* \*

(4) \* \* \* IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder’s IFQ share times the annual commercial quota for gag, red grouper, DWG, Other SWG and tilefishes. \* \* \*

(5) \* \* \*  
(i) *Red grouper multi-use allocation.* (A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder’s initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

$$\text{Red Grouper multi-use allocation (in percent)} = 100 * [\text{Gag ACL} - \text{Gag commercial quota}] / \text{Red grouper commercial quota}$$

(B) Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder’s (shareholder or allocation holder’s) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred. However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(ii) *Gag multi-use allocation.* (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder’s initial gag allocation will be converted to gag

multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

$$\text{Gag multi-use allocation (in percent)} = 100 * [\text{Red grouper ACL} - \text{Red grouper commercial quota}] / \text{Gag commercial quota}$$

(B) Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder’s (shareholder or allocation holder’s) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section. However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(6) \* \* \* For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder’s DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then Other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) \* \* \* For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder’s Other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

\* \* \* \* \*

(b) \* \* \*  
(3) \* \* \*

(i) \* \* \* The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, Other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. \* \* \*

\* \* \* \* \*

(6) \* \* \*  
(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, Other SWG, or tilefishes)

in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. \* \* \*

4. In § 622.42, paragraph (a)(1)(iii) introductory text and paragraph (a)(1)(iii)(A) are revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

- (a) \* \* \*
- (1) \* \* \*

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (Other SWG) species (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is, eviscerated but otherwise whole.

(A) *Other SWG combined.* (1) For fishing year 2012—509,000 lb (230,879 kg).

(2) For fishing year 2013—518,000 lb (234,961 kg).

(3) For fishing year 2014—523,000 lb (237,229 kg).

(4) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

\* \* \* \* \*

5. In § 622.49, paragraphs (a)(3) and (a)(4)(ii)(B) are revised to read as follows:

**§ 622.49 Annual Catch Limits (ACLs) and Accountability measures (AMs).**

(a) \* \* \*

(3) *Other shallow-water grouper (Other SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper)*—(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial Other SWG. The commercial ACL for Other SWG is equal to the applicable quota specified in § 622.42(a)(1)(iii)(A).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(3)(iii) of this section, then during the following fishing year, if the sum of the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(3)(iii) of this section, the AA will file a

notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for Other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

(4) \* \* \*

(ii) \* \* \*

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's target catch (ACT) is unnecessary.

\* \* \* \* \*

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