

the provider would be clinically appropriate for the care of the veteran.

(3) Factual determination of whether a provider has a Medicare provider agreement or an agreement under a State Medicaid plan will be based on verification of an existing agreement. Medicare provider agreements will be verified using CMS Web sites, which list providers with agreements. State agreements will be verified using appropriate State Web sites, which list providers with agreements, or using records maintained by the appropriate State office.

(e) *Termination of agreements.* (1) A provider that wishes to terminate its agreement with VA must send written notice of its intent at least 15 days before the effective date of termination of the agreement. The notice shall include the intended date of termination.

(2) VA may terminate an agreement with any provider if the Director of the VA medical center of jurisdiction, or designee, determines that the provider's service is no longer required or that the provider is not complying with a provision of the provider agreement, and must terminate an agreement with a provider that no longer has a Medicare provider agreement with CMS or no longer participates under a State Medicaid plan. VA will provide written notice of termination at least 15 days before the effective date of termination of the provider agreement. If the Director of the VA medical center of jurisdiction, or designee, determines the health of the veteran to be in immediate jeopardy, VA will provide notice of termination at least 2 days before the effective date of termination of the provider agreement. VA may physically remove a veteran from a dangerous situation at any time in order to protect the health of the veteran prior to terminating the applicable provider agreement.

(f) *Appeals.* Appeals of a determination by the Director of the VA medical center of jurisdiction, or designee, not to enter into or to terminate a VA provider agreement must be made in writing to the Chief Consultant, Office of Geriatrics and Extended Care, no later than 90 days after the date of the decision being appealed. The decision of the Chief Consultant will constitute a final agency decision.

(g) *Compliance with Federal laws.* Under agreements entered into under this section, providers are not required to comply with reporting and auditing requirements imposed under the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.); however, providers

must comply with all other applicable Federal laws concerning employment and hiring practices including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act.

(Authority: 38 U.S.C. 501, 1720; 42 U.S.C. 1395cc)

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 130207066-3066-01]

RIN 0648-BC66

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 37

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

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

**SUMMARY:** NMFS proposes to implement management measures described in Amendment 37 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). If implemented, this rule would revise the commercial and recreational sector's annual catch limits (ACLs) and annual catch targets (ACTs) for gray triggerfish; revise the recreational sector accountability measures (AMs) for gray triggerfish; revise the gray triggerfish recreational bag limit; establish a commercial trip limit for gray triggerfish; and establish a fixed closed season for the gray triggerfish commercial and recreational sectors.

Additionally, Amendment 37 would modify the gray triggerfish rebuilding plan. The intent of this rule is to end overfishing of gray triggerfish and help achieve optimum yield (OY) for the gray triggerfish resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before March 15, 2013.

**ADDRESSES:** You may submit comments on this document, identified by "NOAA-NMFS-2012-0199", 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-2012-0199](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0199), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Rich Malinowski, 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 Amendment 37, which includes a draft environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, Southeast Regional Office, telephone 727-824-5305, email [rich.malinowski@noaa.gov](mailto:rich.malinowski@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 Act. All gray triggerfish weights discussed in this proposed rule are in round weight.

## Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that 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 end overfishing of stocks and to minimize bycatch and bycatch mortality to the extent practicable.

### *Status of the Gray Triggerfish Stock*

The last Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for gray triggerfish was completed in 2006 (SEDAR 9). SEDAR 9 indicated that the gray triggerfish stock was both overfished and possibly undergoing overfishing. Subsequently, Amendment 30A to the FMP established a gray triggerfish rebuilding plan beginning in the 2008 fishing year (73 FR 38139, July 3, 2008). In 2011, a SEDAR 9 update stock assessment for gray triggerfish determined that the gray triggerfish stock was still overfished and was additionally undergoing overfishing. The 2011 SEDAR 9 Update indicated the 2008 gray triggerfish rebuilding plan had not made adequate progress toward ending overfishing and rebuilding the stock. NMFS informed the Council of this determination in a letter dated March 13, 2012. NMFS also requested that the Council work to end overfishing of gray triggerfish immediately and to revise the gray triggerfish stock rebuilding plan.

As a way to more quickly implement measures to end overfishing and rebuild the stock, the Council requested and NMFS implemented a temporary rule to reduce the gray triggerfish commercial and recreational ACLs and ACTs (77 FR 28308, May 14, 2012). The temporary rule also established an in-season AM for the gray triggerfish recreational sector to be more consistent with the commercial sector AMs and provide for an additional level of protection to ensure that the recreational ACL is not exceeded and that the risk of overfishing is reduced. These interim measures were then extended through May 15, 2013, to ensure that the more permanent measures being developed through Amendment 37 could be implemented without a lapse in these more protective management measures (77 FR 67303, November 9, 2012).

### Management Measures Contained in This Proposed Rule

This proposed rule would revise the gray triggerfish commercial and recreational sector ACLs and ACTs (commercial ACT expressed as commercial quota in the regulatory text), revise the gray triggerfish recreational sector AMs, revise the gray triggerfish recreational bag limit, establish a commercial trip limit for gray triggerfish, and establish a fixed closed season for the gray triggerfish commercial and recreational sectors.

#### *ACLs and ACTs*

This rule would revise the ACLs for the gray triggerfish commercial and recreational sectors. This rule would also revise the ACTs (commercial ACT expressed as a quota in the regulatory text) for both sectors.

The Council's Scientific and Statistical Committee (SSC) reviewed the gray triggerfish 2011 SEDAR 9 Update. The SSC recommended that the gray triggerfish acceptable biological catches (ABC) for the 2012 and 2013 fishing years be set at 305,300 lb (138,346 kg). The current gray triggerfish stock ABC is 595,000 lb (269,887 kg). Based on this recommendation, the commercial and recreational ACLs and ACTs for the gray triggerfish need to be updated.

The Magnuson-Stevens Act requires that the FMP contain a mechanism for specifying ACLs at a level such that overfishing does not occur. An ACT is a management target established to account for management uncertainty in controlling the actual catch at or below the ACL. An ACT is used in the system of AMs so that the ACL is not exceeded. Therefore, a sector ACT should be set below the sector ACL to allow the sector to be closed when the ACT is projected to be reached.

In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC (73 FR 38139, July 3, 2008). These allocations are used to set the commercial and recreational sector-specific ACLs. The ABC recommended by the SSC is 305,300 lb (138,482 kg) and the combined sector ACLs are equal to the ABC. Based on the allocations established in Amendment 30A to the FMP, this proposed rule would set a reduced commercial ACL of 64,100 lb (29,075 kg), and a reduced recreational ACL of 241,200 lb (109,406 kg).

The Generic Annual Catch Limit Amendment developed by the Council and implemented by NMFS (76 FR 82044, December 29, 2011) established

a standardized procedure to set sector-specific ACTs based on the ACLs. ACTs are intended to account for management uncertainty and provide a buffer that better ensures a sector does not exceed its designated ACL. The Council chose to use this procedure, which resulted in a 5 percent buffer between the commercial ACL and ACT, and a 10 percent buffer between the recreational ACL and ACT. Therefore, this proposed rule would set the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), and the recreational ACT at 217,100 lb (98,475 kg). The proposed ACLs and ACTs in this rule are the same as those currently in place as implemented through the temporary rule (77 FR 28308, May 14, 2012). The current commercial gray triggerfish quota functions as the commercial ACT.

#### *AMs*

To reduce the risk of overfishing, Amendment 30A to the FMP established gray triggerfish AMs. AMs are management controls that are implemented to prevent ACLs from being exceeded (in-season AMs), and to correct or mitigate overages of the ACL if they occur (post-season AMs). For the commercial sector, there are currently both in-season and post-season AMs. The in-season AM closes the commercial sector after the commercial quota (commercial ACT) is reached or projected to be reached. Additionally, if the commercial ACL is exceeded despite the quota closure, the post-season AM would reduce the following year's commercial quota (commercial ACT) by the amount of the prior-year's commercial ACL overage.

For the recreational sector, there is currently no in-season AM, but a post-season AM is in effect. For the recreational sector, if the recreational ACL is exceeded, NMFS will reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings do not exceed the recreational ACT during the following year.

In 2008, recreational landings exceeded both the recreational ACT and ACL. In 2009, the recreational ACT was exceeded. However, in 2010, recreational landings did not exceed the ACT or ACL. Reduced 2010 recreational landings may be attributable to fishery closures implemented that year as a result of the Deepwater Horizon MC252 oil spill. Based on recent trends in recreational landings and anticipated future recreational effort, the Council and NMFS have determined that implementing an in-season AM would reduce the risk of exceeding the ACL in the future. This proposed rule would

replace the current post-season AM with an in-season AM for the recreational sector to prohibit the recreational harvest of gray triggerfish (a recreational sector closure) after the recreational ACT is reached or projected to be reached. This proposed rule would also add an overage adjustment that would apply if the recreational sector ACL is exceeded and gray triggerfish are overfished. This post-season AM would reduce the recreational ACL and ACT for the following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

#### *Commercial Trip Limit*

Currently, there is no trip limit for the commercial sector. This rule proposes to establish a commercial trip limit for gray triggerfish of 12 fish. This commercial trip limit would be applicable until the commercial ACT (commercial quota) is reached or projected to be reached during a fishing year and the commercial sector is closed.

#### *Seasonal Closure of the Commercial and Recreational Sectors*

This proposed rule would establish a seasonal closure of the gray triggerfish commercial and recreational sectors in the Gulf from June through July, each year. This fixed seasonal closure would assist rebuilding of the gray triggerfish stock by prohibiting harvest during the gray triggerfish peak spawning season. Additionally, June and July are the months that have the highest percentage of recreational landings.

#### *Recreational Bag Limit*

Gray triggerfish currently have a recreational bag limit that is part of the 20-fish aggregate reef fish bag limit. As part of this 20-fish aggregate, there is currently no specific limit for recreational gray triggerfish landings as long as the total is 20 fish or less. This proposed rule would establish a 2-fish gray triggerfish recreational bag limit within the 20-fish aggregate reef fish bag limit. This recreational bag limit would be applicable until the recreational ACT is reached or projected to be reached during a fishing year and the recreational sector is closed.

#### **Other Action Contained in Amendment 37**

Amendment 37 would revise the rebuilding plan for gray triggerfish. The gray triggerfish stock is currently in the 5th year of a rebuilding plan that began in 2008. Amendment 37 would modify

the rebuilding plan in response to the results from the 2011 SEDAR update assessment and subsequent SSC review and recommendations for the gray triggerfish ABC. The modified rebuilding plan would be based on a constant fishing mortality rate that does not exceed the fishing mortality rate at OY.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the FMP, Amendment 37, 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 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 proposed rule is to end overfishing of gray triggerfish and rebuild the gray triggerfish stock by the end of 2017 to achieve OY. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not introduce any changes to current reporting, record-keeping, and other compliance requirements.

This rule, if implemented, is expected to directly affect approximately 400 vessels that have a valid (non-expired) or renewable commercial Gulf reef fish permit. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after permit expiration. Although over 900 vessels have a commercial Gulf reef fish permit, which is required to possess and sell quantities of gray triggerfish in excess of the recreational bag limit, only an average of 382 vessels per year harvested gray triggerfish during the period 2005 through 2009. More recent commercial landings data is either not available (2011 to current) or is not expected to be representative of normal fishing performance, *i.e.*, the 2010 fishing year as a result of the Deepwater Horizon MC252 oil spill and associated fisheries closures. The average annual dockside revenue for commercial vessels that harvested gray triggerfish during this period was approximately \$87,000 per vessel (2010 dollars).

This rule, if implemented, is also expected to directly affect 1,366 vessels that possess a valid or renewable charter/headboat permit for Gulf reef fish (for-hire). The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Although the for-hire permit does not distinguish between charterboats and headboats, an estimated 69 headboats operate in the Gulf. The average charterboat is estimated to earn approximately \$77,000 (2010 dollars) in annual revenue, and the average headboat is estimated to earn approximately \$234,000 (2010 dollars).

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. 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. The revenue threshold for a business involved in the for-hire fishing industry is \$7.0 million (NAICS code 713990, recreational industries). All commercial and for-hire vessels expected to be directly affected by this proposed rule are believed to be small business entities.

Amendment 37, on which this proposed rule is based, addresses five basic actions: (1) Revision of the gray triggerfish rebuilding plan; (2) specification of the commercial and recreational gray triggerfish ACLs and ACTs; (3) establishment of a gray triggerfish commercial sector closed season and trip limit; (4) establishment of a gray triggerfish recreational closed season and bag limit; and (5) revision of the AMs for the gray triggerfish recreational sector.

Rebuilding plans are not contained in the regulatory text associated with this proposed rule and are therefore outside the scope of the Regulatory Flexibility Act (RFA). Further, revision of the rebuilding plan would be an administrative action and, as a result, would not be expected to have any direct economic effects on any small entities. Direct effects of a rebuilding plan would only be expected to accrue to any resultant harvest restrictions implemented through a future rulemaking to achieve the goals of the

rebuilding plan. The proposed harvest restrictions encompass modification of the sector ACTs, fishing seasons, commercial trip limits, and recreational bag limits. The expected economic effects of these proposed modifications are discussed below.

AMs are intended to ensure harvest overages do not occur and to correct or mitigate for overages if they do occur. In-season AMs are specifically intended to prevent or minimize harvest overages. The establishment of AMs, or their modification, would be an administrative action that would only be expected to have indirect effects on small entities. These effects would occur if the AMs are triggered. Because the proposed action would only modify and not implement the current AMs, no direct effects would be expected to accrue to any small entities. As a result, this component of the proposed rule is also outside the scope of the RFA.

However, because the potential implementation of the proposed in-season AM would be expected to restrict fishing operations and potentially result in direct short-term reductions in revenue and profit, further discussion of the potential significance of these effects is provided. The proposed in-season gray triggerfish recreational sector AM would result in closure of the gray triggerfish recreational season if the recreational sector ACT is reached or is projected to be reached. As a result, harvest and possession would be prohibited. Few, if any, fishing trips would be expected to be cancelled in response to a prohibition on the harvest and possession of gray triggerfish because anglers rarely target gray triggerfish: It was identified as a primary target species for less than 1/10th of 1 percent of all fishing trips (2005–2009). Rather, gray triggerfish are often harvested incidental to fishing for other reef fish species. Because other, more desirable reef species would still be available for recreational harvest, any prohibition on the harvest or possession of gray triggerfish would not be expected to have a significant impact on a substantial number of small entities.

Because gray triggerfish is not a significantly targeted species, the proposed overage adjustment if the recreational ACL is exceeded would also be expected to result in minimal, if any, reduction in revenue to small entities. Because of the combination of in-season closure authority, low total harvest and target effort, and the expected recovery of gray triggerfish, overage adjustments would be expected to be infrequent and, if necessary, require only minimal reductions in the recreational ACT. Therefore, few, if any,

recreational trips would be expected to be lost and the revenue to small entities would not be expected to be significantly affected.

Although Amendment 37 contained three proposed actions associated with the commercial harvest of gray triggerfish—specification of the ACT, establishment of the closed season, and establishment of a commercial trip limit—the expected economic effects of this rule would be determined primarily by the specification of the ACT. Individually, assuming no change in fishing behavior, the proposed commercial sector closed season and trip limit would be expected to result in a reduction in total annual revenue for all vessels that harvest gray triggerfish of approximately \$26,000 and \$72,000, respectively. All reductions are expressed in 2010 dollars. Combined, these two measures would be expected to result in a reduction in total annual revenue of approximately \$88,000. This result is less than the total of the two individual proposed actions, approximately \$98,000, because the proposed closed season would negate the expected effects of the trip limit during that period. However, the combined effects of these two proposed actions would not be expected to be sufficient to constrain commercial gray triggerfish harvest to the ACT and avoid an in-season closure. The proposed ACT, 60,900 lb (27,624 kg), would be expected to require a reduction in expected annual commercial harvest of approximately 118,000 lb (53,524 kg). The combined effects of the proposed commercial sector seasonal closure and trip limit would be a reduction in annual commercial harvest of approximately 92,000 lb (41,730 kg). Because commercial harvest would be prohibited when the commercial ACT is reached, the full necessary commercial sector harvest reduction would be expected to occur as a result of the three measures combined (seasonal closure, trip limit, and closure when the ACT is reached). Thus, although the total effect of the proposed seasonal closure and trip limit would be an expected reduction in annual revenue of approximately \$88,000, the net effect of the proposed commercial ACT, seasonal closure, and trip limit would be a reduction in annual revenue of approximately \$112,000. Distributed across all commercial sector entities expected to be directly affected by these proposed measures (382 vessels), the average expected effect would be a reduction in annual revenue of approximately \$300 per entity, or less than one percent of the average annual

revenue per vessel of \$87,000. Although some vessels may be expected to experience a reduction in revenue by more than the average, overall, any reduction would not be expected to be significant because of the small amount of gray triggerfish traditionally harvested by commercial reef fish fishermen.

Impacts on the recreational sector are expected to be similar to those affecting the commercial sector. The proposed gray triggerfish recreational ACT, seasonal closure, and recreational bag limit would be expected to individually result in an annual reduction in producer surplus, used as a proxy for profit, of approximately \$295,000, \$232,000, and \$137,000, respectively. All reductions are expressed in 2010 dollars and equal the combined effects of the proposed actions across all affected entities. Combined, the proposed seasonal closure and bag limit would be expected to result in an annual reduction in producer surplus of approximately \$310,000, which would be less than the effects of the two individual proposed actions combined because of the interactive effects of the two proposed measures. The combined effects of these two proposed measures exceeds the expected effects of the proposed recreational ACT because the estimated reduction in harvest under the proposed seasonal closure and bag limit exceeds the reduction necessary to limit harvest to the proposed gray triggerfish recreational ACT and avoid an in-season closure. Thus, for the proposed actions affecting the recreational sector, the net expected economic effect would be determined by the combined effects of the proposed seasonal closure and bag limit rather than the proposed ACT.

Unlike the case for the commercial sector, the number of vessels within the for-hire fleet that take trips targeting gray triggerfish cannot be determined with available data. If the projected reduction in producer surplus is distributed across all Gulf reef fish for-hire vessels (1,366 vessels), the average annual reduction in producer surplus would be approximately \$230 (2010 dollars) per vessel, or approximately 1 percent in average annual profit per vessel (approximately \$22,800 (2010 dollars)). Because all vessels would not be expected to target gray triggerfish, however, the average reduction in producer surplus per affected vessel would be expected to increase. However, the estimates of expected reduction in producer surplus associated with the proposed actions affecting the recreational sector were generated using a worst-case

assumption. Specifically, the projected reductions in producer surplus were based on the assumption that recreational angler effort, and associated for-hire revenue, would be reduced proportionate to the change in allowable harvest. As previously discussed, gray triggerfish is regarded as a bycatch or general harvest species, harvested in connection with general reef fish fishing (no target species) or as a result of fishing for other reef fish species. As a result, instead of cancelling fishing trips, few if any for-hire vessels would be expected to experience a reduction in customer traffic, and associated revenue, as a result of either the proposed seasonal closure or reduced recreational bag limit. Instead, substitution of another target species during the proposed closed season and continued fishing at the proposed lower bag would be expected. As a result, the proposed actions affecting the recreational sector would not be expected to significantly reduce profits for a significant number of small for-hire entities.

In summary, the proposed rule, if implemented, would not be expected to have a significant impact on a substantial number of small entities and, as a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

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

Dated: February 8, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, 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 § 622.34, paragraph (w) is added to read as follows:

##### § 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(w) *Seasonal closure of the commercial and recreational sectors for gray triggerfish.* The commercial and recreational sectors for gray triggerfish in or from the Gulf EEZ are closed from June 1 through July 31, each year. During the closure, all harvest or possession in or from the Gulf EEZ of gray triggerfish is prohibited and the sale and purchase of gray triggerfish taken from the Gulf EEZ is prohibited.

■ 3. In § 622.39, paragraph (b)(1)(v) is revised to read as follows:

##### § 622.39 Bag and possession limits.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section—20. In addition, within the 20-fish aggregate reef fish bag limit, no more than two fish may be gray triggerfish.

\* \* \* \* \*

■ 4. In § 622.42, paragraph (a)(1)(vi) is revised to read as follows:

##### § 622.42 Quotas.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(vi) Gray triggerfish—60,900 lb (27,624 kg), round weight.

\* \* \* \* \*

■ 5. In § 622.44, paragraph (g) is added to read as follows:

##### § 622.44 Commercial trip limits.

\* \* \* \* \*

(g) *Gulf gray triggerfish.* Until the commercial ACT (commercial quota) specified in § 622.42(a)(1)(vi) is reached—12 fish. See § 622.43(a)(1)(i) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

\* \* \* \* \*

■ 6. In § 622.49, paragraph (a)(2) is revised to read as follows:

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

(a) \* \* \*

(2) *Gray triggerfish*—(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.42(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial

sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL and ACT (commercial quota) for that following year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(ii) *Recreational sector.* (A) Without regard to overfished status, if gray triggerfish recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACT specified in paragraph (a)(2)(ii)(C) 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 the fishing year. On and after the effective date of such a notification, the bag and possession limit of gray triggerfish in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) In addition to the measures specified in paragraphs (a)(2)(ii)(A) of this section, if gray triggerfish recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(2)(ii)(C) of this section, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(C) The recreational ACL for gray triggerfish is 241,200 lb (109,406 kg), round weight. The recreational ACT for gray triggerfish is 217,100 lb (98,475 kg), round weight. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

\* \* \* \* \*

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