

assessing the significance, credibility, or probative value of the evidence.

**6106.609 Other materials considered [Rule 609].**

Written or oral arguments or statements of experts as to how a panel should understand evidence or apply the law are not evidence but may be presented as scheduled by the panel and may be subject to page, word, or time limits. By the close of arbitration under Rule 613, parties should provide the panel with everything it needs to make a decision. Documents written by a party for the panel during arbitration shall comply with Board Rules 1(b) ("Efiles; efilings"), 7, and 23 (48 CFR 6101.1(b), -7, -23).

**6106.610 Motions [Rule 610].**

Motions are strictly limited and should ordinarily be made orally during the initial conference under Rule 607. A later motion may be efiled. A party may make a procedural motion, such as to extend time. An applicant may move for voluntary dismissal. No party may move for a prehearing merits decision (e.g., summary judgment or dismissal for failure to state a claim), or for prehearing dismissal other than on the merits except on the grounds that an arbitration request is untimely. A panel ordinarily issues one decision per arbitration.

**6106.611 Hearing; live or paper [Rule 611].**

Parties may conclude arbitration by presenting their positions in a hearing. A hearing may be live or, if agreed by all parties, on a written record (a "paper hearing") or a combination of the two. The panel will begin a hearing within 60 calendar days after the initial conference under Rule 607 unless the Board Chair approves a later date. All panel members will attend a live hearing in Washington, DC. A single panel member may conduct a live hearing elsewhere. Hearing procedures are at the panel's discretion, with the goal of promptly, justly, and finally resolving the dispute, and need not involve traditional witness examination or cross-examination. Parties should not offer fact witnesses to read legal materials or make legal arguments. Statements of fact in a hearing need not be sworn but are subject to penalty for violation of 18 U.S.C. 1001. Live hearings are not public and may not be recorded by any means without the Board's permission. The Board may have a live hearing transcribed for the panel's use. If a transcript is made, a party may purchase a copy and has 7 calendar days after a copy is available to efile proposed corrections.

**6106.612 Streamlined procedures [Rule 612].**

The Stafford Act provides a right of arbitration to save time and money that might otherwise be spent in the FEMA appeal process and in court. To that end, the Board encourages parties to focus on providing only the information a panel needs to resolve an eligibility or repayment dispute. Examples may include without limitation—

- (a) Electing not to supplement the materials already provided to FEMA, if (or to the extent) the existing record adequately frames the dispute;
- (b) Relying when possible on documents over other types of evidence;
- (c) Simplifying live hearings by efilings in advance written testimony, reports, or opening statements by some witnesses or party representatives;
- (d) Refraining from objecting to evidence without good cause; and
- (e) Omitting duplicative and immaterial evidence and arguments.

**6106.613 Decision; finality [Rule 613].**

The panel will advise the parties when the arbitration is closed. The panel will resolve a dispute within 60 calendar days thereafter unless the panel advises the parties that the Board Chair approves a later date. The panel's decision may be issued in writing or orally with transcription. A decision is primarily for the parties, is not precedential, and should concisely resolve the dispute. The decision of a panel majority is the final administrative action on the arbitrated dispute and is judicially reviewable only to the limited extent provided by the Federal Arbitration Act (9 U.S.C. 10). Within 30 calendar days after issuing a decision, a panel may correct clerical, typographical, technical, or arithmetic errors. A panel may not reconsider the merits of its decision resolving an eligibility or repayment dispute.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 190213109-9109-01]

**RIN 0648-BI63**

**Temporary Rule To Establish Management Measures for Red Grouper in the Gulf of Mexico**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed temporary rule; emergency action.

**SUMMARY:** NMFS proposes to issue an emergency rule as requested by the Gulf of Mexico Fishery Management Council (Council) to address concerns regarding the Gulf of Mexico (Gulf) red grouper stock. The Council made this request after receiving new information that indicates the stock may be in decline. This proposed emergency rule would reduce the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs). This emergency rule would be effective for 180 days, although NMFS may extend the emergency rule's effectiveness for a maximum of an additional 186 days. The intended effect of this emergency rule is to provide a temporary rapid reduction in Gulf red grouper harvest levels to protect the stock from overharvest while the Council develops permanent rulemaking.

**DATES:** Written comments must be received by March 20, 2019.

**ADDRESSES:** You may submit comments on the proposed emergency rule, identified by "NOAA-NMFS-2018-0142," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0142](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0142) click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Peter Hood, NMFS Southeast Regional Office, 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 required fields if you wish to remain anonymous).

Electronic copies of the documents in support of this emergency rule, which include an environmental assessment, may be obtained from the Southeast

Regional Office website at <http://sero.nmfs.noaa.gov>.

**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:** NMFS and the Council manage Gulf reef fish, including red grouper, under the Fishery Management Plan for Reef Fish Resources of the Gulf (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

**Background**

All weights in this emergency rule are in gutted weight. The current red grouper commercial and recreational ACLs and ACT were implemented through a framework action to the FMP in 2016 (81 FR 70365, October 12, 2016). These values were based on a red grouper stock ACL equal to 10.70 million lb (4.85 million kg). The current sector allocation for red grouper is 76 percent commercial and 24 percent recreational, and the commercial and recreational ACTs reduce the sector-specific ACLs by 95 percent and 92 percent, respectively. The current red grouper commercial ACL is 8,190,000 lb (3,714,922 kg) and the commercial ACT (commercial quota) is 7,780,000 lb (3,528,949 kg). The current red grouper recreational ACL is 2,580,000 lb (1,170,268 kg) and the recreational ACT is 2,370,000 lb (1,075,014 kg).

The commercial sector is managed under an individual fishing quota (IFQ) program. The commercial red grouper quota equals the commercial ACT, and is allocated to red grouper shareholders each year. The commercial IFQ program also serves as the accountability measure (AM) for the commercial sector.

The current recreational AMs specify that if the recreational ACL is reached or projected to be reached, red grouper fishing will be closed to the recreational sector for the remainder of the fishing year. If the ACL is exceeded in the following fishing year the level of harvest will be set at the prior year's recreational ACT and the length of the recreational red grouper fishing season will be adjusted based on the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT. If the stock is

overfished and an overage occurs, NMFS will reduce the recreational ACL by the amount of the ACL overage in the prior fishing year. The overage adjustment will also apply to the following year's recreational ACT.

*Status of Stock*

The stock status of Gulf red grouper was last evaluated in 2015 through the Southeast Data Assessment Review (SEDAR) 42 stock assessment. The Council's Scientific and Statistical Committee (SSC) reviewed the assessment results and agreed with the assessment's determination that red grouper were not overfished or experiencing overfishing. At that time, the SSC recommended increases in the overfishing limit and the acceptable biological catch (ABC), which were the basis for the current commercial and recreational ACLs and ACTs.

*Justification and Need for This Emergency Rule*

At the October 2018 meeting, the Council requested that NMFS implement an emergency or interim rule to reduce the Gulf red grouper stock ACL for the 2019 fishing year to 4.60 million lb (2.09 million kg), or the 2017 total red grouper landings, whichever is less. The Council also began work on a red grouper framework action to reduce the red grouper catch limits on a more permanent basis. The Council took these actions based on recent information regarding the health of the stock. Since 2014, combined commercial and recreational Gulf red grouper landings have trended downwards from over 7.26 million lb (3.29 million kg) in 2014 to approximately 4.16 million lb (1.89 million kg) in 2017, an indication that the stock may be in decline. The most recent red grouper stock assessment, SEDAR 61, will not be completed until mid-2019. Therefore, the NMFS Southeast Fisheries Science Center (SEFSC) conducted an interim red grouper stock analysis to assist the SSC in developing harvest advice for 2019. The interim analysis used an index from a fishery-independent survey to compare the current stock condition with the stock condition forecast by the previous assessment (SEDAR 42). This analysis suggested that the stock may be declining. The Council's SSC reviewed the analysis and concluded that it contained too much uncertainty to use for a new ABC recommendation but did support recommending that the Council reduce the 2019 Gulf red grouper total ACL to 4.60 million lb (2.09 million kg). The Council received this advice at its meeting in October 2018.

In addition to the SSC's advice based on the interim analysis, the Council heard public testimony at the October 2018 meeting primarily from commercial fishermen. These fishermen expressed concern about the status of the red grouper stock, noting that red grouper are harder to catch than in previous years and that there appears to be a scarcity of legal-size and larger fish throughout the species' range on the west Florida shelf.

The Council also discussed the severe red tide conditions that occurred off the Florida west coast in the summer and fall of 2018, which may have adversely affected the red grouper stock. Although the impacts of this recent red tide are unknown, the 2009 SEDAR 12 update assessment indicated that a similar red tide event in 2005 reduced the red grouper spawning stock biomass.

The 2017 combined red grouper commercial and recreational landings (approximately 4.16 million lb (1.89 million kg)) are less than the SSC recommended combined ACL of 4.60 million lb (2.09 million kg). Therefore, NMFS has developed this proposed emergency rule to reduce the red grouper commercial and recreational ACLs and ACTs consistent with a stock ACL of 4.16 million lb (1.89 million kg). This emergency rule would be effective for 180 days, although NMFS may extend the emergency rule's effectiveness for a maximum of an additional 186 days. This would allow for sufficient time for the Council and NMFS to develop and implement a new framework action to manage the red grouper stock for the 2020 fishing year and beyond.

**Measures Contained in This Proposed Emergency Rule**

For red grouper, this emergency rule would revise the red grouper stock ACL to 4.16 million lb (1.89 million kg), which is equal to the combined red grouper commercial and recreational landings. Applying the commercial allocation of 76 percent to the stock ACL of 4.16 million lb (1.89 million kg) results in a proposed commercial ACL of 3.16 million lb (1.43 million kg). The commercial ACT would be set at 95 percent of the commercial ACL, or 3.00 million lb (1.36 million kg). This would be an approximate 60 percent reduction from the current commercial ACL and ACT.

Because commercial red grouper is managed under an IFQ program, NMFS distributes IFQ allocation to the program shareholders on January 1 of each year. After NMFS distributes the applicable commercial quota to shareholders, it cannot be recalled.

Therefore, in anticipation of this proposed emergency rule reducing the commercial quota, NMFS has withheld distribution of 59.4 percent, equivalent to 4.78 million lb (2.17 million kg) of red grouper IFQ allocation effective on January 1, 2019, through a temporary rule (83 FR 64480, December 17, 2018). If the commercial quota reduction implemented through this proposed emergency rule is not effective by June 1, 2019, the withheld commercial quota will be redistributed to the shareholders.

For the recreational sector, 24 percent of the 4.16 million lb (1.89 million kg) proposed total stock ACL results in a recreational ACL of 1.00 million lb (0.45 million kg). The recreational ACT would be set at 92 percent of the recreational ACL, or 0.92 million lb (0.42 million kg).

### Emergency Rule Criteria

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists, and this proposed emergency rule would be promulgated under these criteria. Specifically, NMFS' policy guidelines require that an emergency:

- (1) Result from recent, unforeseen events or recently discovered circumstances; and
- (2) Present serious conservation or management problems in the fishery; and
- (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS has determined that reducing the red grouper 2019 commercial and recreational ACLs and ACTs for 2019 meets the three criteria required for an emergency rule. The new red grouper interim analysis developed by the SEFSC and subsequent SSC recommendation were presented to the Council at its October 2018 meeting and constitute recently discovered circumstances. In addition, public testimony at the October Council meeting expressed concern about the status of the red grouper stock, noting that red grouper appear to be scarcer in abundance than in previous years. The severe red tide event that occurred in summer and fall 2018 off the Florida west coast was also unforeseen and may have adversely affected the red grouper stock. Although the impacts of this recent red tide are unknown, the 2009 SEDAR 12 update assessment and 2015

SEDAR 42 assessment indicated that a similar 2005 red tide event depressed the red grouper spawning stock biomass. The SEDAR 61 red grouper stock assessment is presently underway and NMFS expects to present the results to the Council's SSC in July 2019.

Without this emergency rule, the red grouper ACLs and ACTs could not be effectively reduced for the 2019 fishing year. This could present a serious conservation problem if the red grouper stock is in decline, as the reduction in landings, public comment, and interim analysis may suggest.

Based on the Council's request for an interim or emergency rule, in its December 17, 2018 temporary rule, NMFS withheld the IFQ allocation equal to this emergency rule's proposed reduction in the commercial ACT (quota) (83 FR 64480). This proposed emergency rule meets the third criteria for an emergency because it would reduce the commercial quota to be effective prior to June 1, 2019. This would provide the Council and NMFS sufficient time to develop and implement a framework action that will address the new information about the red grouper stock, including the SEDAR 61 assessment, for the 2020 fishing year and beyond. However, NMFS is proposing this emergency reduction because there is sufficient time to include a 15-day comment period and implement any final emergency rule by June 1, 2019.

### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to provide increased protection for the Gulf red grouper stock and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is being taken pursuant to the emergency provision of Magnuson-Stevens Act and is exempt from review by the Office of Management and Budget.

NMFS prepared an initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA), for this emergency rule. The IRFA describes the economic impact this rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see

**ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

This proposed rule would directly apply to recreational fishers (anglers) and commercial fishing businesses that harvest red grouper in Federal waters of the Gulf. Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private, or leased vessels. Therefore, estimates of the number of anglers directly affected by the rule and the impacts on them are not provided here. For-hire fishing businesses that harvest red grouper in Federal waters would be indirectly affected if the rule were to cause changes in angler demand for their services. However, The RFA does not consider such indirect impacts on small entities.

This proposed rule would directly affect commercial fishing businesses (NAICS code 11411) that harvest red grouper in Federal waters of the Gulf by decreasing the commercial quota for red grouper.

An annual average of 376 vessels land red grouper and an estimated 330 businesses own the vessels. All of these businesses operate in the commercial fishing industry (NAICS code 11411) and some also in related industries, such as fish and seafood merchant wholesalers (NAICS code 424460) and fish and seafood (retail) markets (NAICS code 445220). All are expected to operate primarily in the commercial fishing industry.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing 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 its combined annual receipts are not in excess of \$11 million (in 2017 dollars) for all of its affiliated operations worldwide. The average vessel that used bottom longline gear to harvest red grouper from 2013 through 2017 had average total annual revenue of \$309,737 (in 2018 dollars), whereas the average total annual revenue for vessels that used other gear types to harvest red grouper were considerably lower. Additional examination of

annual revenues indicates the total annual revenue of each business to be less than \$11 million. Consequently, all of the 330 businesses directly affected by the proposed action are identified as small.

The commercial quota would be reduced from 7.78 million lb (3,528,949 kg) to 3.00 million lb (1.36 million kg). The commercial sector landed only 3.33 million lb (1.51 million kg) in 2017. However, an average of approximately 4.56 million lb (2.07 million kg) of red grouper were landed annually from 2013 through 2017, and that average is used as the baseline landings for the analysis below. As such, the 330 small businesses would incur combined losses of red grouper landings that total approximately 1.56 million lb (0.71 million kg) and have an estimated dockside value of approximately \$6.43 million (in 2018 dollars) in 2019.

The average loss per vessel is expected to vary by the gear used to harvest red grouper. The average longline vessel would incur the largest average loss of red grouper revenue (\$86,857), followed in turn by the average bandit-gear vessel (\$8,970), average hand hook-and-line vessel (\$5,361) and average other-gear vessel (\$3,079). These decreases in 2019 revenue from red grouper landings represent a 28.0 percent reduction in the average longline vessel's total revenue, a 7.3 percent reduction in the average bandit-gear vessel's total revenue, a 16.6 percent reduction in the average hand hook-and-line vessel's total revenue, and a 15.2 percent reduction in the average other-gear vessel's total revenue.

Two alternatives were considered, but not selected for red grouper commercial harvest limit revisions. The first alternative, the no action alternative, would maintain the current commercial quota. Although the no-action alternative would have no adverse economic impact in 2019, it would have the largest long-term costs to small businesses because it could allow for the largest decline of the status of the stock. The second non-selected alternative would reduce the commercial quota to 3.32 million lb (1.51 million kg), and have a smaller adverse economic impact than the selected alternative. However, this alternative could have smaller long-term benefits than the selected alternative because it may allow for less improvement of the stock's status.

## List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf of Mexico, Red grouper, Quotas.

Dated: February 26, 2019.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, 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 § 622.39, suspend paragraph (a)(1)(iii)(C) and add paragraph (a)(1)(iii)(D) to read as follows:

### § 622.39 Quotas.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(D) *Red grouper*—3.00 million lb (1.36 million kg)

\* \* \* \* \*

- 3. In § 622.41, suspend paragraph (e) and add paragraph (r) to read as follows:

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

\* \* \* \* \*

(r) *Red grouper*—(1) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The applicable commercial ACL for red grouper, in gutted weight, is 3.16 million lb (1.43 million kg).

(2) *Recreational sector*. (i) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (r)(2)(iv) 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 red grouper 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.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (r)(2)(i) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (r)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (r)(2)(iv) 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 ACT is unnecessary. In addition, the notification will reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

(iii) If red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (r)(2)(iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (r)(2)(i) and (ii) of this section, 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 for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (r)(2)(ii) of this section, 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.

(iv) The recreational ACL for red grouper, in gutted weight, is 1.00 million lb (0.45 million kg). The recreational ACT for red grouper, in gutted weight, is 0.92 million lb (0.42 million kg).

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