Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*		*	*	
SNAILS							
*	*	*	*		*	*	
Snail, tulotoma	*Tulotoma magnifica*	U.S.A. (AL)	Entire	T	412, 789	NA	NA
*	*	*	*		*	*	

* * * * *

Dated: May 18, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–13687 Filed 6–1–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110321211–1289–02]

RIN 0648–BA94

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

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

ACTION: Final temporary rule.

SUMMARY: This final temporary rule, issued pursuant to NMFS' authority to issue emergency and interim rules under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), replaces a temporary rule made effective January 1, 2011, and implements interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This rule reduces the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), establishes a 2-month recreational season for gag, and suspends red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as recommended by the Gulf of Mexico Fishery Management Council (Council). The rule will be effective for 180 days, unless superseded by subsequent rulemaking, although NMFS may extend its effectiveness for an additional 186 days pursuant to the Magnuson-Stevens Act. The intended effect of this final temporary rule is to reduce overfishing of the gag resource in the Gulf.

DATES: This rule is effective June 1, 2011, through November 29, 2011.

ADDRESSES: Electronic copies of documents supporting this final rule, which include an environmental assessment, a regulatory impact review, and a 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, or e-mail: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (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.

On April 21, 2011, in response to a finding that the gag resource continues to be overfished and experiencing overfishing, NMFS published a proposed temporary rule that is finalized here, and requested public comment on that proposal (76 FR 22345).

This final temporary rule reduces the commercial quota for gag from 1.49 million lb (0.68 million kg) to 430,000 lb (195,045 kg), reduces the commercial SWG quota from 6.22 million lb (2.82 million kg) to 5.16 million lb (2.34 million kg), suspends red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program, and implements a recreational fishing season for gag from September 16 through November 15, with a 2-fish daily bag limit. The purpose of this final temporary rule is to reduce overfishing of the gag resource in the Gulf. No changes from the proposed temporary rule were made to this final rule as a result of public comment.

This action reduces the commercial quota for SWG species to 5.16 million lb (2.34 million kg) from the 6.22 million lb (2.82 million kg) SWG quota which was implemented through a regulatory amendment to the FMP on January 1, 2011 (75 FR 74656, December 1, 2011). Because a gag interim rule that reduced the SWG quota even further became effective that same day on January 1, 2011 (75 FR 74650, December 1, 2011), NMFS delayed effectiveness of the 6.22 million lb (2.82 million kg) quota until further notification in the **Federal Register**. This temporary final rule further delays the effectiveness of the 6.22 million lb (2.82 million kg) SWG quota and implements a reduced SWG quota of 5.16 million lb (2.34 million kg). After termination or expiration of this interim final rule, the timing of which is uncertain, NMFS will announce the effective date of the 6.22 million lb (2.82 million kg) SWG quota, unless this rule is superseded by subsequent rulemaking.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' respective responses. During the comment period, NMFS received 24 comments on the proposed rule. Three comments from non-governmental organizations supported the management measures contained in the proposed temporary rule. The remaining comments came primarily from the recreational sector of the Gulf reef fish fishery, as well as one state agency and one commercial fisherman. Those comments opposed one or more of the management measures contained in the proposed temporary rule, and are addressed below.

Comment 1: A number of commenters questioned the scientific basis used to assess the gag stock and how scientific information was applied to support fishery management decisions. They indicated the data NMFS used were outdated or flawed, or in some cases data were ignored.

Response: Stock assessments are conducted under the scientifically peer reviewed Southeast Data, Assessment,

and Review (SEDAR) process, which was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR seeks improvements in the scientific quality of stock assessments and supporting information available to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. SEDAR is organized around 3 workshops: data, assessment, and expert review. The data workshop documents, analyzes, and reviews datasets to be used for assessment analyses. The assessment workshop develops and refines quantitative population analyses and estimates population parameters. The final workshop is conducted by a panel of independent experts who review the data and the assessment and recommend the most appropriate values of critical population and management quantities. The 2006 gag assessment and 2009 update assessment were conducted using the SEDAR process, including 2010 assessment reanalyses to better account for discarded fish. All of these assessments were used in determining the management measures contained in this temporary rule. All workshops and Council-initiated meetings reviewing the assessment were open to the public and included constituent participation on the various SEDAR panels to ensure the transparency of the data and how it was applied in the assessments. In addition, the Council's Scientific and Statistical Committee (SSC) reviewed assessment results and made recommendations to the Council about the adequacy of the assessments and at what level to set the acceptable biological catch. The Council took all of this information into consideration when recommending the management measures contained in this temporary rule. The finding of the SSC and Council are therefore the result of rigorous application of scientific principles.

Comment 2: Several individuals questioned that red tide could be responsible for the 2005 mortality event modeled in the gag update assessment.

Response: Red tide is believed to have contributed to the 2005 episodic mortality event. In the 2009 update assessment, 10 models were run that varied different parameters within the assessment. The model with the best fit was one which took into account decreases in indices of abundance thought to have occurred because of the red tide event documented in 2005. Although this model cannot show a direct link between the red tide event and the decrease in gag abundance, it does indicate a variable was present in 2005 that depressed the stock size. The assessment panel felt that the 2005 red tide event was the factor that best explained this depressed stock.

Comment 3: Several commenters indicated gag are plentiful and, therefore, further management measures beyond those in place in 2010 are unnecessary. Other commenters indicated that although the gag population does seem depressed, the proposed management measures seem overly restrictive. Several commenters suggested alternative management measures including different seasonal closures, reduced bag limits, or increased size limits.

Response: The 2006 assessment and 2009 update assessment for gag used a variety of data including those from fishery dependent and fishery independent sources. Several models were used including models that took into account a 2005 episodic mortality event. These models consistently indicated the gag stock was depressed. The model recommended by the Council's SSC was the one that took into account the 2005 episodic mortality event, and that best explained the current estimated gag numbers. This model indicated the stock was overfished and undergoing overfishing, prompting NMFS to inform the Council of this condition and that, pursuant to the Magnuson-Stevens Act, the stock needs to be rebuilt. There was some question about the model results because of how discards were estimated in the model. A SEDAR panel was convened to address these questions and reanalyzed the 2009 update assessment. The reanalysis of the assessment did not substantially alter the assessment outcome, that the stock was overfished and undergoing overfishing.

In evaluating different management measures, the Council examined alternative seasonal closures, area closures, bag limits, and size limits. Because of the magnitude of discards by the recreational sector, only the seasonal closure alternatives would meet the required reductions. Bag limit changes would not substantially change season lengths. Reducing size limits would substantially shorten the season length, and increasing size limits would substantially increase the number of dead discards. Public testimony given at Council meetings either favored a summer or winter season, depending on where people fished. In general, fishermen from Texas and southwest and central Florida favored a winter season, and fishermen from other areas of the Gulf favored a summer season. In seeking a compromise, the Council recommended a fall season because it starts at the very end of the summer and comes very close to the winter months. A fall season maximizes the number of days gag would be open for fishing.

Comment 4: One commenter indicated regionalized gag management should be considered to allow a greater proportion of the gag harvest to occur in areas where gag are more abundant.

Response: Considering regionalized management is outside the scope of this rulemaking because such an approach would not directly reduce overfishing, as required by the Magnuson-Stevens Act. However, the Council continues to examine regionalized management for reef fish species. In the course of developing long-term management measures in Amendment 32 to the FMP, the Council is considering seasonal-area closures for grouper species which are considered to be a type of regionalized management.

Comment 5: Several commenters indicated the management actions contained in this temporary rule favor the commercial sector over the recreational sector. These commenters suggest that the commercial sector should either be closed, not be allowed to use longline gear, or only harvest gag when the recreational sector is open.

Response: When the allocation of gag harvest was developed for the recreational and commercial sectors in Amendment 30B to the FMP, it was based on average landings for each sector between 1986 and 2005. The resultant recreational and commercial allocation ratio is 61:39, respectively. The management measures contained in this temporary rule were designed to equally reduce the number of gag removals (harvest and dead discards) for each sector to maintain this allocation ratio. Thus, while the recreational regulations may seem more restrictive, they actually allow for a much greater recreational harvest than will be allowed for the commercial sector. It is beyond the scope of this temporary rule to change the allocation ratio. It is also beyond the scope of this temporary rule to ban longline gear; however, recently implemented management measures contained in Amendment 31 to the FMP have reduced the number of longline vessels and further limited where longline vessels can fish.

The commercial sector is managed under an IFQ program where individual fishermen are given an allocation of gag

based on the commercial quota and the number of IFQ shares owned by the fisherman. This individual allocation allows commercial fishermen more flexibility in how they can fish, including fishing year round as long as they still have allocation remaining. If the commercial sector was not allowed to keep gag when the recreational sector was closed, dead discards would increase. Because the commercial sector fishes in waters deeper than where most of the recreational sector fishes, the likelihood of catching undersized fish is less and the chance a discarded fish would die if released is very high. Therefore, by allowing the commercial sector to keep gag year-round as long as an individual fisherman still has allocation, gag could be counted towards the quota and not wasted.

Comment 6: Several commenters indicated fishing effort is down due to current economic conditions, including increased fuel prices.

Response: In developing fishing regulations to limit harvest, recent fishing effort levels are taken into account. Recent data would reflect trends in effort due to factors such as changes in the economy. For example, as described in the environmental assessment, effort in 2009 was below the 2005–2008 average, in part due to changing economic conditions. In addition, in recommending the management measures contained in this temporary rule, the Council heard testimony from constituents who described current conditions in the fishery, including the effects of the economic situation, and how they perceived the rule would affect them.

Comment 7: One commenter questioned why the proposed rule would remove § 622.34 paragraph (v) from the regulations and replace it with § 622.34 paragraph (w).

Response: Section 622.34, paragraph (v), was implemented through a 2010 temporary rule and prohibits the harvest and possession of gag in the Gulf exclusive economic zone (EEZ). The 2010 temporary measure expires on May 31, 2011, unless subsequent rulemaking supersedes this measure. Because the timing of implementation of this new temporary rule was uncertain at the proposed rule stage, the rule proposed to remove paragraph (v) and add paragraph (w) to § 622.34. However, because this new temporary rule will become effective on June 1, 2011, after the current temporary rule expires, NMFS can now add new paragraph (v) instead of paragraph (w) to § 622.34. The new paragraph (v) implements a recreational gag seasonal closure in the Gulf EEZ by setting the gag bag limit to zero from January 1 through September 15, and from November 16 through December 31. This would allow a recreational gag harvest from September 16 through November 15 under a 2-fish bag limit. This paragraph would also be temporary and would remain in effect for 180 days from the rule's publication date, and could be extended for up to an additional 186 days.

Comment 8: One commenter suggested one of the purposes of this proposed rule is to force catch shares on the recreational sector. Another commenter stated his opposition to IFQs in general.

Response: The development of catch shares and IFQ programs as management tools is completely unrelated to this rule. The purpose of this rule is to reduce overfishing of gag, as required by the Magnuson-Stevens Act. Catch shares, or changes to the IFQ program, if considered, would be examined through the deliberative Council system and evaluated through a plan amendment to the FMP.

Comment 9: Several commenters expressed concern over the magnitude of the economic effects on the recreational sector and associated shore-side businesses expected to occur as a result of the proposed temporary rule, and one comment stated that the economic assessment grossly and inadequately understated the economic effects of the recreational component of the proposed action.

Response: The magnitude of the expected economic effects on all affected entities provided in the assessment is consistent with the comments that expressed concern over the magnitude of the economic effects. Substantial gag harvest reductions are necessary, however, to reduce overfishing of the gag resource, and the actions selected are expected to result in the best social and economic outcome.

The comment that claimed the economic assessment grossly and inadequately understated the economic effects claimed that the proposed action would result in the loss of 5,000 jobs and $3 billion in economic activity per year in Florida. This comment also implied that the analysis for the proposed action determined that the total economic value of both gag and red grouper to the recreational fishing industry is only $118 million when the total economic value of saltwater fishing in west Florida is $23 billion.

The estimates of the expected losses in jobs and economic activity provided by this comment were unsubstantiated by either source or methodology, and the "$118 million" estimate of economic value, or a reasonable proxy, cannot be found in the analysis provided for the proposed temporary rule or associated environmental assessment. Therefore, the origin of any of these numbers is unknown.

The assessment of the expected economic effects of the recreational component of the proposed temporary rule included estimates of the expected changes in economic value, as measured by changes in consumer surplus (CS) to recreational anglers and net operating revenues (NOR) to for-hire businesses, and economic impact, also known as economic activity or business activity. Economic activity estimates provide a measure of how expenditures re-circulate through a geographic region and stimulate business sales in multiple production industries, wages and salaries, and jobs.

Both of the measures of economic value (CS and NOR), are net sums, meaning they equal the remaining portion of benefits to anglers and revenues to for-hire vessels after expenditures have been deducted. As described in the assessment, the expected change in economic value is the appropriate measure for the calculation of the costs and benefits to the nation of a proposed management change.

Estimates of changes in economic activity, though not an appropriate measure of economic value, were provided because they may be useful in characterizing potential community and shoreside effects of proposed management actions. Unlike economic value, however, measures of economic activity are not net sums. For example, in the case of business sales, total gross expenditures for an initial purchase of goods or services, as well as any expenditures that were necessary to produce those goods or services and that occurred within the same geographic area, are included in the measure of business activity. It should be clearly understood, therefore, that economic value and economic activity are not equivalent and it is incorrect to equate the two. This comment confuses the two measures and errs in characterizing the "$23 billion" as "economic value" when it should correctly have been labeled "economic activity." As a result, comparisons of this total with others that may represent economic value, in the case of the "$118 million" figure, or that are measures of economic value, in the case of CS and NOR, are inappropriate and misleading.

Beyond the issue of comparing disjointed concepts, the primary issue associated with this comment is the difference in magnitude of the estimated effects of the proposed action when

dealing with the common metric "economic activity." Although details of the methodology utilized to produce the estimates provided in this comment were not given, the primary difference between the estimated effects provided in the assessment and those provided in this comment is likely the assumption of the number of trips that would be expected to be affected. Calculating this number is a key factor in the effects analysis.

Based on the documented model employed in NMFS' assessment, one full-time equivalent (FTE) job was estimated to be lost for every 1,800 angler trips cancelled in response to the proposed action. As described in the assessment, approximately 315,000 individual angler fishing trips could be cancelled due to this rule. These cancellations would result in the loss of 176 FTE jobs throughout the Gulf region, with 174 of these jobs occurring in Florida. These estimates do not include the effects of trip cancellations in the headboat sector because business activity estimates for this sector are not available. However, this estimate of potentially cancelled trips is considered an upper bound for cancellation in the shore, private, and charter sectors because it assumes all trips that normally would be expected to target gag during the affected period would be cancelled. In reality, many of these trips would be expected to continue and target alternative species or be shifted to the open season. As a result, the over-estimation of the number of affected trips in these other recreational sectors is expected to be sufficient to compensate for the absence of information on the headboat sector. Applying the same ratio of affected trips to jobs to the jobs estimate provided in this comment (5,000 jobs lost in Florida) results in an estimate of approximately 9 million cancelled fishing trips. Available data do not support this estimate. The average number of trips that target gag each year throughout the Gulf of Mexico is estimated to be less than 600,000 trips, while the average number of trips that catch gag is estimated to be less than 1.2 million. The total number of trips for all species in west Florida averages less than 17 million trips per year. As a result, there is no foundation to expect that more than 50 percent of all fishing trips in west Florida would be cancelled as a result of an approximate 10-month prohibition on the recreational harvest of gag.

Non-Substantive Change From the Proposed Rule

This final rule contains a change in the codified text from the proposed rule. In the proposed rule, § 622.34 would be amended by removing and reserving paragraph (v), and adding paragraph (w). However, because this final rule will become effective on June 1, 2011, after the current interim rule that added paragraph (v) expires, NMFS no longer needs to add paragraph (w), and can add paragraph (v) back into the codified text instead.

Classification

The NMFS Assistant Administrator (AA) has determined that this temporary rule is necessary for the conservation and management of the Gulf gag resource. The AA has also determined that this final temporary rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days, as described in section 305(c)(3)(B) of the Magnuson-Stevens Act.

This final temporary rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the full IRFA is available from NMFS (see **ADDRESSES**). The FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final temporary rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This final temporary rule does not establish any new reporting, record-keeping, or other compliance requirements.

A statement of the need for and objectives of this final temporary rule is provided in the supplementary information section of this preamble and is not repeated here.

A summary of the comments received on the proposed temporary rule is provided in the previous section of this preamble. Although NMFS received no comments to the IRFA, some of the comments noted concerns about the effects this rule would have on small businesses. For example, several commenters expressed concern over the magnitude of the economic effects on the recreational sector and associated shore-side businesses expected to occur as a result of this temporary rule. One commenter claimed the economic assessment in the proposed temporary rule grossly and inadequately understated the economic effects that would result from the proposed temporary rule and provided alternative estimates of these effects.

NMFS responded to these comments in detail in the response to comments section of the preamble to this rule. Moreover, in the IRFA, NMFS analyzed the expected economic effects of the proposed action to the recreational sector components of anglers, for-hire businesses, and associated shore-side businesses. The effects of this temporary rule on anglers and shore-side businesses are not germane to the Regulatory Flexibility Act (RFA) analysis because anglers are not small entities within the context of the RFA (see discussion below) and shore-side entities would only be indirectly affected by the proposed action and the RFA does not require NMFS to examine indirect effects. NMFS agrees with the commenters that this rule will result in some economic effects on small (and large) entities. However, as discussed in greater detail below, there are no alternatives that would end overfishing of gag, as is required by the Magnuson-Stevens Act.

With respect to the criticism that NMFS understates the economic effects of this rule, as discussed in the previous section of this preamble, these alternative estimates are undocumented and unsupported by available data. NMFS' earlier response to this criticism is sufficient and is not repeated here.

This temporary final rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) 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. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

This temporary final rule is expected to directly affect commercial fishing vessels whose owners possess gag quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and were eligible for initial shares and allocation in the

grouper and tilefish IFQ program. Of these 970 entities, 908 received shares and allocation of grouper or tilefish, including 875 that received gag shares and an initial allocation of the commercial gag quota in 2010. These 875 entities are expected to be directly affected by this temporary final rule.

Of the 875 entities that initially received gag shares, 215 did not record commercial landings or revenues in 2008 or 2009. On average, these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These eight entities received a much higher initial allocation of gag in 2010 than all 215 entities, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel with commercial gag quota shares was approximately $606,000 (2008 dollars).

The average charter vessel is estimated to earn approximately $88,000 (2008 dollars) in annual revenue, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

Based on the average revenue values provided above, all commercial and for-hire fishing vessels expected to be directly affected by this temporary final rule are determined, for the purpose of this analysis, to be small business entities.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. The average annual gross revenue by these vessels in 2008 and 2009 was approximately $50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue came from snapper, mackerel, dolphin, and wahoo landings. On average, these vessels received an initial allocation of 540 lb (245 kg) of gag quota in 2010.

The remaining 521 commercially active fishing vessels that initially received gag shares recorded landings of gag in 2008 or 2009. Over that 2-year period, these vessels averaged approximately $71,000 (2008 dollars) in annual gross revenue from commercial fishing. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009, respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue and, thus, these vessels were somewhat, though not significantly, dependent on revenue from gag landings. The average initial gag allocation in 2010 for these 521 vessels was 2,121 lb (964 kg). Therefore, on average, the 2008 gag landings for these vessels were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. The average annual revenue for these 52 vessels was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings for these vessels decreased from approximately $15,900 in 2008 to approximately $8,400 in 2009 and, thus, these vessels became relatively less dependent on gag landings in 2009. These vessels, however, were highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009, respectively. Revenue from deep-water grouper (DWG) landings by these vessels decreased only slightly, from approximately $36,000 in 2008 to approximately $31,000 in 2009 and, thus, these vessels became relatively more dependent on revenue from DWG landings. The average initial 2010 allocation of gag for these vessels was approximately 5,507 lb (2,503 kg), while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009, respectively. Thus, vessels that have a bottom longline endorsement have been harvesting well below their allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the EEZ by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to 1 year after expiration. Because of the extended permit renewal period, numerous permits may be expired but still renewable at any given time of the year. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that state; however, vessels would be subject to any applicable state permitting requirements. Although the permit does not distinguish between headboats and charter vessels, NMFS estimates that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Because nearly 99 percent of gag target effort and 97 percent of the economic impacts from recreational gag fishing in the Gulf occur in west Florida, NMFS assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) with permit registration addresses in Florida will be directly affected by this action.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn any profit from commercial fishing in those 2 years. The reduction in this rule of the commercial gag quota from 1.49 million lb (0.68 million kg) to 430,000 lb (195,045 kg) will reduce these vessels' average allocation of gag in 2011 from 952 lb (433 kg) to 275 lb (125 kg), or by approximately 677 lb (308 kg). Using the average 2008 gag price of $3.52 per pound, this loss in allocation could potentially represent a loss of nearly $2,400 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of $670 (2008 dollars) in net revenue per entity. For the eight entities within this group that also possess longline endorsements, their average allocation of gag in 2011 will be reduced from 3,418 lb (1,554 kg) to 987 lb (449 kg), or by 2,431 lb (1,105 kg). Thus, the potential loss in gross revenue and net revenue to these eight entities is estimated to be approximately $8,600 and $2,500 (2008 dollars), respectively.

However, in general, these potential losses in gross revenue and net revenue will only be realized if these 215 entities not only become active in commercial fishing, but also intend to harvest gag in 2011 at a level above their reduced allocation. That is, because they have not used their quota (and thus gained revenue to lose) in recent years, a reduction in allocation can only lead to a reduction in landings and, thus, gross revenue, if these entities intend to harvest at levels above their reduced allocation. Alternatively, these losses in gross and net revenue could accrue to a loss of ability by these entities to sell the allocations they will lose under the temporary action, though this possibility presumes that a demand for these allocations will exist. Regardless, the significance of these potential losses in gross and net revenue to these 215 entities cannot be evaluated because of

the lack of information on potential gross revenue, net revenue, and profits from commercial fishing in general and specifically for gag.

Similarly, the 139 entities with gag shares that participated in commercial fisheries other than gag earned approximately $50,800 in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, because these entities did not have any gag landings in 2008 or 2009, none of their gross revenue or profit was the result of gag harvests. Under the temporary rule, the average allocation of gag in 2011 for these entities will be reduced from 588 lb (267 kg) to 170 lb (77 kg), or by 418 lb (190 kg). Using the average 2008 price of $3.52 per pound, this loss in allocation could potentially represent a loss of nearly $1,500 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of approximately $410 (2008 dollars) in net revenue per entity.

However, these potential losses in gross and net revenue will only lead to a loss in profits if these 139 entities intend to commercially harvest gag in 2011 at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings if these entities intend to harvest at levels above their reduced allocation. For example, if these vessels intended to harvest gag in 2011 at a level equivalent to their 2011 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately 3 percent in gross revenue, which could in turn reduce net revenue and profits. Alternatively, losses in gross and net revenue could be due to a potential inability to sell the allocations lost under the temporary final rule, though this possibility presumes that a demand for these allocations will exist.

The 521 entities with gag shares that commercially harvested gag in 2008 or 2009 earned an average gross revenue of approximately $71,000 (2008 dollars) per year. Profit estimates for these vessels are not currently available. However, gag landings accounted for approximately 8 percent of these vessels' average annual gross revenue. As a result, these vessels are somewhat, but not significantly, dependent on revenue from gag landings. Under the temporary final rule, the gag allocations for these vessels will be reduced from 2,310 lb (1,050 kg) to 667 lb (303 kg), or 1,643 lb (747 kg) on average. Because these vessels have been harvesting at levels near their 2010 allocation in recent years, on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and, therefore, gross revenue. Using the average 2008 price of $3.52 per pound, it is estimated that these vessels could lose nearly $5,800 (2008 dollars), or approximately 8 percent, in annual gross revenue, on average. Using the 2010 average price of $1.00 per pound of gag allocation, these vessels could lose approximately $1,600 (2008 dollars) in net revenue, which is assumed to be representative of profit for commercial vessels, per entity under this temporary final rule.

However, 52 of these 521 vessels also received a bottom longline endorsement in 2010. The average annual gross revenue for these 52 vessels was approximately $156,000 (2008 dollars) in 2008 and 2009, with gag landings accounting for approximately 8 percent of gross revenue. These vessels are more dependent on revenue from red grouper than from gag. Under this action, the allocation of gag in 2011 for these vessels will decrease from 6,215 lb (2,825 kg) to 1,953 lb (888 kg), or by 4,262 lb (1,937 kg). Because these vessels have been harvesting gag at levels near their 2010 allocation on average in recent years, the reduction in gag allocation is expected to lead to an equivalent reduction in gag landings and gross revenue. Using the average 2008 price of $3.52 per pound, it is estimated that these vessels would lose approximately $15,000 (2008 dollars) in annual gross revenue, or nearly 10 percent, on average. Using the 2010 average price of $1.00 per pound of gag allocation, these vessels would lose approximately $4,200 (2008 dollars) in net revenue, which is assumed to be representative of profit, per entity.

No additional economic effects are expected to result from the revised SWG quota because this quota simply reflects the reduction in the commercial gag quota, the effects of which have already been discussed.

Minimal adverse economic effects are expected to result from the action to suspend the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. As a result of the reduction in the commercial gag quota that will occur under this temporary final rule, it is expected that vessels will exhaust their gag and gag multi-use allocations relatively quickly. Gag commands a higher market price. As a result, gross revenue from commercial fishing revenue and profit per vessel could be reduced as a result of the suspension of multi-use conversion.

NOR is assumed to be representative of profit for for-hire vessels. As previously discussed, it is assumed that 823 for-hire vessels, of which 780 are estimated to be charter vessels and 43 headboats, participate in the gag component of the recreational sector of the Gulf reef fish fishery. Estimates of NOR from recreational fishing for all species by these charter vessels and headboats are not available. However, on average, the NOR per year for vessels from trips targeting gag is estimated to be approximately $1.56 million for all charter vessels (approximately $2,000 per vessel) and approximately $91,300 for all headboats (approximately $2,100 per vessel), or approximately $1.65 million per year for all for-hire vessels.

During the periods when the recreational harvest of gag is prohibited, some trips that normally would be expected to target gag are expected to target other species, while other trips are expected to be cancelled. Estimates of NOR per trip by species targeted, however, are unavailable. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from cancelled trips and not trips directed towards alternative species. Estimates of the actual number of trips that would be expected to be cancelled as a result of the shortened gag season are not available. The following analysis assumes all for-hire trips that would normally be expected to target gag will be cancelled when the recreational sector is closed. Because not all of these trips are likely be cancelled, this analysis overestimates the actual reduction in NOR associated with a shorter season that is expected to occur and the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

The establishment of a recreational gag fishing season of September 16, 2011–November 15, 2011, is expected to result in a maximum reduction of NOR of approximately $435,000 and $28,000 from trips targeting gag on charter vessels and headboats, respectively, or approximately $463,000 across both fleets. These reductions translate into per-vessel averages of approximately $560 and $660 for charter vessels and headboats, respectively, or approximately 28 percent and 31 percent of profits. If this temporary final

rule is extended an additional 186 days, as allowed under the Magnuson-Stevens Act for interim or emergency measures, the reductions in NOR for charter vessels and headboats are estimated to be, in total over the entire period (366 days), approximately $1.41 million and $81,800, respectively, or $1,808 and $1,902 per charter vessel and headboat.

This temporary rule is not expected to affect the profit from charter vessel or headboat trips that do not target gag. For-hire vessel dependence on fishing for individual species cannot be determined with available data. Although some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels, overall, only approximately 3 percent of for-hire anglers are estimated to target gag. As a result, while shortening the gag season action is expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips, nor are these trips, by extension, expected to account for a substantial portion of total fleet-wide for-hire NOR.

Two alternatives, including the status quo, were considered to setting the gag commercial quota at 430,000 lb (195,045 kg). The first alternative, the status quo, would have maintained the gag commercial quota at 1.49 million lb (0.68 million kg). This alternative is not consistent with the goals and objectives of the Council's plan to manage gag to achieve the mandates of the Magnuson-Stevens Act. Specifically, selection of this alternative would be inconsistent with current National Standard 1 guidance because the commercial quota would be above the commercial annual catch target (ACT) of 500,000 lb (226,796 kg), which is based on the Council's defined F_{OY} (fishing mortality at the optimum yield) yield of 1.28 million lb (0.58 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would have set the gag commercial quota at 100,000 lb (45,539 kg). This alternative is based on the request made by the Council in August 2010 for the interim rule that published December 1, 2010, and reflects the uncertainty in the stock status at that time due to questions regarding how commercial and recreational discards were treated in the assessment update. When this commercial quota was recommended, it was unknown how revisions to the treatment of discards might influence the reanalysis of the updated stock assessment. If the reanalysis yielded a more pessimistic condition of the stock, then setting the harvest based on the F_{OY} yield, estimated then at 390,000 lb (177,273 kg), would not reduce overfishing sufficiently to allow the stock to begin to recover within the maximum time frame allowed under the Magnuson-Stevens Act. The 100,000 lb (45.539 kg) commercial quota was recommended because some gag are expected to be incidentally caught by the commercial sector while fishing for other species. Further, most discarded gag die after being released due to the high discard mortality rate associated with fishing at deeper depths. Rather than waste all of these fish, the Council set the quota at a level that would allow some fish to be retained and be counted towards the commercial quota.

As of March 2, 2011, over 65 percent of the gag IFQ shareholders had less than 50 lb (23 kg) in allocation still available to them. Thus, if the commercial quota were not set at a level above 100,000 lb (45,539 kg), gag would likely be lost through dead discards rather than kept and counted towards the commercial quota as fishermen run out of allocation. However, the reanalysis of the assessment showed a slight increase in the projected yields under the F_{OY} if Florida adopted compatible regulations for the recreational sector. Because Florida adopted compatible regulations for the recreational sector, a higher commercial quota is allowable.

One alternative, the status quo, was considered to suspending vessels' ability to convert red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. This alternative would have continued to allow 4 percent of the red grouper allocation to be converted into multi-use allocation, and would be expected to result in gag harvests exceeding the annual catch limit, promote overfishing, and slow recovery of the stock, contrary to the Council's objectives. Further, this alternative would also be expected to result in greater adverse economic effects stemming from the corrective measures that would be implemented to address the over-harvesting of gag.

Three alternatives, including the status quo, were considered to establishing a recreational fishing season for gag of September 16, 2011, through November 15, 2011. The first alternative, the status quo, would maintain the recreational ACT at 2.20 million lb (1 million kg), and anglers would be able to harvest the 2-fish daily bag limit for gag starting June 1, 2011. Depending on whether 2006–08 or 2009 is used as the baseline, the estimated reduction in removals under this alternative would be between 15 percent and 20 percent, which is insufficient to allow the stock to rebuild, and would be inconsistent with the stock rebuilding plan being developed by the Council. In addition, this alternative is inconsistent with the Magnuson-Stevens Act and current National Standard 1 guidance because the expected level of harvest would be above the recreational ACT of 780,000 lb (353,802 kg), which is based on the Council's defined F_{OY} yield of 1.28 million lb (0.58 million kg) for 2011. Further, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero and, thereby, prohibit the recreational harvest of gag. This alternative would reduce fishing mortality the most out of all the alternatives considered and, therefore, generate the greatest biological benefits for the gag stock. Although this alternative would not allow the recreational harvest of gag while the interim rule is in effect, the number of dead discards would also be expected to be reduced because no recreational fishing trips would be expected to target gag. Because Florida adopted compatible regulations, this alternative would reduce the harvest sufficiently in 2011 to be consistent with the Council's rebuilding plan in Amendment 30B to the FMP, as it would reduce removals between 58 percent and 67 percent and, as such, end overfishing. If Florida had not adopted compatible regulations, the estimated reduction in removals would be between 43 percent and 61 percent, which would reduce, but might not be sufficient to end, overfishing. Because no recreational harvest of gag would be allowed, this alternative would be expected to result in greater economic losses to the for-hire sector than this temporary rule. However, when the Council requested the current temporary rule, it intended to allow some recreational harvest of gag in 2011 and establish that level of harvest under the long-term management measures being developed in Amendment 32 to the FMP. This alternative would not accomplish that goal, and so was not selected.

The third alternative would establish a recreational fishing season for gag of July 1, 2011, through August 15, 2011, and, thus, would allow for some recreational harvest of gag in 2011 as the Council intended when it requested the current interim rule. This alternative would establish a 46-day recreational fishing season, which is less than the 61-day season under this temporary rule. This alternative also minimally overlaps with the red snapper season, which begins on June 1. This alternative

would provide for-hire vessels with a greater number of options when marketing summer trips. The reduction in removals under this alternative would be expected to be between 49 percent and 60 percent and, therefore, might be sufficient to end overfishing.

The Council heard public testimony regarding potential recreational seasons for gag at its February 2011 meeting. Participants in the recreational sector asked for either a summer or winter season depending on their geographic location. In general, recreational participants from Texas, southwest Florida, and central Florida favored a winter season, while recreational participants from other areas of the Gulf favored a summer season. In looking for a compromise, the Council recommended the proposed recreational season with no changes to the bag limit or size limit. The proposed recreational season would cover the end of the summer recreational fishing season and run through the beginning of the winter recreational fishing season. In addition, the estimated reductions in removals under the proposed recreational season are between 50 percent and 54 percent, which might be sufficient to end overfishing.

Pursuant to 5 U.S.C. 553(d)(3), NMFS finds that delaying this rule's effective date for 30 days is impracticable and contrary to the public interest, and therefore there is good cause to waive the 30-day delay in effectiveness of this rule.

A delay is impracticable, because it would contribute to overfishing of gag, which is contrary to National Standard 1 of the Magnuson-Stevens Act, which requires NMFS to conserve and manage ocean resources to prevent overfishing while achieving the optimum yield from each fishery. Without this rule, on June 1, 2011 the current gag temporary rule will expire, which would allow the commercial sector to harvest gag using red grouper multi-use allocation and the recreational sector to harvest gag in Federal waters. These harvests could result in further overfishing of gag, contrary to NMFS' statutory obligations. By implementing this rule immediately, red grouper multi-use allocation will be suspended and the recreational sector for gag will be closed to gag harvest until the 2-month gag season, which opens on September 16 and closes on November 15, 2011.

In addition, delaying the effectiveness of this rule for 30-days is contrary to the public interest. This rule replaces the current fishing season for gag with a 2-month recreational fishing season for gag in the fall. Recreational fishing businesses need to be able to plan for this season, and any delay in implementing this rule will delay their ability to plan for this new season, and risk economically injuring these entities. Moreover, many Gulf reef fish fishermen have already exhausted their gag allocation for the year, and this temporary rule will allow them to catch more gag. Without the increased allocation of gag, gag bycatch in the commercial sector would increase, leading in turn to a higher gag mortality rate, and a further reduction of the gag resource, which would be contrary to the public's interest.

Accordingly, the 30-day delay in effectiveness of the measures contained in this temporary rule is waived.

List of Subjects in 50 CFR Part 622

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

Dated: May 27, 2011.

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 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.*

§ 622.20 [Amended]

■ 2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.

■ 3. In § 622.34, paragraph (v) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(v) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through September 15 and November 16 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

■ 4. In § 622.42, paragraphs (a)(1)(iii)(A)(*3*) and (a)(1)(iii)(B)(*3*) are suspended and paragraphs (a)(1)(iii)(A)(*4*) and (a)(1)(iii)(B)(*4*) are added to read as follows:

§ 622.42 Quotas.

(a) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) For fishing year 2011 and subsequent fishing years—5.16 million lb (2.34 million kg).

(B) * * *

(*4*) For fishing year 2011 and subsequent fishing years—430,000 lb (195,045 kg).

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[FR Doc. 2011–13703 Filed 5–27–11; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101203602–0602–1]

RIN 0648–BA29

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard; Emergency Rule Extension

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

ACTION: Temporary rule; emergency action extension.

SUMMARY: NMFS is exempting, through this emergency rule extension, trawl catcher/processor vessels (C/Ps) that are not specified in regulation as American Fisheries Act (AFA) vessels, and Amendment 80 cooperatives from the groundfish retention standard (GRS) program in the Bering Sea and Aleutian Islands management area. The GRS was implemented to increase the retention and utilization of groundfish caught by the non-AFA trawl C/Ps and to respond to bycatch reduction goals described in National Standard 9. NMFS recently discovered that the regulatory methodology used to calculate compliance with and to enforce the GRS percentages established for 2010 and 2011 effectively require the sector to meet a GRS well above that considered by the North Pacific Fishery Management Council or that implemented by NMFS. As a result, the retention requirements are expected to impose significantly higher costs due to the increased level of retention and to generate an unanticipated level of noncompliance in the Amendment 80 fleet. Further, monitoring and enforcement of the GRS have proven far more complex, challenging, and potentially costly than anticipated by NMFS. This emergency rule extension is necessary to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum retention