Dated: November 24, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, 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.*

■ 2. In § 622.34, paragraph (n) is removed and reserved and paragraph (o) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

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(o) *Gulf EEZ area closure related to Deepwater Horizon oil spill.* Effective November 26, 2010, fishing is prohibited in the portion of the Gulf EEZ, and for the fishery components identified, in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100806332–0573–02]

RIN 0648–BA02

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, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final temporary rule.

SUMMARY: NMFS issues this final temporary rule to implement interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This final rule reduces the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), prohibits recreational harvest of gag, and suspends red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as requested by the Gulf of Mexico Fishery Management Council (Council). The intended effect of this final temporary rule is to reduce overfishing of the gag resource in the Gulf.

DATES: This rule is effective January 1, 2011 through May 31, 2011.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Peter Hood, 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 (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 18, 2010, NMFS published the proposed temporary rule and requested public comment (75 FR 63786).

This final temporary rule will reduce the commercial quota for gag, reduce the combined commercial SWG quota, prohibit recreational harvest of gag, and suspend red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program. The purpose of this final temporary rule is to reduce overfishing of the gag resource in the Gulf. No changes were made to this final rule as a result of public comment.

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 55 comments on the proposed rule.

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

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 Gulf, South Atlantic, 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. First, the data workshop documents, analyzes, and reviews datasets to be used for assessment analyses. Second, 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 both conducted within this SEDAR process. All workshops and Council-initiated meetings to review 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 reviewed the assessment results and made recommendations to the Council about the adequacy of the assessments and what level to set the acceptable biological catch. The data incorporated into the SEDAR assessment is derived from both fishery-dependent and fishery-independent data. Examples of fishery-dependent data include, but are not limited to: Logbook data, trip tickets, dockside sampling, dealer reports, and marine recreational fishing statistical surveys (MRFSS). Fishery-independent data sources consist of data provided through surveys and research conducted by Federal, state, and academic institutions. Furthermore, NOAA's Southeast Fisheries Science Center reviews and certifies that the actions contained in this rulemaking are based on the best available scientific information.

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

Response: Red tide may 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 took into account decreases in indices of abundance thought to have occurred because of the red tide event documented in 2005. Although the 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.

Comment 3: Several commenters indicated that it was unfair to close the recreational sector while allowing some commercial harvest to continue. Comments indicated a complete closure of both sectors would be more fair and that commercial fishermen should be able to target other species with methods to minimize the bycatch of gag. One commenter disliked an implied reference to the opening of the recreational sector by the Council in subsequent rulemaking.

Response: The Council discussed a complete closure to all gag harvest pending the outcome of the review of the assessment, but determined it was more reasonable to allow some commercial harvest. This decision was expected to minimize the mortality of gag caught by the commercial sector while targeting other species, and ultimately maximize the extent of a recreational season in 2011.

The commercial sector has a lower overall allocation and harvest of gag, and likely a lower overall impact on the gag stock; nevertheless, the commercial sector has a higher discard mortality rate of the gag that are caught. Because the fish inadvertently caught by commercial operations are less likely to survive being caught, the Council decided the most reasonable action was to allow some retention of fish that would otherwise be discarded dead. The quota of 100,000 lb (45,359 kg) was believed to be low enough to discourage commercial vessels from fishing in areas with high gag catch, because of the high levels of discards in such areas, while still allowing some level of gag retention when gag were incidentally caught.

Although the recreational sector has a lower discard mortality rate, it has a higher discard rate, as well as a much larger allocation of the total allowable catch, thus resulting in a substantial number of dead discards by the recreational sector overall. Thus, allowing the recreational sector even a limited harvest of gag early in 2011 would result in large number of dead discards as well. If this temporary closure were not to occur for the recreational sector, projections indicate that gag harvest would likely close early in the 2011 fishing year, leading to a very abbreviated season. The Council's request is expected to discourage fishing in areas where gag catch is likely to occur, and minimize the number of gag dead discards until the Council can implement 2011 management measures through Amendment 32. Landing projections indicate the recreational season length could be maximized by moving the gag recreational season to the summer. Therefore, more restrictive measures early in the 2011 season are ultimately expected to result in greater season length later in the year and greater fishing opportunities for the recreational sector as a whole.

Comment 4: Several commenters indicated gag are plentiful and, therefore, further management measures 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, and changing the status of gag to a gamefish.

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 Scientific and Statistical Committee (SSC) was the model taking into account the 2005 episodic mortality event. This model indicated the stock was overfished and undergoing overfishing, prompting NMFS to inform the Council of this condition and that action is needed to rebuild the stock.

In evaluating different management measures, the Council evaluated 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, and these alternatives indicated a summer season would best maximize the time the sector could remain open. Given the uncertainty surrounding the reductions needed for gag resulting from issues with how dead discards were treated in the update assessment, and given the Council's recommendation that the recreational season could be maximized in the summer, the Council requested a temporary closure of the recreational sector until these issues could be resolved.

Comment 5: Several commenters stated that shifts in species abundance have negatively affected gag stocks. Specifically, an increased red snapper population has shifted gag away from their primary habitats and an increased goliath grouper population is feeding heavily on gag.

Response: Species interactions among Gulf reef fish species are poorly understood; models that examine the linkages between species are not yet adequate to determine the effects of management measures on species interactions. However, it is important to note that species such as red snapper and goliath grouper are managed by NMFS and the Council to improve their stock condition. Therefore, as these stocks improve, some interactions could occur through competition for food or habitat. With respect to goliath grouper, although they do feed on fish and will opportunistically prey upon fish caught with hook-and-line, they feed primarily on crustaceans. In one scientific study, conducted by Coleman and Koenig, over 200 goliath grouper were sampled from the Gulf, and no grouper species were found in the analysis of their stomach contents (*http://www.bio.fsu.edu/coleman_lab/goliath_grouper.php*).

Comment 6: Some commenters indicated that gag overharvest was due to the actions of the commercial sector. They suggested implementing measures to restrict commercial harvest such as banning longline gear, instead of reducing recreational harvest.

Response: When the allocation of gag harvest was developed for the recreational and commercial sectors in Amendment 30B, it was based on average landings between 1986 and 2005. The resultant allocation ratio is 61:39, respectively. Therefore, even if commercial harvest were prohibited, some restrictions on recreational harvest would still be necessary to allow the stock to rebuild. It is beyond the scope of this temporary rule to ban longline gear because such a ban would not end overfishing; however, recently implemented management measures taken through Amendment 31 (75 FR 21512; April 26, 2010) have reduced the number of longline vessels in the Gulf reef fish fishery and further limited where they can fish.

Comment 7: Several commenters 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: It is outside of the scope of this temporary rule to consider regionalized management because such an approach would not lead directly to ending overfishing. However, the Council continues to examine regionalized management for reef fish species. In the course of developing long-term management measures in Amendment 32, the Council is considering seasonal-area closures for grouper species which is considered an example of regionalized management.

Comment 8: Several commenters indicated fishing effort was reduced

because of current economic conditions and fishery closures resulting from the Deepwater Horizon MC252 oil spill.

Response: In developing fishing regulations to limit harvest, current and past fishing effort levels are taken into account. These levels would reflect trends in effort because of factors such as the economy and the oil spill. As shown in the environmental assessment for this action, gag effort, in 2009, was below the 2005–2009 average. However, these recent reductions in effort are likely less than what will be needed to end overfishing of gag and rebuild the stock.

NMFS is in the process of analyzing landings data to determine the effects of the spill on fishing effort. Oil from the Deepwater Horizon MC252 incident, at its maximum extent, affected approximately one-third of the Gulf EEZ, from western Louisiana east to the panhandle of Florida and south to Campeche Bay in Mexico. However, the affected areas are outside the west Florida Shelf where gag are primarily found. Most of the gag habitat was either not affected by fishery closures resulting from the oil spill, or the duration of the closures was limited. Therefore, the opportunity to harvest gag was minimally affected compared to the opportunity to harvest other species primarily harvested in the northern Gulf, such as red snapper.

Comment 9: One commenter suggested that the proposed prohibition on the recreational harvest of gag would do little to reduce the total number of gag killed by the Gulf reef fish fishery because recreational harvest would still result in gag bycatch and subsequent release mortality.

Response: The total number of gag caught and released under a recreational harvest prohibition would be less than if the harvest prohibition were not in place. Based on data from the 2006 SEDAR assessment, recreationally discarded fish have a lower discard mortality rate (~32 percent) than commercially discarded fish (~67 percent), and therefore the likelihood of survival for released fish is much higher for the recreational sector. This is because recreational effort primarily occurs in shallower waters where discard mortality rates are low.

Classification

The Regional Administrator, Southeast Region, NMFS, (RA) determined that the interim measures this final temporary rule will implement are necessary for the conservation and management of the Gulf gag resource. The RA has also determined that this final temporary rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final temporary rule has been determined to be not significant for the purposes of E.O. 12866.

A final regulatory flexibility analysis (FRFA) was prepared. 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 analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

No comments received directly raised issues specific to the IRFA. However, many comments raised concerns regarding the Regulatory Impact Review (RIR) in the Environmental Assessment (EA). Some of these comments address issues indirectly related to the IRFA. While the IRFA analyzes the economic effects on small entities, a direct relationship exists between the RIR and the IRFA. Thus, all comments related to the RIR and IRFA are addressed here.

A number of public comments were received regarding the economic impact of the gag component of the reef fish fishery to the U.S. economy, most of which mentioned the economic impact of recreational sector. These comments stated that NMFS did not conduct an economic assessment of the affected economic environment, the assessment was incomplete, or the assessment was inaccurate.

Using the best available information, NMFS conducted an economic impact assessment of the gag component of the reef fish fishery to the U.S. economy. For the commercial sector, this assessment included information regarding the number of affected shareholders and vessels, their landings, gross revenue, shares and allocation of gag, and the distribution of longline endorsements. Information regarding the number of affected dealers, as well as the volume and value of their seafood purchases, was also included. The assessment also included information regarding the value of imported grouper. In addition, ex-vessel revenue was used to generate estimates of impacts to the U.S. economy in terms of output, income, and the number of full-time equivalent (FTE) jobs.

For the recreational sector, the analysis included estimates of losses in pounds and number of fish, which were used to estimate the loss in consumer surplus to all anglers. For the for-hire sector, the analysis also incorporated estimates of the number of adversely affected for-hire (charter and headboat) vessels, as well as the reduction in target trips for gag and net operating revenue by month and for the duration of the closure. In addition, estimates of adverse economic impacts to the U.S. economy in terms of lost output, value-added, and the number of full-time equivalent (FTE) jobs were also provided. Estimates of these adverse economic impacts were also broken down by State and mode. For these reasons, no changes were made to this final rule as a result of these comments.

This final temporary 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 final temporary rule is expected to directly affect commercial fishing vessels whose owners possess gag fishing 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 thus were eligible for initial shares and allocation in the grouper and tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 875 entities specifically received gag shares and an initial allocation of the commercial sector's gag quota in 2010. These 875 entities are expected to be directly affected by the actions to reduce the commercial quota for gag and disallow the conversion of red grouper allocation to multi-use allocation.

Of the 875 entities that initially received gag shares, 215 were not commercially fishing in 2008 or 2009 and thus had no commercial fishing revenue during these years. 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 8 entities received a much higher initial allocation of gag in 2010, 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 fishing quota shares was approximately $606,000 (2008 dollars).

The average charterboat 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 these values, all commercial and for-hire fishing vessels expected to be directly affected by this final temporary 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. Their average annual gross revenue in these 2 years was approximately $50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of snapper, mackerel, dolphin, and wahoo landings. On average, in 2010, these vessels received an initial allocation of 540 lb (245 kg) of gag quota.

The remaining 521 commercially active fishing vessels did have landings of gag in 2008 or 2009. Their average annual gross revenue from commercial fishing was approximately $71,000 (2008 dollars) between the two years. 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 they are somewhat, though not significantly, dependent on revenue from gag landings. These vessels' average initial gag allocation in 2010 was 2,121 lb (964 kg). Therefore, on average, their 2008 gag landings 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. These particular vessels' average annual revenue was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings decreased from approximately $15,900 to $8,400 in 2009 and thus they became relatively less dependent on gag landings. These vessels are 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 decreased only slightly, from approximately $36,000 in 2008 to $31,000 in 2009, and thus these vessels became relatively more dependent on revenue from DWG landings. Their average initial 2010 allocation of gag 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 now have a bottom longline endorsement have been harvesting well below that 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 during the renewal period after the permit's expiration. 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, it is estimated that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Given that nearly 99 percent of target effort for gag and 97 percent of the economic impacts from the recreational sector for gag in the Gulf reef fish fishery are in west Florida, it is assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) in Florida are expected to be directly affected by the action to reduce the recreational bag limit for gag to zero.

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 profit from commercial fishing in those 2 years. Under the action to decrease the commercial quota for gag, their allocation of gag in 2011 would be reduced, on average, from 874 lb (397 kg) to 61 lb (28 kg), or by approximately 813 lb (370 kg). Using the 2008 average price of $3.52 per lb, this loss in allocation could potentially represent an annual loss of nearly $2,900 in gross revenue per entity. For the eight entities with gag shares that also possess longline endorsements, their average annual allocation of gag would be reduced from 3,139 lb (1,427 kg) to 220 lb (100 kg), or by 2,919 lb (1,327 kg). Thus, their potential loss in gross revenue, estimated to be nearly $10,280, could be much higher. However, in general, this potential loss in gross revenue could only reduce profit if these entities not only become active in commercial fishing, but specifically intend to harvest gag in 2011 and at a level above their reduced allocation. Alternatively, these potential losses in gross revenue could be due to these entities' inability to sell the allocations they are losing under this action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of this potential loss in gross revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue and profit from commercial fishing in general and specifically for gag.

Profit estimates are not currently available for the 139 entities with gag shares that participated in commercial fisheries other than gag. However, since these vessels did not have any gag landings, none of their gross revenue and thus none of their profit were the result of gag harvests. Under the action to decrease the commercial quota for gag, their average allocation of gag in 2011 would be reduced from 540 lb (245 kg) to 38 lb (17 kg), or by approximately 502 lb (228 kg). Using the 2008 average price of $3.52 per pound, this loss in allocation could potentially represent an annual loss of nearly $1,800 in gross revenue per entity. However, this potential loss in gross revenue could only lead to a loss in profit if these entities intend to become active in the gag component of the Gulf reef fish fishery in 2011 and at a level above their reduced allocation. Thus, for example, assuming these vessels intend to harvest gag in 2011 at a level equivalent to their 2010 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 three percent in gross revenue which could in turn reduce profit. Alternatively, these losses in gross revenue could be due to these entities' inability to sell the allocations they are losing under this action, though this possibility presumes

that a demand for these allocations exists.

Profit estimates are not currently available for the 521 entities with gag shares that participated in the commercial gag sector of the Gulf reef fish fishery in 2008 or 2009. Under the action to decrease the commercial gag quota, these vessels' gag allocations would be reduced from 2,121 lb (964 kg) to 148 lb (67 kg), or by approximately 1,973 lb (897 kg) on average. As 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 a future 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 $6,950, or approximately 10 percent, in average annual gross revenue. A loss in gross revenue of this magnitude would likely lead to a reduction in profit.

However, for the 52 vessels with gag shares that were active in the gag component of the Gulf reef fish fishery and also received a bottom longline endorsement in 2010, their allocation of gag in 2011 would decrease from 5,707 lb (2,594 kg) to 400 lb (182 kg), or by approximately 5,307 lb (2,412 kg) under this action. This loss in landings is estimated to be valued at approximately $18,700 in gross revenue, or 12 percent of their average annual gross revenue. Such a loss in gross revenue would likely reduce their profit.

Under the action to suspend the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag, minimal adverse economic effects are expected as a result of commercial fishing entities not being allowed to convert 4 percent of their red grouper allocation into multi-use allocation. 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 this reduction in the commercial gag quota, it is likely these entities will exhaust their gag and gag multi-use allocations relatively early in 2011. Revenue from gag landings is greater than revenue from an equivalent amount of red grouper landings since gag commands a relatively higher market price. Thus, total commercial fishing revenue and, therefore, profit per vessel could be slightly less than if the multi-use conversion were allowed to continue.

Net operating revenues (NOR) are assumed to be representative of profit for for-hire vessels. It is assumed that 823 for-hire vessels, 780 charter vessels, and 43 headboats, participate in the recreational gag component of the Gulf reef fish fishery. Estimates of NOR from recreational fisheries other than gag, and thus across all fisheries in which these charter vessels and headboats participate, are not currently available. However, on average, NOR for charter vessels from trips targeting gag are estimated to be approximately $1.34 million per year while NOR for headboats from trips targeting gag are estimated to be $81,000 per year. NOR for all trips targeting gag are estimated to be approximately $1.35 million per year. The average annual NOR from trips targeting gag are estimated to be $1,716 per charter vessel and $1,881 per headboat.

When the length of the gag season is reduced by setting the recreational bag limit for gag at zero, some trips that formerly targeted gag will instead target other species while other trips that formerly targeted gag will be cancelled. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from trips cancelled as a result of the shortened season length. Information regarding the number of trips cancelled as a result of the shortened season is not current available. Thus, this analysis assumes that all of the current for-hire trips targeting gag will be cancelled. Because some of these trips would probably not be cancelled, this assumption is expected to overestimate the actual reduction in NOR associated with a shorter season. Thus, the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

Under the action to set the gag recreational bag limit for gag at zero, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately $750,000 and $43,000, respectively, if this final temporary rule is not extended for up to 186 days as allowed under the Magnuson-Stevens Act for interim measures. Thus, the losses in NOR from trips targeting gag are estimated to be $962 and $1,000 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 56 percent and 53 percent per charter vessel and headboat, respectively. However, if there is an extension of this final temporary rule, the losses in NOR for charter vessels and headboats are estimated to be approximately $1.34 million and $81,000, respectively. Thus, the losses in NOR are estimated to be $1,716 and $1,881 per charter vessel and headboat, respectively. These losses in NOR represent a loss in profit for all charter vessel and headboat trips targeting gag. This action is not expected to affect profit for charter vessels and headboats from trips not targeting gag. Vessel dependence on fishing for individual species cannot be determined with available data. Although some vessels are likely more dependent on trips that target gag than other vessels, overall, about three percent of for-hire anglers are estimated to target gag. As a result, while the action would be 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 would they, by extension, be expected to account for a substantial portion of total for-hire NOR.

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

Three alternatives, including the status quo, were considered for the action to reduce the commercial quota for gag from 1.49 million lb (0.68 million kg) to 100,000 lb (45,359 kg) in 2011. The first alternative, the status quo, would have maintained the commercial quota for gag at 1.49 million lb (0.68 million kg) in 2011. 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 this quota would be above the allowable biological catch (ABC) recommended by the Council's SSC of 1.17 million lb (0.53 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would have set the commercial quota for gag at 390,000 lb (0.18 million kg), with one option to release the entire quota on January 1, 2011 and a second option to release 50 percent of the quota on January 1, 2001 and the remaining 50 percent on July 1, 2011. This quota is based on projected fishing mortality at optimum yield (F_{OY}) yield streams, 1.01 million lb (0.46 million kg) for 2011, and is consistent with the methods used by the Council in Amendment 30B for setting the annual catch target. This harvest level corresponds with the Council's initial request for an interim rule at its June 2010 meeting. The commercial quota for gag under this alternative is less than what the quota would be if based on the SSC's ABC recommendation ($F_{Rebuild}$

yield stream) of 1.17 million lb (0.53 million kg). Based on the SSC's recommendation, selecting this alternative would have a less than 50 percent chance of overfishing by the commercial sector and would provide a greater than 50 percent chance of rebuilding the stock if this yield stream is adhered to in future actions. However, recent discrepancies with the estimation of dead discards could affect how the assessment projects the status of the stock. If these discrepancies show a more pessimistic condition of the stock when the assessment is rerun, then selecting this alternative could result in harvest levels inconsistent with rebuilding the stock within the time frames outlined in the Magnuson-Stevens Act. Should these discrepancies result in a more optimistic condition of the stock, then the commercial quota for gag could be increased in subsequent actions.

The third alternative is the most conservative and would set the commercial quota for gag equal to zero. Under this alternative, any addition to the quota would be initiated through Amendment 32 or some other rulemaking vehicle. Closure of the commercial sector to gag would benefit the stock by ending overfishing as well as halt gag fishing during the primary gag spawning season. However, this alternative would not allow gag allocation holders to land gag that might be caught incidentally when fishing for other species. Instead, these fish would have to be released. Because the commercial sector generally operates in relatively deep waters, a large proportion of these fish would likely die from barotrauma (injuries sustained in response to the sudden pressure change when brought to the surface from depth) and from handling onboard the vessel. Release mortality has been estimated to be 67 percent on average for commercial discards. This high rate of discard mortality would contribute to overall mortality, thereby slowing recovery of the stock and thus is contrary to the Council's objectives.

Two alternatives, including the status quo, were considered for the action to suspend the ability of allocation holders to convert red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. The first alternative, the status quo, would continue to allow 4 percent of the red grouper allocation to be converted into multi-use allocation. This alternative is expected to result in gag harvests that would exceed specified annual catch limits, promote overfishing, and therefore slow recovery of the stock, contrary to the Council's objectives. Further, this alternative is also expected to result in greater adverse economic effects stemming from the corrective measures that would be implemented to address the over-harvesting of gag.

The second alternative would allow a smaller percentage (1.6 percent) of red grouper allocation to be converted into multi-use allocation based on the buffer existing between the commercial annual catch limit (ACL) and quota for gag. This alternative is consistent with a gag commercial ACL of 1.76 million lb (0.8 million kg) and a 1.49 million lb (0.68 million kg) commercial quota for gag. Since this final rule will establish the commercial quota for gag at only 100,000 lb (45,359 kg), the percentage of red grouper allocation that could be converted to multi-use allocation is too high under this alternative as it is expected to result in gag harvests that would exceed specified ACLs, promote overfishing, and therefore slow recovery of the stock, contrary to the Council's objectives.

Two alternatives, including the status quo, were considered for the action to set the recreational bag limit at zero. The first alternative, the status quo, would maintain the recreational catch target at 2.20 million lb (1 million kg) as defined in Amendment 30B and thus maintain the current recreational bag limit of two gag within the four fish aggregate grouper bag limit. Selection of this alternative would be inconsistent with current National Standard 1 guidance because this level of harvest would be above the ABC recommended by the Council's SSC of 1.17 million lb (0.53 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero on the date when 620,000 lb (0.28 million kg) of gag is projected to be landed by the recreational sector in 2011. This harvest level is consistent with the fishing mortality rate associated with the optimum yield (OY) used by the Council in Amendment 30B to set the recreational annual catch target. Under certain assumptions regarding the disposition of discards, this alternative is expected to result in a fishing season of 83 days. Given the closure of the SWG recreational sector annually from February 1 to March 31, fishing would be allowed for the month of January and from April 1 to May 22. However, this fishing season is dependent on achieving the same percentage reduction in dead discards as obtained from the harvest. If these levels of reduction are not met, then harvesting this amount of fish could exceed the reductions needed for the stock to recover under the rebuilding plan being developed in Amendment 32 which, in turn, could require deeper cuts in future harvests than those projected by the current assessment update.

Although, as specified by the Magnuson-Stevens Act, the actions in this final temporary rule do not need to end overfishing, they do need to reduce overfishing. This alternative could limit the types of long-term measures developed by the Council in Amendment 32 that could be applied to the 2011 fishing year since the 620,000 lb (0.28 million kg) catch target would likely be achieved before rulemaking from Amendment 32 is implemented. Therefore, the harvest for the rest of the fishing year could be zero and any long-term measures developed in Amendment 32 would not apply until 2012.

Further, recent discrepancies with the estimation of dead discards could affect how the assessment projects the status of the stock. If these discrepancies show a more pessimistic condition of the stock when the assessment is redone, then selecting this alternative could result in harvest levels inconsistent with rebuilding the stock within the time frames outlined in the Magnuson-Stevens Act. This potential outcome is particularly important for the recreational sector which harvests a greater proportion of the gag total catch than the commercial sector. Conversely, should these discrepancies result in a more optimistic condition of the stock, the recreational catch target and bag limit could be increased in subsequent actions.

This final temporary rule does not establish any new reporting, recordkeeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

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

Dated: November 24, 2010.

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) *Closure of the recreational sector for gag.* The recreational sector for gag in the Gulf EEZ is closed. During the closure, all recreational harvest and possession of gag grouper in or from the Gulf EEZ is prohibited. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

■ 4. In § 622.39, paragraph (b)(1)(ii) is suspended, and paragraph (b)(1)(viii) is added, to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(viii) Groupers, combined, excluding goliath grouper, Nassau grouper, and gag—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

* * * * *

■ 5. 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—4.83 million lb (2.19 million kg).

(B) * * *

(*4*) For fishing year 2011 and subsequent fishing years—100,000 lb (45,359 kg).

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[FR Doc. 2010–30167 Filed 11–30–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100803319–0565–02]

RIN 0648–BA04

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

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement actions identified in a regulatory amendment 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). This final rule reduces the commercial quota for red grouper and, thus, the combined commercial quota for shallow water grouper (SWG) species, and requires vessels with valid commercial Gulf of Mexico (Gulf) reef fish permits to mark their buoy gear with the official vessel number. This rule also implements minor revisions to codified text, including a revised definition of buoy gear, re-codification of the commercial and recreational quotas for greater amberjack, revision of the recreational accountability measure for greater amberjack, and removal of outdated language for the red snapper individual fishing quota (IFQ) program. The intended effect of this final rule is to help prevent overfishing of red grouper while achieving optimum yield (OY) by reducing red grouper harvest, consistent with the findings of the recent stock assessment for this species, and to implement technical corrections to the regulations.

DATES: This rule is effective January 1, 2011, except for the amendment to § 622.42(a)(1)(iii)(A), which will be effective upon further notification in the **Federal Register.**

ADDRESSES: Copies of the regulatory amendment, which includes an environmental assessment and regulatory impact review, may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1171; e-mail *gulfcouncil@gulfcouncil.org;* or may be downloaded from the Council's Web site at *http://www.gulfcouncil.org/.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS by e-mail, *rich.malinowski@noaa.gov,* or the Office of Management and Budget (OMB), by e-mail to *OIRA Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Hood, 727–824–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 18, 2010, NMFS published a proposed rule for the red grouper regulatory amendment and requested public comment (75 FR 63780). The proposed rule and the regulatory amendment outline the rationale for the measures contained in this final rule. A summary of the provisions implemented by this final rule is provided below.

This final rule will reduce the red grouper commercial quota from 5.75 million lb (2.53 million kg) to 4.32 million lb (1.96 million kg), and thus the combined SWG commercial quota from 7.65 million lb (3.47 million kg), as specified in § 622.42(a)(1)(iii)(A) for 2011 and subsequent fishing years, to 6.22 million lb (2.82 million kg) for 2011 and subsequent fishing years, and require vessels with valid commercial Gulf reef fish permits to mark their buoy gear with the official vessel number. This final rule will also make minor revisions to the codified text, including a revised definition of buoy gear, re-codification of the commercial and recreational quotas for greater amberjack, revision of the recreational accountability measure for greater amberjack, and removal of outdated language for the red snapper IFQ program. The purpose of this final rule is to help prevent overfishing of red grouper while achieving OY by reducing red grouper harvest consistent with the findings of the recent stock assessment for this species.

Effective Dates

This rule is effective January 1, 2011, except for the commercial SWG quota contained in this final rule. NMFS is delaying, until a future notification in the **Federal Register,** the commercial quota for SWG species specified in