

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34) (g), of the Instruction. This rule involves the establishment of a safety zone around a pyrotechnics display barge. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary zone § 165.T11–175 to read as follows:

#### § 165.T11–175 Safety zone; Sea World Spring Nights; Mission Bay, San Diego, California.

(a) *Location.* The limits of the safety zone will include a 600 foot radius

around the barge in approximate position 32°46'03"N, 117°13'11"W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 9:30 p.m. on April 4, 2009 through April 19, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: April 2, 2009.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 070719384–9260–05]

RIN 0648–AV80

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 30B

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 30B 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 establishes annual catch limits (ACLs) and accountability measures (AMs) for commercial and recreational gag, red grouper, and shallow-water grouper (SWG); establishes a commercial quota for gag; adjusts the commercial quotas for red grouper and SWG; removes the commercial closed season for SWG; establishes an incidental bycatch allowance trip limit for commercial gag and red grouper; reduces the commercial minimum size limit for red grouper; reduces the gag bag limit and the aggregate grouper bag limit; increases the red grouper bag limit; extends the closed season for recreational SWG; eliminates the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and requires that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters. In addition, Amendment 30B establishes management targets and thresholds for gag consistent with the requirements of the Sustainable Fisheries Act (SFA); sets the gag and red grouper total allowable catch (TAC); and establishes interim allocations for the commercial and recreational gag and red grouper fisheries. This final rule is intended to end overfishing of gag and maintain catch levels of red grouper consistent with achieving optimum yield.

**DATES:** This rule is effective May 18, 2009.

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

**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 28, 2008, NMFS published a notice of availability of Amendment 30B and requested public comments (73 FR 63932). On November

18, 2008, NMFS published the proposed rule to implement Amendment 30B and requested public comments (73 FR 68390). NMFS approved Amendment 30B on January 23, 2009. The rationale for the measures contained in Amendment 30B is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

#### Comments and Responses

NMFS received 30 public comments on Amendment 30B and the proposed rule, including 27 comments from individuals, 2 from government agencies, and 1 from a non-governmental entity. The following is a summary of the comments and NMFS' respective responses.

*Comment 1:* The science used to assess gag and red grouper stocks is questionable. Specifically, the process is not transparent, large swings in biomass are not plausible for long-lived species such as groupers, and there is no link between inshore nursery grounds for gag and offshore spawning of gag.

*Response:* Stock assessments are currently conducted under the Southeast Data, Assessment, and Review (SEDAR) process. This process 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. The intent of the SEDAR process is to improve the scientific quality of stock assessments, and places greater relevance on historical and current information 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. Each SEDAR assessment is organized into three workshops. 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 review workshop is conducted by a panel of independent experts who review the data and the assessment and recommend the most appropriate management measures for the assessed stocks. Both gag and red grouper assessments were conducted using this process. All workshops and Council meetings held to review these assessments were open to the public and included industry participants, non-governmental organizations, scientists and other constituents on the various SEDAR panels.

In exploited long-lived populations, such as groupers, recruits from strong year classes supplement the adult spawning biomass until the strong year classes have been reduced through fishing pressure and natural mortality. This can cause fluctuations in the spawning stock if subsequent year classes are not as strong. For gag and red grouper, year class trends have been readily documented through a continuous series of age structure sampling. These data indicate strong recruitment years for gag in 1985, 1989, 1993, 1996, 1999, and possibly 2000. Strong year classes for red grouper occurred in 1991, 1996, and 1999. As an example of how these strong year classes can affect fisheries, the last stock assessment for red grouper showed the red grouper component of the Gulf reef fish fishery has been supported by the 1999 year-class. Red grouper abundance peaked in 2004, as the 1999 year-class fully recruited to the fishery. Since then, updated red grouper abundance indices have shown a declining trend, suggesting red grouper stock biomass may be declining.

Linkages between inshore juvenile and offshore adult populations of gag have been well documented. The linkages have been shown through tagging studies, correlations between year-class population strength, and otolith microchemistry. These studies all demonstrate a movement from inshore nursery areas such as seagrass beds to adult spawning and foraging habitats in offshore waters.

*Comment 2:* The total allowable catch (TAC) proposed for red grouper should be maintained at the current 6.56 million lb (2.97 million kg).

*Response:* Projections from the most recent stock assessment indicate red grouper stock biomass will continue to increase with a 7.57 million lb (3.43 million kg) TAC, although more slowly than if the 6.56 million-lb (2.97 million-kg) TAC was selected. The 7.57 million-lb (3.43 million-kg) TAC represents a harvest at equilibrium optimum yield (OY). This alternative, consistent with national standard 1 of the Magnuson-Stevens Act, also accomplishes the Council's intent to manage all reef fish species at OY levels once a stock is rebuilt. After completion of the next red grouper stock assessment, red grouper TAC would be set equal to equilibrium OY, or to the yield at FOY (fishing mortality at OY), whichever is less.

As noted in the previous response, the red grouper component of the Gulf reef fish fishery is supported by a strong 1999 year-class. In part, this strong recruitment affects the assessment projections, which indicate an increase

in TAC allows the fishery to achieve OY, and these projections were certified as best available science by the NMFS Southeast Fishery Science Center (SEFSC). However, if the population is declining, as updated indices of abundance suggest (see previous response), then the assessment projections may be overly optimistic. However, the final rule sets ACLs and AMs for red grouper, which will minimize the chance of overfishing.

*Comment 3:* Red grouper allocation should be shifted in favor of the recreational sector of the fishery because it has greater economic value.

*Response:* NMFS and the Council recognize that determining allocations between the fishing sectors is a complex endeavor. Therefore, the Council established an Ad Hoc Allocation Committee (Committee) composed of Council members to examine fair and equitable ways to allocate Gulf resources between these sectors. The interim allocations contained in Amendment 30B will be in place until NMFS, through the recommendations of the Committee, can implement a separate amendment to allocate grouper resources between recreational and commercial sectors.

*Comment 4:* Commercial grouper quotas fail to ensure other SWG species will be protected from over harvest. To be risk averse, a more conservative quota should be implemented.

*Response:* The commercial SWG quotas contained in this final rule adjust the commercial red grouper quota, set a new commercial gag quota, and set an allowance for other SWGs (including black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper). The other SWG allowance of 0.41 million lb (0.19 million kg) contained in this rule uses the baseline years 2001–2004, which is the original baseline used in the gag stock assessment. Based on landings in recent years and regulatory changes with this final rule, NMFS anticipates the gag or red grouper quota will be met and the SWG component of the fishery closed prior to the other SWG allowance being met.

*Comment 5:* Longline gear should not be allowed in the commercial reef fish fishery, or at least should be further restricted, either by restricting longlining to deeper depths or by restricting the use of bycatch as bait.

*Response:* The intent of this final rule is to end overfishing of gag, revise red grouper management measures as a result of changes in the stock condition, establish ACLs and AMs for gag and red grouper, co-manage SWGs, and improve the effectiveness of Federal management

measures. Additional measures intended to constrain commercial harvest, including the restriction or elimination of certain gear types, may be considered in future actions. With regard to using bycatch as bait, current regulations prohibit the use of reef fish as bait with the exception of dwarf sand perch and sand perch.

*Comment 6:* Different size limits, bag limits, and seasonal closures should be implemented in the recreational sector of the fishery. A higher bag limit is favored at the cost of an increased size limit, along with a longer seasonal closure, to achieve the required reductions in harvest.

*Response:* NMFS agrees that there are numerous additional management options available to effectively manage the grouper resources of the Gulf of Mexico. However, NMFS cannot substitute or add to the measures proposed by the Council. The selected combination of harvesting restrictions for the recreational sector of the fishery is intended to provide fishing opportunities while minimizing the economic impacts of the fishery closure. The Council can always reconsider its management strategy, and NMFS encourages the public to be actively involved in the Council process and provide suggestions to the Council for their deliberation.

*Comment 7:* The recreational and commercial closed seasons and size limits should be the same.

*Response:* Although both the commercial and recreational seasonal closures were implemented to protect grouper, particularly gag, the rationale for continuing the closures and the effectiveness of these closures are different. The existing February 15 to March 15 commercial closed season for gag, black grouper, and red grouper was implemented in 2001 to protect spawning aggregations of gag during a portion of their peak spawning season, and to reduce fishing mortality of gag and red grouper. It was projected that the closed season would reduce commercial gag/black grouper harvest by 10 percent and red grouper harvest by 8 percent. However, a comparison of 1999–2000 data (when there was no closed season) with 2001 data (closed season in effect) showed the February through March contribution to the annual gag/black grouper and red grouper harvest reductions was only 2 percent when the closed season was in effect. This was likely a result of effort shifting to the weeks that were open at the beginning of February and the end of March. The recreational grouper closure from February 15 to March 15 was developed to reduce red grouper

fishing mortality and prevent or minimize bycatch of gag and black grouper. The closure presently occurs simultaneously with the commercial grouper closure and includes important spawning seasons for gag, red grouper, and black grouper. The closure is estimated to reduce gag harvest by approximately 7.8 percent unless there is effort shifting to the open season by trips that would have occurred during the closed season. To achieve greater reductions in SWG fishing effort while allowing for an increase in the red grouper bag limit, the final rule extends the closed season from February 1 through March 31. In extending this closure, several factors were considered, such as required reductions in gag harvest levels, associated socio-economic effects on the recreational sector, possible increases in red grouper harvests, expected recreational season length, and the length and timing of the recreational SWG closure. The extended closure, in conjunction with other management measures, will reduce recreational gag landings by 26 percent, and increase red grouper landings by 17 percent, while yielding a 306-day recreational season.

*Comment 8:* Closing the recreational grouper component of the Gulf reef fish fishery from February 1 through March 31 will cause significant economic harm to southwestern Florida for-hire fisheries. The recreational grouper closure period should be changed to April 1 through June 30 to protect spawning black grouper.

*Response:* Several alternative SWG closed seasons were considered during the spring, summer, and fall, in conjunction with a 2-fish gag bag limit, 2-fish red grouper bag limit, and a 4-fish grouper aggregate bag limit. Each closure associated with the bag limits would achieve the needed reductions in gag harvest while allowing the harvest of red grouper to increase. The combination of a closed season with bag limits also reduces the adverse economic effects on the fishery, more so than if either a closed season or bag limit was used to control harvest exclusively. The spring seasonal closure was selected because it provided biological protections to SWG stocks while minimizing the time needed for the closure to be effective. This time period includes important spawning seasons for both gag and red grouper, as well as other SWGs such as scamp and black grouper. Prohibiting fishing during the spawning season will allow more fish to successfully spawn and reproduce before being harvested. Because landings of red grouper are highest during the summer in both the

Florida Panhandle and along the West Florida Peninsula, more anglers would be affected by a summer closure than a closure during other times of the year. Fall and winter closures would need to be longer to be effective.

With respect to black grouper, the best available science indicates this species is a winter and spring spawner. Therefore, a closure of February 1 through March 31 provides more protection of spawning black grouper than an April 1 through June 30 season.

*Comment 9:* Bycatch is too high with current size and bag limits. New methods should be put into place to minimize bycatch.

*Response:* Bycatch and bycatch mortality can negatively affect a stock by reducing the number of fish that survive to harvestable sizes. Fishery management regulations are intended to constrain effort and control fishing mortality, but in some cases increase bycatch or bycatch mortality. When proposing fishing regulations, managers must balance the competing objectives of maximizing yield, ending overfishing, and reducing bycatch to the extent practicable. Currently, for red grouper, dead discards account for 12 percent of the commercial sector's biomass removals and up to 14 percent of the recreational sector's removals. In the gag component of the fishery, dead discards account for an even greater percentage of the total biomass removed, including 10 percent for the commercial sector and as much as 23 percent for the recreational sector, and the proportion of dead discards to landings has increased greatly in recent years.

Measures to reduce bycatch were evaluated in a bycatch practicability analysis for Amendment 30B. This analysis concluded reducing the red grouper minimum size limit, especially in the commercial longline component of the fishery, is a practical option for reducing discards as long as landings are constrained by a quota or other management measures. For gag, lowering the minimum size limit in the recreational sector of the fishery would reduce bycatch, but this decrease would increase angler catch rates and require a longer closed season. The longer closed season would partially offset benefits resulting from the lower minimum size limit.

*Comment 10:* The Federal consistency requirement for federally permitted vessels should not apply to species other than SWG species. This regulation preempts and interferes with a state's regulatory authority to manage its waters, discriminates against charter fishermen with Federal permits, and is unnecessary if more resources could be

dedicated to enforce permit requirements for those fishing in Federal waters.

*Response:* Federal regulations assume that Gulf States will implement compatible Federal regulations. If states do not comply, then projected reductions in harvest and fishing mortality may not occur, compromising NMFS' ability to end overfishing and rebuild overfished stocks, which is required by the Magnuson-Stevens Act. Additionally, inconsistent regulations in state waters complicate law enforcement and may provide fishermen an incentive to harvest greater amounts of fish, regardless of where the fish are caught, which could result in harvest overages. If such overages were not prevented, more stringent Federal regulations would result in much larger adverse economic effects on federally permitted for-hire vessels, whether or not they also fish in state waters.

Measures developed under an FMP amendment may apply to all species listed in the fishery management unit for that FMP as allowed by the Magnuson-Stevens Act. For example, a recent regulation intended to end red snapper overfishing and rebuild the red snapper stock also contained a gear requirement that applied to all reef fish fishing in Federal waters.

There are several examples of regulations that apply to federally permitted reef fish vessels regardless of whether they fish in state or Federal waters. These include: Requiring a red snapper IFQ endorsement for a federally permitted commercial reef fish vessel to have red snapper onboard, regardless of where the fish were caught; prohibition of gag, red grouper, black grouper, and greater amberjack on board federally permitted commercial reef fish vessels during these species' respective closed seasons, regardless of where caught; and the requirement of an operating vessel monitoring system onboard federally permitted commercial reef fish vessels at all times.

This measure may give rise to certain complications regarding the ability of some vessels to compete with other vessels when fishing in state waters if state and Federal regulations are not compatible. Federally permitted vessels would likely have a competitive advantage over vessels with state permits because they can fish in both Federal and state waters. Conversely, operators of permitted for-hire vessels may be disadvantaged against private vessels and non-federally permitted for-hire vessels when fishing for grouper species in state waters. This measure does not preclude the operator from fishing in state waters under state

regulations if different from Federal regulations. To do so, the vessel owner would have the choice of no longer maintaining his or her permit. Under these scenarios, the vessel owner would no longer have a Federal permit, and he or she could abide by state regulations in state waters. However, the vessel owner also would not be able to conduct activities in Federal waters allowed by his or her Federal reef fish permit.

When there are less restrictive regulations in state waters, the effectiveness of the Federal regulations is diminished and the ability to enforce regulations is more difficult. The purpose of this measure is to improve compliance with Federal management regulations for federally permitted commercial and for-hire reef fish vessels, particularly for stocks that are undergoing overfishing or are being rebuilt. When regulations differ between jurisdictions, it is more difficult to coordinate enforcement activities. Regulations are enforced through actions of NMFS Office for Law Enforcement, the United States Coast Guard, and various state authorities. To maximize the use of assets to enforce state and Federal management measures Federal and state enforcement agencies have developed cooperative agreements to enforce the Magnuson-Stevens Act.

#### **Changes from the Proposed Rule**

This final rule does not include the measures to implement a new seasonal/area closure called the Edges, as contained in the proposed rule published on November 18, 2008 (73 FR 68390). The proposed rule inadvertently included a provision regarding the Edges seasonal/area closure that was not contained in Amendment 30B. The Edges seasonal/area closure will be implemented through separate additional rulemaking.

#### **Classification**

The Administrator, Southeast Region, NMFS, determined that Amendment 30B is necessary for the conservation and management of gag and red grouper in the Gulf of Mexico and that it is consistent with the Magnuson-Stevens Act, and other applicable laws.

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

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on October 24, 2008 (73 FR 63470).

An FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis, 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.

Several comments opposed requiring vessels with Federal permits to follow the more restrictive of Federal or state regulations when fishing in state waters. The comments stated that this regulation would discriminate against federally permitted for-hire vessels and would place these vessels at a competitive disadvantage against vessels that possessed only state permits. While this rule would require adherence to the more restrictive measures by federally permitted vessels, this measure is expected to help prevent harvest overages, particularly for species that are overfished or undergoing overfishing. If such overages were not prevented, more stringent Federal regulations would subsequently be required, resulting in much larger adverse economic effects for all federally permitted for-hire vessels, regardless of where they fish. It should also be noted that, even under the final rule, federally permitted vessels may be able to maintain a competitive advantage over vessels that only possess state permits because of the flexibility to fish in both Federal and state waters.

Several comments opposed the February 1 through March 31 closure of the recreational grouper component of the Gulf reef fish fishery closure because it would cause significant economic harm to southwestern Florida for-hire fisheries. The commenters proposed other closure periods would be more appropriate. Different combinations of bag limits and seasonal closures were considered to control the recreational harvests to the target levels because bag limits alone or seasonal closures alone were projected to either fail to achieve the target recreational harvests or result in larger adverse economic effects than the measures contained in the final rule. NMFS concurs with the Council's choice of bag limits and the February 1 through March 31 seasonal closure as the appropriate combination of measures to achieve the target recreational harvest while limiting the adverse economic effects.

One comment indicated the red grouper allocation should be shifted in favor of the recreational sector of the fishery because that sector has greater economic value. An allocation change can benefit one sector, however, it is generally at the expense of the other sector. The underlying economic principle when changing allocations is not whether one sector has greater economic value than the other sector,

but whether the increase in value to one sector as a result of a re-allocation is sufficient to compensate for the reduction in value to the other sector. An analysis of this type requires determining the value for red grouper to both the commercial and recreational sectors. The SEFSC has begun conducting this type of study for red grouper and other species. However, this work has not been completed. When the final results of this work are available, the information will be provided to the Council for consideration in addressing allocation issues for red grouper and other Gulf species.

No changes in the final rule were made in response to public comments on the proposed rule.

The final rule is expected to directly affect vessels that operate in the Gulf of Mexico commercial reef fish fishery and for-hire reef fish fisheries. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. 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 affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is \$7 million (NAICS code 713990, recreational industries).

A Federal commercial reef fish permit is required to operate in the Gulf of Mexico commercial reef fish fishery, and a moratorium on the issuance of new permits has been in effect since 1992. A total of 1,209 vessels with commercial reef fish permits is estimated to comprise the universe of commercial harvest operations in the fishery. For the period 2001–2006, an average of 631 vessels harvested varying amounts of gag, 732 vessels harvested varying amounts of red grouper, and 888 vessels harvested varying amounts of SWG. These numbers are not additive because some of these vessels harvested a combination of grouper species. The SWG complex includes red grouper and gag, therefore there is substantial overlap in harvest of grouper species among these vessels.

The annual average gross revenue and net income per vessel for vessels in the SWG fishery is unknown. For all vessels in the commercial reef fish fishery, the average annual gross revenue, respectively, for vertical line vessels is estimated to range from approximately

\$24,100 (2005 dollars; \$6,800 net income) to \$110,100 (\$28,500 net income), while the values for bottom longline vessels are approximately \$87,600 (2005 dollars; \$15,000 net income) to \$117,000 (\$25,500 net income). Some fleet behavior is known to exist in the commercial reef fish fishery, but the extent of such is unknown, though the maximum number of permits reported to be owned by the same entity is six. Additional permits in this and other fisheries (and associated revenues) may be linked through affiliation rules but these links cannot be made using existing data. Nevertheless, based on the average annual gross revenue information for all commercial reef fish vessels, NMFS determines, for the purpose of this analysis, that all commercial reef fish entities potentially affected by this final rule are small business entities.

An estimated 1,692 vessels are permitted to operate in the Gulf of Mexico reef fish for-hire fishery. It is unknown how many of these vessels operate as headboats or charterboats, a distinction which is based on pricing behavior, and individual vessels may operate as both types of operations at different times. However, 76 vessels participate in the Federal headboat logbook program. Several entities own multiple for-hire permits, and at least one entity is believed to own as many as 12 permits.

The average charterboat is estimated to generate approximately \$77,000 (2005 dollars) in annual revenues, while the comparable figure for an average headboat is approximately \$404,000 (2005 dollars). Based on the average annual gross revenue information for these vessels, NMFS determines, for the purpose of this analysis, that all for-hire entities potentially affected by this final rule are small business entities.

Relative to the baseline consisting of all no action alternatives, the final action would reduce the net operating revenues of commercial vessels by \$5.3 million (in 2005 dollars) over the period 2008–2013. It would be equivalent to an annual loss of \$0.88 million. If this loss were equally shared by all 888 vessels landing any species of SWG, the loss per vessel would be \$991 annually. Of the 888 vessels landing any grouper species during the period 2001–2006, 114 vessels landed less than 100 lb (45.4 kg), 232 vessels landed between 100 and 1,000 lb (454 kg), 229 vessels landed between 1,000 lb and 5,000 lb (2,270 kg), 271 vessels landed between 5,000 lb and 50,000 lb (22,700 kg), and 42 vessels landed more than 50,000 lb. Although the estimated reduction in net operating income could be

accommodated by the 42 highest and even 271 next highest volume vessels, it could be quite burdensome to others, particularly the 114 lowest volume vessels.

Although for-hire vessels do not derive revenues from grouper sales, most vessels target these species at some time during the year. Assuming angler demand declines in response to the restrictions for these species, revenue and profit reductions can be projected. As a result of the final action on grouper, the for-hire sector is projected to experience a loss in net income of approximately \$405,000 to \$794,000 per year. If these losses were distributed equally across all the 1,692 for-hire vessels in the fishery, the resulting loss per vessel would be between \$239 and \$469 per vessel. Some for-hire vessels, such as those in Florida, are likely more dependent on grouper than other vessels due to where they fish and client preferences and thus may be more severely affected by the final action.

Three alternatives, including no action, were considered for the action in Amendment 30 to set thresholds and benchmarks for gag. The first alternative (no action) to the final action would not comply with the Sustainable Fisheries Act requirement to establish more scientifically-based thresholds and benchmarks. The other alternative to the final action would provide a less conservative proxy for maximum sustainable yield (MSY), and would likely result in catch levels in excess of the true MSY. Each of the alternatives, including the final action, would not have direct impacts on small entities, but would serve as a platform for the development of specific management measures.

Five alternatives, including no action, were considered for the action in Amendment 30 to set gag TACs. The first alternative (no action) to the final action would not provide for a gag TAC, and thus would allow continued overfishing of the stock. The second alternative to the final action uses a stepped approach to managing TAC levels by setting TAC at 3-year intervals. This alternative, however, is likely to result in management measures that could create overages in years 2 and 3 of the interval. It could thus trigger AMs that would have potentially larger adverse impacts on small entities. The third alternative to the final action is similar to the final action, but it would set fishing mortality rate right at the threshold. This is more likely to generate overfishing situations that would only require more stringent regulations. The fourth alternative to the final action is similar to the second

alternative and thus would be saddled with similar problems. In addition, it is also susceptible to providing management measures that would result in overages in years 2 and 3 of each interval, setting the stage for application of AMs.

Three alternatives, including no action, were considered for the action in Amendment 30 to set a red grouper TAC. The first alternative (no action) to the final action would retain the red grouper TAC at 6.56 million lb (2.98 million kg). The final red grouper TAC of 7.57 million lb (3.43 million kg) would provide more benefits to small entities than the no action alternative. The second alternative to the final action would set a higher TAC of 7.72 million lb (3.50 million kg) corresponding to fishing at equilibrium FMSY (the fishing mortality rate that produces MSY) as opposed to equilibrium FOY (the fishing mortality that produces OY) in the final action. Although this higher TAC would be more beneficial to small entities, it is right at the threshold when AMs would set in. This higher TAC, then, would place at higher probability the imposition of stringent management measures that would essentially undo the initial benefits received by small entities.

Three alternatives, including no action, were considered for the action to set gag and red grouper allocations. The first alternative (no action) to the final action would revert the recreational:commercial allocation to that of Amendment 1 65:35 for gag and 23:77 for red grouper. The second alternative to the final action would set the recreational:commercial allocation at 59:41 for gag and 24:76 for red grouper. It should be noted that under the final action, the recreational:commercial allocation would be 61:39 for gag and 24:76 for red grouper. The general nature of any allocation is that it would favor one group of small entities at the expense of another group of small entities. The Council's choice for the final action considered the longest and most robust time series of data compared to the other alternatives.

Five alternatives, including no action, were considered to set SWG ACLs and AMs. The first alternative (no action) to the final action would not provide for ACLs and AMs. By not specifying AMs, harvests could likely exceed target catch levels and would thereby reduce the likelihood overfishing would be ended or prevented. The second alternative to the final action would have identical target catches as the final action but would set the ACLs lower than those of

the final action. It would then likely result in potentially more adverse impacts on small entities. The third alternative to the final action would set the same commercial target catches as, but some higher ACLs than, the final action. This alternative would set higher recreational target catches and ACLs for gag than the final action, but would set the same target catches and ACLs for red grouper. On average, this alternative would result in lower adverse impacts on small entities than the final action. The fourth alternative to the final action would set the same target catches as, but lower ACLs than, the final action. It may then be expected to result in higher adverse impacts on small entities than the final action.

Four alternatives, including no action, were considered for the action to set gag, red grouper, and SWG quotas. The first alternative (no action) to the final action would maintain the red grouper and SWG quotas. Although this alternative would potentially allow the largest SWG quota, it would not provide specific protection to gag so that overfishing of this stock would continue. In addition, it would not provide flexibility to increase the red grouper quota due to stock improvements. The second alternative to the final action would be similar to the final action, except that the final action would provide for a higher quota for other SWG. Hence, small entities would operate in a better economic environment under the final action.

Four alternatives, including no action, were considered for the action on commercial quota closures. The first alternative (no action) to the final action would maintain the red grouper or SWG quota, whichever comes first, as a trigger to close the SWG fishery. Given all preferred alternatives for all other actions, this alternative would provide the largest benefits to small entities. However, it would not provide sufficient protection to gag so that overfishing of the stock could continue. The second alternative to the final action would add the gag quota as a closure trigger. With the gag quota most likely to be met first, the entire SWG fishery would close early in the year. This alternative would yield the largest negative effects on small entities. The third alternative to the final action is similar to the second, except that it would impose gag trip limits at the start of the fishing year. This alternative would allow the SWG fishery to remain open much longer than the second alternative so that it would result in less adverse impact on small entities. The third alternative differs from the final action, which would impose the

incidental harvest trip limit only when 80 percent of the gag or red grouper quota is reached. Due to the generally longer closure under the final action, the third alternative would turn out to result in less adverse economic impact on small entities. The third alternative, however, would impose more adverse effects on the gag component of the fishery so that in general it would adversely affect hook-and-line vessel trips more than longline trips. The opposite would generally occur under the final action.

Seven alternatives, including no action, were considered for the action on measures to control the recreational harvests of gag and red grouper. The first alternative (no action) to the final action would maintain current recreational regulations so that it would likely allow overfishing of gag to continue. All other alternatives to the final action would eliminate the recreational red grouper bag limit, establish a gag grouper bag limit (except one alternative), establish a recreational closure, and reduce the aggregate grouper bag limit to 3 fish. These other alternatives would reduce gag harvest by a greater amount than the final action and either increase red grouper harvest (three alternatives) or reduce red grouper harvest (two alternatives), relative to the final action. These alternatives would be expected to, therefore, result in greater adverse economic impacts than the final action.

Three alternatives, including no action, were considered for the action on reducing the discard mortality of groupers. The first alternative (no action) to the final action would not require any new equipment or implement new measures to reduce bycatch, and would retain the size limit for grouper species subject to size limits. This would not address the bycatch problem in the grouper component of the fishery. The second alternative would require pamphlets or placards providing instructions on venting, proper handling, and release methods. The presence of these pamphlets or placards on board would provide convenient resource materials for reducing bycatch mortality, but the extent of their effects cannot be determined. The final action, on the other hand, would reduce the size limit for red grouper, reduce bycatch mortality, and contribute to further stock rebuilding and thus may be expected to result in positive effects on small entities.

Four alternatives were considered for the action pertaining to the duration of time/area closures and marine reserves. As noted in the Changes from the

Proposed Rule section of this rule, the Edges seasonal-area closure is not included in this final rule and will be implemented via separate rulemaking. Three of these alternatives, including no action, were specific to time/area closures. The fourth alternative, with three sub-options inclusive of no action, directly addressed the two existing marine reserves. With respect to time/area closures, two alternatives to the final action would set specific expiration dates. These alternatives would have about similar effects as the final action, particularly considering the ability and history of the Council in changing time/area closure regulations. With respect to the duration of the two existing marine reserves, two alternatives to the final action would allow the reserves to expire within a certain number of years. These two alternatives would provide relatively inadequate time for full evaluation of the effectiveness of the existing marine reserves, as compared to the final action.

Two alternatives, including no action, were considered for the action on Federal regulatory compliance. The first alternative (no action) to the final action would retain any existing inconsistencies between state and Federal regulations in state waters for operators of vessels with Federal reef fish permits. This would be particularly problematic for species considered overfished or undergoing overfishing, that have relatively substantial presence in state waters. Although in this case, the no action alternative would provide better economic prospects for small entities in the short run, the long-run sustainability of the fishery and economic benefits derivable from the fishery would be jeopardized.

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

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

Dated: April 13, 2009.

**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.*

■ 2. In § 622.2, the definitions of “Deep-water grouper (DWG)” and “Shallow-water grouper (SWG)” are added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Deep-water grouper (DWG)* means yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind. After the shallow-water grouper (SWG) commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is also considered a DWG for purposes of the commercial fishery.

\* \* \* \* \*

*Shallow-water grouper (SWG)* means gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. However, after the SWG commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is considered a DWG for the commercial fishery only.

■ 3. In § 622.4, the suspension of paragraph (a)(2)(v) is lifted; paragraph (a)(2)(xiv) is removed, and paragraphs (a)(1)(iv) and (a)(2)(v) are revised to read as follows:

**§ 622.4 Permits and fees.**

(a) \* \* \*

(1) \* \* \*

(iv) If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

(2) \* \* \*

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant’s earned

income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

\* \* \* \* \*

■ 4. In § 622.34, paragraph (k)(1)(iii) is removed and reserved; paragraph (o) is removed and reserved; the suspension of paragraph (u) is lifted; paragraphs (v) and (w) are removed; and paragraph (u) is revised to read as follows:

\* \* \* \* \*

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

\* \* \* \* \*

(u) *Seasonal closure of the recreational fishery for shallow-water grouper (SWG).* The recreational fishery for SWG, in or from the Gulf EEZ, is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ is zero.

■ 5. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iv) is added to read as follows:

**§ 622.37 Size limits.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Yellowfin grouper—20 inches (50.8 cm), TL.

\* \* \* \* \*

(iv) Red grouper—(A) For a person not subject to the bag limit specified in § 622.39 (b)(1)(ii)—18 inches (45.7 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—20 inches (50.8 cm), TL.

\* \* \* \* \*

■ 6. In § 622.39, the suspension of paragraphs (b)(1)(ii) and (v) is lifted; paragraphs (b)(1)(viii) and (b)(1)(ix) are removed, and the first sentence of paragraph (b)(1)(ii) is revised to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag or 2 red grouper per person per day. \* \* \*

\* \* \* \* \*

■ 7. In § 622.42, paragraph (a)(1)(vii) is removed, and paragraphs (a)(1)(ii) and (iii) are revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

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

(ii) Deep-water groupers (DWG) and, after the quota for SWG is reached, scamp, combined—1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (SWG), including scamp before the quota for SWG is reached, have a combined quota as specified in paragraph (a)(1)(iii)(A) of this section. Within the SWG quota there are separate quotas for gag and red grouper as specified in paragraphs (a)(1)(iii)(B) and (C) of this section, respectively. The quotas specified in paragraphs (a)(1)(iii)(A) through (C) of this section are all in gutted weight, that is eviscerated but otherwise whole.

(A) *SWG combined.* (1) For fishing year 2009—7.48 million lb (3.39 million kg).

(2) For fishing year 2010—7.57 million lb (3.43 million kg).

(3) For fishing year 2011 and subsequent fishing years—7.65 million lb (3.47 million kg).

(B) *Gag.* (1) For fishing year 2009—1.32 million lb (0.60 million kg).

(2) For fishing year 2010—1.41 million lb (0.64 million kg).

(3) For fishing year 2011 and subsequent fishing years—1.49 million lb (0.68 million kg).

(C) *Red grouper*—5.75 million lb (2.61 million kg).

\* \* \* \* \*

■ 8. In § 622.44, paragraph (g) is revised and paragraph (h) is added to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(g) *Gulf deep-water grouper (DWG) and shallow-water grouper (SWG), combined.* For vessels operating under the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for DWG and SWG combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero.

(h) *Gulf gag and red grouper.* For vessels operating under the quota specifications in § 622.42(a)(1)(iii)(B) or (a)(1)(iii)(C), once 80 percent of either the gag or red grouper quota is reached, or projected to be reached, and the quota for the applicable species is projected to be reached prior to the end

of the fishing year, the AA will file a notification with the Office of the Federal Register to implement a trip limit for the applicable species of 200 lb (90.7 kg), gutted weight. However, when the SWG, gag, or red grouper quota as specified in § 622.42(a)(1)(iii)(A), (B), or (C), respectively, is reached, or projected to be reached, the commercial trip limit for the species subject to the closure is zero.

■ 9. In § 622.49, paragraphs (a)(3) through (a)(5) are added to read as follows:

**§ 622.49 Accountability measures.**

(a) \* \* \*

(3) *Shallow-water grouper (SWG) combined.* (i) *Commercial fishery.* If either gag, red grouper, or SWG commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii), the AA will file a notification with the Office of the Federal Register to close the entire SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, SWG commercial landings exceed the applicable ACL as specified in this paragraph (a)(3)(i), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the SWG commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for SWG, in gutted weight, are 7.94 million lb (3.60 million kg) for 2009, 7.99 million lb (3.62 million kg) for 2010, and 8.04 million lb (3.65 million kg) for 2011 and subsequent fishing years.

(ii) [Reserved]

(4) *Gag.* (i) *Commercial fishery.* If gag commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(B), the AA will file a notification with the Office of the Federal Register to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, gag commercial landings exceed the applicable ACL as specified in this paragraph (a)(4)(i), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the gag commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for gag, in gutted weight, are 1.66 million lb (0.75 million kg) for 2009, 1.71 million lb (0.78 million kg) for 2010, and 1.76 million lb (0.80 million kg) for 2011 and subsequent fishing years.

(ii) *Recreational fishery.* If gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(4)(ii), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the gag target catch level for that following year at the level of the prior year's target catch. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in that following fishing year. The applicable recreational ACLs for gag, in gutted weight, are 2.59 million lb (1.17 million kg) for 2009, 2.64 million lb (1.20 million kg) for 2010, and 2.67 million lb (1.21 million kg) for 2011 and subsequent fishing years. The recreational target catch levels for gag, in gutted weight, are 2.06 million lb (0.93 million kg) for 2009, 2.14 million lb (0.97 million kg) for 2010, and 2.20 million lb (1.00 million kg) for 2011 and subsequent fishing years. Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

(5) *Red grouper.* (i) *Commercial fishery.* If red grouper commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(C), the AA will file a notification with the Office of the Federal Register to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the red grouper commercial quota for that following year at the level of the prior year's quota.

(ii) *Recreational fishery.* If red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(5)(ii), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the red grouper target catch level for that following year at the level of the prior year's target catch. In addition, the notification will reduce

the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational target catch level the following fishing year. The recreational ACL for red grouper, in gutted weight, is 1.85 million lb (0.84

million kg). The recreational target catch level for red grouper, in gutted weight, is 1.82 million lb (0.82 million kg). Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009

and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

\* \* \* \* \*

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