

of numerous fisheries have been analyzed in various biological opinions, and this final rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This final rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles through information collected from observer programs.

This final rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: March 12, 2015.

**Samuel D. Rauch, III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 140728622-5225-02]

RIN 0648-BE44

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the recreational accountability measures (AMs) by establishing a recreational annual catch target (ACT) and quota overage adjustment for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). The purpose of

this final rule is to help achieve optimum yield (OY) for the Gulf red snapper resource and better ensure red snapper recreational landings do not exceed the recreational quota established in the rebuilding plan.

**DATES:** This rule is effective April 20, 2015.

**ADDRESSES:** Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html).

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, Southeast Regional Office, NMFS, telephone 727-824-5305; email: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On November 21, 2014, NMFS published a proposed rule for the framework action and requested public comment (79 FR 69418). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by the framework action and this final rule is provided below.

#### Management Measures Contained in This Final Rule

This final rule revises the red snapper recreational AMs to support management efforts to maintain landings within the recreational quota and to mitigate any recreational quota overages should they occur.

#### *Red Snapper Recreational ACT and Season Length*

This final rule establishes a red snapper recreational ACT by applying a buffer to the recreational quota that is based on the Council's annual catch limit (ACL)/ACT control rule developed in the Generic ACL/Amendment (76 FR 82044, December 29, 2011). The ACL/ACT control rule is used to determine the appropriate target catch levels that account for management uncertainty in maintaining catches at or below the ACL (quota). The control rule is intended to be applied separately to the recreational and commercial sectors because each sector has different levels of management uncertainty. The control rule recommends no buffer be applied

to the quota for the red snapper commercial sector because the sector is managed by an IFQ program, has accurate landings data, and has not exceeded its quota in the last 7 years the IFQ program has been in effect. For the recreational sector, the control rule recommends applying a 20-percent buffer to the quota primarily because the recreational quota has been exceeded in 3 of the last 4 years. When the 20-percent buffer is applied to the quota, it results in an ACT of 4.312 million lb (1.956 million kg), round weight.

This final rule also revises the procedure for determining the recreational season length (closure date). Beginning in the 2015 fishing year, the red snapper recreational season closure date will be based on when the recreational ACT will be met instead of when the recreational quota will be met. Using the ACT to set the season length serves as an in-season AM and reduces the probability of exceeding the recreational quota during a fishing year from 50 percent to 15 percent.

#### *Red Snapper Recreational Post-Season AM*

This final rule also revises the recreational AMs to include a quota overage adjustment (payback) should the recreational quota be exceeded while the red snapper stock is overfished. If red snapper are overfished and the recreational quota is exceeded, then in the year following the overage, the recreational quota will be reduced by the amount of the recreational quota overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. If the quota is adjusted, the recreational ACT will also be reduced to maintain the 20-percent buffer between the ACT and the adjusted quota.

#### Comments and Responses

NMFS received a total of 40 public comments on the proposed rule: 2 Comments from non-governmental organizations, 4 comments from fishing organizations, and the rest from individuals. Ten commenters submitted suggestions for the reef fish fishery that were outside the scope of the framework and the proposed rule, including comments related to reallocation between sectors, regional management, area closures, different fishing seasons, making red snapper a gamefish, and establishing a recreational tag system. A number of commenters also expressed opinions about the status of the red snapper stock. Eleven commenters stated general opposition to the rule, while 4 commenters expressed general

support for the rule. Only specific comments related to the actions contained in the framework and the proposed rule as well as NMFS' respective responses are summarized below.

*Comment 1:* Accountability measures, such as ACTs and payback provisions are unreasonable requirements because the Marine Recreational Information Program (MRIP) was never designed to count, in real-time, the number of red snapper being harvested by anglers, and so these measures cannot be used for in-season quota monitoring.

*Response:* NMFS disagrees that managing the recreational sector for Gulf red snapper with an ACT and requiring a payback is unreasonable. NMFS agrees that MRIP is not designed to count landings in real time. This is why the Federal red snapper recreational fishing season begins each year on June 1, and with implementation of this final rule, will remain open until the ACT is projected to be reached. The MRIP information, in combination with other landings and effort information, is used to project season lengths and is not used for in-season monitoring. Using the ACT to set the season accounts for uncertainty in the projections and is a reasonable method to help ensure the recreational quota is not exceeded. However, if the quota is exceeded, the payback provision mitigates possible biological consequences to the stock resulting from the overage. Using an ACT and a payback in this manner is consistent with the National Standard 1 Guidelines.

*Comment 2:* After any red snapper recreational quota overage, the ACT should be reset using the Council's ACL/ACT control rule rather than just reducing the recreational quota by a fixed percentage. This would allow the buffer to change in response to changing management conditions.

*Response:* NMFS disagrees that the ACT should be reset using the ACL/ACT control rule after a recreational quota overage. The ACT is not intended to address quota overages. The ACT is used to account for management uncertainty in setting the recreational season and is intended to help ensure that the quota is not exceeded. If a quota overage does occur, the payback provision, which reduces the quota by the amount of the overage and also reduces the ACT to keep a consistent 20 percent buffer, mitigates for that excess harvest. Keeping a consistent buffer of 20 percent between the quota and ACT provides for more stable management of the recreational sector. If new information indicates that a 20 percent

buffer may no longer be appropriate, the Council can consider revising the ACT. The ACL/ACT control rule would be used to determine one alternative for an appropriate buffer. The Council would also consider other reasonable alternatives before deciding whether to adjust the ACT.

*Comment 3:* No AMs should be applied to the recreational sector until there is better data to determine red snapper recreational harvest.

*Response:* NMFS disagrees that no AMs should be applied to the recreational sector until some unspecified time in the future. AMs are required by the Magnuson-Stevens Act and the AMs implemented in this final rule are consistent with that requirement and the National Standard 1 Guidelines. Further, estimates of red snapper landings used to support implementation of the AMs in this final rule are based on the best scientific information available as required by National Standard 2. Currently, NMFS uses historical landings data to project the length of the Federal season. This landings information is obtained from MRIP-based private angler/charter survey; the Southeast Region Headboat Survey; the Louisiana Department of Wildlife and Fisheries creel survey, and the Texas Parks and Wildlife Department creel survey. NMFS agrees there are opportunities to improve the landings data collection process and is collaborating with many of the Gulf states' marine fisheries resource agencies to make improvements in both data collection and data analysis.

*Comment 4:* Because the red snapper allocation between the commercial and recreational sectors does not accurately reflect the actual use of the resource by the recreational sector, the AMs are unreasonable requirements.

*Response:* NMFS disagrees that the AMs implemented by this rule are unreasonable requirements. As explained above, AMs are required by the Magnuson-Stevens Act, and both the ACT and payback provision are consistent with the National Standard 1 Guidelines. The framework action developed by the Council did not consider and this rule does not address the red snapper allocation between the recreational and commercial sectors. Thus, to the extent this comment is advocating for a change in the current allocation, it is beyond the scope of the current rulemaking. However, NMFS notes that the Council is currently evaluating alternatives to the current red snapper allocation in Amendment 28 to the FMP.

*Comment 5:* Introducing further restrictions, like ACTs and paybacks, on

the red snapper recreational sector would have detrimental economic impacts to the sector and coastal communities supported by recreational fishing. These impacts would be large because the recreational sector contributes more money into the local economies and creates more jobs than the commercial sector.

*Response:* NMFS recognizes the economic importance of the recreational sector to many coastal communities; however, as discussed in the proposed rule and above, the Council has determined that implementing the ACT and payback provisions are necessary for the management of the recreational sector. Although the AMs are expected to result in economic losses to recreational fishing participants and their communities, the AM alternatives that were selected are expected to best achieve the objectives of the framework action while minimizing, to the extent practicable, adverse economic effects.

*Comment 6:* The payback provision states that the AA will file a notification with the Office of the Federal Register to reduce the recreational quota by the amount of the quota overage unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. How will this determination be made?

*Response:* NMFS will make the final determination about whether the best scientific information available shows that something other than a payback of 100 percent of the quota overage is necessary. However, NMFS anticipates that this scientific information will likely come from a red snapper stock assessment and would also be reviewed by the Council's Scientific and Statistical Committee. The rationale for an overage adjustment, if different from 100 percent, would be described in the **Federal Register** notice that is published when AMs are implemented.

#### **Classification**

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of Gulf red snapper and is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comment, NMFS' responses to those comments,

and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. Some comments with indirect socio-economic implications were received and these are addressed in the comments and responses section of this rule. No changes in the final rule were made in response to public comments.

This final rule establishes a red snapper recreational ACT; revises the procedure for determining the recreational season length (closure date); and, adds a quota overage adjustment (payback) should the recreational quota be exceeded while the red snapper stock is overfished.

NMFS agrees that the Council's choice of preferred alternatives will best achieve the Council's objectives for the framework action while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble of the proposed rule and this final rule provide a statement of the need for and objectives of this final rule, and it is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. Accordingly, this final rule does not implicate the Paperwork Reduction Act.

NMFS expects this final rule to directly affect federally permitted for-hire vessels operating in the Gulf reef fish fishery. The for-hire sector is comprised of charter boats and headboats (party boats). Although charter boats tend to be smaller in length, on average, than headboats, the key distinction between the two types of operations is how the fee is determined. On a charter boat trip, the fee charged is for the entire vessel, regardless of how many passengers are carried, whereas the fee charged for a headboat trip is paid per individual angler.

A Federal Gulf charter/headboat permit has been required for reef fish since 1996 and the sector currently operates under a limited access permit system. In 2013, there were 1,190 valid (non-expired) or renewable Gulf of Mexico Charter/Headboat Reef Fish Permits. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after expiration. Although the for-hire permit application collects information on the primary method of operation, the

permit itself does not identify the federally permitted vessel as either a headboat or a charter boat. Operation as either a headboat or charter boat is not restricted by the Federal permitting regulations, and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to NMFS' HBS. Participation in the HBS is based on determination by the NMFS Southeast Fisheries Science Center (SEFSC) that the vessel primarily operates as a headboat. In 2013, 70 Gulf vessels were registered in the HBS. As a result, 1,120 of the vessels with a valid or renewable reef fish charter/headboat permit are expected to operate as charter boats. The average charter boat is estimated to earn approximately \$83,000 (2013 dollars) in gross annual revenue and the average headboat is estimated to earn approximately \$251,000 (2013 dollars) in gross annual revenue.

The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in finfish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$20.5 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is \$7.5 million (NAICS code 487210, recreational industries).

Based on the revenue figures above, all for-hire vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities. Because all entities expected to be affected by this rule are small entities, NMFS has determined that this final rule will affect a substantial number of small entities. In addition, because all entities affected by this rule are small entities, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Establishing an ACT, which serves as the basis for estimating the length of the recreational red snapper fishing season, is expected to reduce net operating revenues (the return used to pay all labor wages, returns to capital, and owner profits) of all Gulf reef fish for-hire vessels (charter and headboats) by a combined total of approximately \$2.286 million (2013 dollars) in the first year this rule is implemented. If there are no recreational quota overages, this amount will be the annual net operating

revenue loss to the for-hire vessels. If recreational quota overages occur in a fishing year, and red snapper are overfished, net operating revenues will further decrease in the following fishing year with the application of 100 percent of the recreational quota overage reduction from the following year's quota. In effect, establishing a payback provision will tend to increase the potential losses in net operating revenue to the for-hire vessels.

An important feature associated with the payback provision is the uncertainty of the occurrence and level of overages. Under the proposed buffer of 20 percent for deriving the ACT from the recreational quota, the probability of exceeding the quota is estimated at 15 percent. At this probability level, the occurrence of an overage is relatively low. However, should an overage occur, the overage level could be insignificant or could be substantial. If the quota overage is low, the net operating revenue loss to the for-hire vessels will be approximately equivalent to the amount estimated above (\$2.286 million). If the quota overage is substantial, it could result in setting the ACT at zero the following year. In this case, net operating revenue loss to the for-hire vessels will be relatively substantial, with some unknown number of for-hire businesses possibly exiting the industry as a result of revenue loss. The year after that overage adjustment, however, the recreational quota and the corresponding ACT will be restored as there would be no overages in the previous year if the ACT had been set at zero. Assuming no increases in the recreational red snapper quota, for-hire vessels will continue to lose the amount of net operating revenue estimated above. A recreational quota increase will alleviate some of the losses to the for-hire vessels.

The following discussion analyzes the alternatives that were not selected as preferred by the Council. Five alternatives, including the preferred alternative (as fully described in the preamble), were considered for setting a red snapper recreational ACT. The first alternative, the no action alternative, would not establish an ACT. This alternative is associated with the highest probability of exceeding the recreational quota and so would not address the need to better control the recreational harvest to the sector's quota. The other three alternatives would establish an ACT by applying a buffer of 30 percent, 40 percent, or 60 percent to the quota. Relative to the preferred alternative, each of these three alternatives would result in a lower ACT, and therefore greater loss in net operating revenues for

the for-hire component of the recreational sector. For this reason, the three alternatives were not selected.

Three alternatives, including the preferred alternative (as fully described in the preamble), were considered for establishing a payback provision in case of recreational quota overages. It is noted that the payback provision only applies when red snapper are overfished. The first alternative, the no action alternative, would not establish a payback provision. This alternative would not address the need to mitigate for overages that may negatively impact the rebuilding plan, and thus was rejected. The second alternative would establish a 100-percent recreational quota payback provision, similar to the preferred alternative, and in addition would further reduce the adjusted ACT in the following season by 100 percent, 50 percent, or 30 percent of the quota overage. The adjusted ACT is derived by applying the 20-percent buffer to the quota after the recreational quota is reduced by the amount of overage. This alternative, together with any of its additional options to further reduce the following season's overage adjusted ACT, would be expected to result in higher net operating revenue losses for the for-hire sector, and therefore was rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency

shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

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

Fisheries, Fishing, Gulf, Quotas, Recreational, Red Snapper.

Dated: March 13, 2015.

#### 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 OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.41, paragraph (q) is added to read as follows:

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

\* \* \* \* \*

(q) *Red snapper*—(1) *Commercial sector*. [Reserved]

(2) *Recreational sector*. (i) The AA will determine the length of the red snapper recreational fishing season based on when recreational landings are projected to reach the recreational ACT specified in paragraph (q)(2)(iii) of this section, and announce the closure date in the **Federal Register**. This will serve as an in-season accountability measure. On and after the effective date of the recreational closure notification, the bag and possession limit for red snapper is zero.

(ii) In addition to the measures specified in paragraph (q)(2)(i) of this section, if red snapper recreational landings, as estimated by the SRD, exceed the applicable quota specified in § 622.39(a)(2)(i), and red snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the recreational quota by the amount of the quota overage in the prior fishing year, and reduce the recreational ACT specified in paragraph (q)(2)(iii) of this section (based on the buffer between the ACT and the quota specified in the FMP), unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACT for red snapper is 4.312 million lb (1.956 million kg), round weight.

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