

Dated: November 7, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

For the reasons discussed in the preamble, the interim final rule amending 34 CFR part 280, published at 75 FR 9777 on March 4, 2010, is adopted as a final rule without change.

[FR Doc. 2012-27559 Filed 11-9-12; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412-2517-02]

RIN 0648-BB97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 35

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Amendment 35 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 sector annual catch limits (ACLs) and sector annual catch targets (ACTs) for greater amberjack; revises the sector accountability measures (AMs) for greater amberjack; and establishes a commercial trip limit for greater amberjack. Additionally, Amendment 35 modifies the greater amberjack rebuilding plan. The intent of Amendment 35 is to end overfishing of greater amberjack, modify the greater amberjack rebuilding plan and help achieve optimum yield (OY) for the greater amberjack resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective December 13, 2012.

ADDRESSES: Electronic copies of Amendment 35, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional

Office Web site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727-824-5305, email rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf 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 Act. All greater amberjack weights discussed in this rule are in round weight.

On July 3, 2012, NMFS published a notice of availability for Amendment 35 and requested public comment (77 FR 39460). On July 19, 2012, NMFS published a proposed rule for Amendment 35 and requested public comment (77 FR 42476). The proposed rule and Amendment 35 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

ACLs and ACTs

Amendment 35 establishes the greater amberjack stock ACL equal to the greater amberjack stock allowable biological catch (ABC) at 1,780,000 lb (807,394 kg), and sets the greater amberjack stock ACT at 1,539,000 lb (698,079 kg) based on the ACT Control Rule developed in the Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) (76 FR 82044, December 29, 2011).

Sector allocations were established in Amendment 30A to the FMP and remain unchanged at 27 percent of the ACL allocated to the commercial sector and 73 percent of the ACL allocated to the recreational sector. Based on these allocations, this final rule establishes specific ACLs for the greater amberjack commercial and recreational sectors. This final rule also establishes ACTs (expressed as quotas in the regulatory text) for both sectors.

This final rule establishes the greater amberjack commercial sector ACL at 481,000 lb (218,178 kg). The commercial ACT, which is equivalent to the greater amberjack commercial quota, is reduced from 503,000 lb (228,157 kg), to 409,000 lb (185,519 kg). The commercial ACT is set 15 percent below the ACL to account for management uncertainty.

This final rule establishes the greater amberjack recreational ACL at 1,299,000 lb (589,116 kg). The recreational ACT,

which is equivalent to the greater amberjack recreational quota, is reduced from 1,368,000 lb (620,514 kg), to 1,130,000 lb (512,559 kg). The recreational ACT is set 13 percent below the ACL to account for management uncertainty.

AMs

This final rule revises the AMs for both the greater amberjack commercial and recreational sectors. The current in-season AM for the greater amberjack commercial sector requires the sector be closed when commercial landings reach or are projected to reach the applicable quota (currently equal to the commercial ACL). In addition, if despite such closure the commercial landings exceed the quota, the following year's quota is reduced by the amount of the quota overage in the prior fishing year (post-season AM). This final rule implements an ACT that is less than the ACL, creating a buffer between the two. The commercial ACT will now be equivalent to the commercial quota and this final rule requires that the commercial sector be closed when the commercial ACT is reached or projected to be reached. By closing the sector when the commercial ACT is reached or projected to be reached, there is less probability of exceeding the commercial ACL. In addition to this revision of the in-season AM, this rule revises the post-season AM as follows: If commercial landings exceed the commercial ACL, then during the following fishing year, both the commercial ACT (commercial quota) and the commercial ACL will be reduced by the amount of the prior year's commercial ACL overage.

The current in-season AM for the greater amberjack recreational sector closes the sector when recreational landings reach or are projected to reach the recreational quota (currently equal to the recreational ACL). In addition, if despite such closure the recreational landings exceed the recreational quota, the following year's recreational quota is reduced by the amount of the recreational quota overage in the prior fishing year, and the recreational fishing season is reduced by the amount necessary to recover the overage from the prior fishing year (post-season AMs). This final rule implements a recreational ACT, which will now be equivalent to the recreational quota, and requires that the recreational sector close when the recreational ACT is reached or projected to be reached. In addition to this revision of the in-season AM, this final rule revises the post-season AMs as follows: If recreational landings exceed the recreational ACL, then during the following fishing year,

both the recreational ACT (recreational quota) and the recreational ACL will be reduced by the amount of the prior year's recreational ACL overage.

Commercial Trip Limit

This final rule establishes a commercial trip limit for greater amberjack of 2,000 lb (907 kg). This trip limit is applicable until the commercial ACT (commercial quota) is reached or projected to be reached during a fishing year and the commercial sector is closed.

Other Action Contained in Amendment 35

Amendment 35 revises the rebuilding plan for greater amberjack. The greater amberjack stock is currently in its last year of a 10-year rebuilding plan that began in 2003 and ends in 2012. Amendment 35 modifies the rebuilding plan in response to the results from the 2011 Southeast Data, Assessment, and Review stock assessment (SEDAR 9 Update) and subsequent SSC review and recommendations for the greater amberjack ABC. The Council agreed with the SSC application of the ABC Control Rule developed in the Generic ACL Amendment for setting the greater amberjack ABC. The SSC applied the ABC Control Rule to the most recent 10 years (2000–2009) of landings and established the revised ACL 25 percent below the ABC.

Comments and Responses

NMFS received seven comment letters from individuals, two from non-governmental organizations, and one from a Federal agency on Amendment 35 and the proposed rule. The Federal agency indicated they had no objection to Amendment 35 or the proposed rule. Specific comments related to the actions contained in Amendment 35 and the proposed rule are summarized and responded to below.

Comment 1: All species should have a closed season during their respective spawning seasons, including greater amberjack. If spawning season closures were implemented for all fisheries, then these species would not be targeted, bycatch would be reduced, and species would not become overfished.

Response: Amendment 35 does not address closed seasons for all species. The intent of Amendment 35 is to end overfishing of greater amberjack, modify the greater amberjack rebuilding plan and help achieve OY. The commercial harvest of greater amberjack is closed during the months of March, April, and May for the greater amberjack spawning season. On April 29, 2011, NMFS published a final rule to implement a

recreational seasonal closure during June and July (76 FR 23904). In Amendment 35, the Council considered alternatives that would modify the recreational season closure, including a recreational season closure mirroring the commercial season closure. However, the Council decided to leave the current recreational season closure in place to determine if this will adequately restrain harvest. In addition, the Council determined that a recreational season closure during peak harvest (June–July) reduced harvest and mortality to a greater extent than a closure during the spawning season (March–May) because there is less recreational fishing effort early in the year compared to mid-summer.

Comment 2: The lack of a trip limit has resulted in a derby fishery, where the quota is harvested early in the year. However, a 1,500-lb (680 kg) or 1,000-lb (453 kg) commercial trip limit is more appropriate than what has been selected, and would be less likely to result in the quota being exceeded during the fishing year.

Response: In addition to preferred 2000-lb (907 kg) trip limit, the Council considered a 1,500-lb (680 kg), 1,000-lb (453 kg), and 500-lb (227 kg) trip limit. The trip limit is intended to extend the fishing season, not ensure that the quota is not exceeded during the fishing year. The Council decided that the current commercial sector seasonal closure (March 1–May 31) and establishment of a commercial 2,000-lb (907 kg) trip limit would provide the best balance between a longer commercial fishing season and revenue reductions per trip, and is not anticipated to shift any commercial fishing effort or methods because less than 5 percent of commercial trips exclusively target greater amberjack.

Comment 3: Amendment 35 and the proposed rule should establish a 4,000-lb (1,814 kg) commercial trip limit because of costs associated with maintaining the profitability of a small fishing business.

Response: The Council considered several commercial trip limit alternatives in Amendment 35 that would keep the commercial fishing season open as long as possible without exceeding the ACL. Landings data indicate that on average approximately 8 percent of vessels that landed greater amberjack landed more than 2,000 lb (907 kg) in a single trip. Thus, of the reasonable alternatives considered, a 2,000-lb (907 kg) trip limit was the largest trip limit considered. All commercial trip limit alternatives were estimated to result in revenue reductions, but a 2,000-lb (907 kg) trip limit was considered to achieve the best

balance between a longer commercial season and reduced economic impacts on commercial fishermen. With the 2,000-lb trip limit, the commercial sector is expected to remain open until mid-September or October. A 4,000-lb (1,814 kg) trip limit would likely result in a more abbreviated commercial fishing season that would cause additional negative economic impacts to the entire greater amberjack commercial sector.

Comment 4: NMFS should approve and implement the management measures in Amendment 35. However, the lack of rebuilding analyses on which to base the management decisions causes concern. Hopefully, the benchmark stock assessment scheduled for 2013 will produce stock projections deemed sufficient for management advice, and the Council will be able, at that time, to revise the ACLs and set new target rebuilding dates. Until the assessment is completed in 2013, the measures proposed by the Council in Amendment 35 are consistent with the management advice the Council received from its Scientific and Statistical Committee (SSC) and the ABC Control Rule previously approved by NMFS.

Response: NMFS agrees that the management measures contained in Amendment 35 should be implemented. The reliability of the yield/stock projections in the SEDAR 9 Update was questioned by the Council's SSC because of the large sensitivity to small changes in the assessment model initial conditions, fishing mortality rates, and catch. The Council's SSC determined the initial conditions of sample sizes from the observer studies were low, the spatial representation of the observer trips to the entire fishery was not complete, the observer study did not span a long time series, and there was uncertainty in the ability of the observers to accurately differentiate greater amberjack from other commonly caught jacks (Almaco jack, banded rudderfish, lesser amberjack).

Therefore, the SSC did not use the stock assessment to set the overfishing limit (OFL) or the acceptable biological catch (ABC) but instead used the ABC control rule that the Council was developing in the Generic Annual Catch Limit/Accountability Measure Amendment (Generic ACL Amendment) and was subsequently approved by NMFS. NMFS believes that the SSC's ABC recommendation (i.e., 75 percent of the OFL) and the management measures implemented by the Council (setting the ACT approximately 15 percent below the ACL) will, more likely than not, provide the reduction in

greater amberjack fishing mortality necessary to end overfishing and rebuild the greater amberjack stock.

A new benchmark assessment for greater amberjack is scheduled to be undertaken in 2013. The SSC recommended that the next stock assessment include aging studies and fishery-independent data for the Gulf. When the new assessment is completed, NMFS and the Council will be able to confirm that greater amberjack has met its rebuilding schedule.

Comment 5: Greater amberjack are overfished in the Gulf and both the recreational and commercial sectors should have more restrictions implemented than those proposed through Amendment 35. Recent landings by both the recreational and commercial sectors have exceeded the existing ACL by more than the reductions implemented through this rule. Restrictions in this rule may not restrict either sector to their quotas.

Response: In Amendment 35, the Council analyzed and reviewed ACLs and ACTs, minimum size limits, recreational bag limits, seasonal closures, and commercial trip limits. The Council's SSC recommended that the ABC be set at 1,780,000 lb (807,394 kg), which is a decrease from the previously established ACL. The Council then set the ACL equal to the ABC, and set the ACT approximately 15 percent below the ACL. NMFS and the Council expect that the management measures implemented in this final rule will lengthen the fishing season, restrain catch to the ACT, and end overfishing of greater amberjack. Both the commercial and recreational sector AMs require that the sectors close for the remainder of the fishing year when landings reach or are projected to reach the applicable ACT (quota). This in-season closure authority is intended to restrict each sector to its ACT to the extent possible. The buffer between the ACL and the ACT (quota) is intended to ensure that the ACL is not exceeded due to management uncertainty in determining when the sector should close.

Comment 6: The management measures in Amendment 35 are not sufficient to successfully rebuild the greater amberjack population. Specifically, Amendment 35 maintains the status quo for the recreational minimum size limit of 30 inches (76 cm). Without other management actions to significantly reduce overall mortality, not enough of the population will reach the size at which they become reproductively mature. This inhibits the ability of this population to rebuild to a healthy level. The commenters

strongly recommend raising the minimum allowable size from the current 30 inches (76 cm) fork length (FL) to 34 or 36 inches (86 or 91 cm) FL. This would increase the number of mature females capable of spawning that are left in the water and make it far more likely that the rebuilding plan will successfully restore this population.

Response: The Council considered increasing the minimum size limit to as much as 36 inches (91 cm), FL. Based on a theoretical analysis comparing yield-per-recruit and spawning potential ratio, Amendment 35 estimated that increasing the minimum size limit would provide greater spawning potential but maintaining the 30 inch (76 cm) FL minimum size limit would result in a higher yield. Although larger size limit alternatives are estimated to provide greater biological benefits to greater amberjack than the preferred alternative of maintaining the current minimum size limit of 30 inches (76 cm), public testimony at Council meetings indicated that release mortality likely increases as fish size increases, because larger greater amberjack fight harder, it takes longer amounts of time to reel in the fish, and the fish take longer to recover after release. Thus, the benefits of increasing the minimum size limit would be lower than estimated because more fish would die from release mortality and not contribute to the fishery yield or spawning potential. The preferred alternative would provide the greatest benefits to the resource by reducing the number of dead discards when compared to having a larger size limit.

Comment 7: The use of overage deductions that adjust both the ACL and the ACT as part of the AMs is appropriate. However, overage adjustments for any given fishing year will be subtracted from the ACL and ACT for the following year. A more appropriate method would be to set the adjusted ACT using the ACT control rule adopted in the Generic ACL Amendment so that adjustments to the ACT correspond to changes in the amount of management uncertainty associated with this fishery.

Response: In Amendment 35, the Council revised both the ACT and ACL based on the ACL/ACT control rule developed in the Generic ACL Amendment (76 FR 82044, December 29, 2011). The Council established the procedure for an overage adjustment when it established the rebuilding plan through Amendment 30A to the Reef Fish FMP, and did not consider alternative ACT and ACL calculation methods in Amendment 35. However, in the future the Council may consider

alternative methods of adjusting the ACT when the ACL is exceeded, such as that suggested in the comment.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 35 and is consistent with 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 rule. The FRFA incorporates the 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. The FRFA follows.

While none of the comments specifically addressed the IRFA, two of the ten comments received on Amendment 35 and the proposed rule concerned direct socio-economic implications of this rule on small commercial entities, and both relate to the proposed 2,000-lb (907 kg) commercial trip limit. One suggested a 1,500-lb (680 kg) commercial trip limit as a longer fishing season is necessary to maintain profitability. The other suggested a 4,000-lb (1,814 kg) commercial trip limit as a lower trip limit would result in lower net operating income per trip for distribution between the boat and its crew. As noted in the comments and responses section, the Council considered several trip limit alternatives that would lengthen the fishing season but not exceed the ACL/ACT. The economic analysis conducted for Amendment 35 determined that all trip limits would result in revenue reductions to commercial vessels. Some vessels would experience more revenue reductions than others. A 4,000-lb (1,814 kg) commercial trip limit would likely result in an abbreviated fishing season that would bring about more negative economic impacts on small entities. The 2,000-lb (907 kg) commercial trip limit was determined to achieve the best balance between a longer fishing season and revenue reductions per trip without exceeding the ACL/ACT. No changes to the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on

fishers, support industries, and associated communities. The preamble to the final rule provides a statement and need for, and the objectives of this rule, and 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. This final rule would not introduce any changes to current reporting, recordkeeping, and other compliance requirements.

NMFS expects the rule to directly affect commercial fishers and for-hire operators. 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 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 its combined annual receipts are not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2005–2010, an average of 1,096 vessels had Federal commercial Gulf reef fish permits. Based on home port states reported in their permit applications, these vessels were distributed as follows: 897 vessels in Florida, 34 vessels in Alabama, 19 vessels in Mississippi, 58 vessels in Louisiana, 79 vessels in Texas, and 9 vessels in other states. Of the total number of federally permitted reef fish commercial vessels, 750 vessels reported landings of at least 1 lb (0.6 kg) of reef fish. These vessels generated total dockside revenues of approximately \$41.5 million dollars (2010 dollars), or an average of \$55,000 per vessel. An average of 325 vessels reported landings of at least 1 lb (0.6 kg) of greater amberjack, with these vessels distributed as follows: 259 vessels in Florida, 15 vessels in Alabama/Mississippi, 32 in Louisiana, 32 in Texas, and 2 in other states. Dockside revenues from greater amberjack were approximately \$600,000 (2010 dollars). Based on this information, all commercial fishing vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. From 2005–2010, an average of 1,493 vessels had Federal

Gulf reef fish charter/headboat permits, and based on homeport states reported in their permit applications these vessels were distributed as follows: 921 vessels in Florida, 147 vessels in Alabama, 61 vessels in Mississippi, 104 vessels in Louisiana, 238 vessels in Texas, and 22 in other states. There is no information available as to how many for-hire vessels harvested or targeted greater amberjack. The Federal Gulf charter/headboat permit does not distinguish between headboats and charterboats, but in 2010, the headboat survey program included 79 headboats. The majority of headboats were located in Florida (43), followed by Texas (19), Alabama (8), and Louisiana (4). The average charterboat is estimated to earn approximately \$89,000 (2010 dollars) in annual revenues, while the average headboat is estimated to earn approximately \$466,000 (2010 dollars). Based on these average annual revenue figures, all for-hire vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

Some fleet activity, i.e., multiple vessels owned by a single entity, may exist in both the commercial sector and the for-hire component of the recreational sector by an unknown extent, and NMFS treats all vessels as independent entities in this analysis.

NMFS expects the final rule to directly affect all federally permitted commercial vessels harvesting greater amberjack and for-hire vessels that operate in the Gulf reef fish fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determined that this final rule would affect a substantial number of small entities.

NMFS considers all entities expected to be affected by this final rule as small entities, so the issue of disproportional effects on small versus large entities does not arise in the present case.

Modifying the greater amberjack rebuilding plan by establishing sector ACLs and ACTs would result in a total annual revenue reduction of \$99,000 (part of which would be profits) for the entire reef fish commercial sector's vessel operations because the commercial ACT is less than the historical average commercial landings. This revenue reduction takes into account the AM revision that would close the commercial sector if the ACT is reached or projected to be reached during the fishing year. However, it does not account for the effects of the post-season AM that would reduce the applicable sector's ACT and ACL if the ACL were exceeded in the previous

fishing year. This post-season AM would be expected to reduce vessel revenues and profits by an unknown amount. The for-hire component of the recreational sector would largely remain unaffected by the ACL/ACT and AM revisions, at least in the short term. Based on the projection model used in the analysis, the recreational sector, which includes the for-hire component, is not expected to reach its ACL/ACT, implying that there would be no trip cancellations that would lead to for-hire profit reductions.

Establishing a 2,000-lb (907 kg) trip limit on commercial vessels that harvest greater amberjack would result in an annual revenue reduction (part of which would be profits) of \$96,000 for the entire commercial harvesting operation. Because this estimated revenue reduction for the selected trip limit alternative presupposed the adoption of the ACLs/ACTs revised through this final rule, it should not be considered in addition to the revenue reduction due to the ACL/ACT revision. The smaller reduction appears to show that because the trip limit may allow for an extension of the commercial season it would slightly mitigate the adverse effects of a lower ACL/ACT.

The negative effects of this final rule on the profits of commercial vessels are minimal when compared to the overall industry profits from harvesting reef fish. It is possible that some vessels may rely on greater amberjack for a sizeable portion of their overall harvesting operations so their profit reductions may be relatively large, but the number of vessels in this category in the reef fish fishery cannot be ascertained.

Four alternatives, including the preferred alternative, and two sub-options, of which one is the preferred option, were considered for modifying the greater amberjack rebuilding plan. The first alternative, the no action alternative, would retain the greater amberjack stock ACL. This is not a viable alternative because the current stock ACL is higher than the ABC being set for greater amberjack.

Like the preferred alternative, the second alternative would set a stock ACL equal to the ABC, which is about 5 percent lower than the current stock ACL. However, this alternative would not set an ACT below the level of the ACL. Among the alternatives, this would provide the best scenario for short-term profitability of small entities. Without an ACT, however, this ACL level may be exceeded, particularly since the stock ACL has been exceeded in the last 3 years (2009, 2010, and 2011). Exceeding this ACL would lower the probability of protecting and

rebuilding the overfished stock. The sub-option that was not selected would set the stock ACL 18 percent less than the current ACL. This would have the same impacts on profits as the preferred option for a current fishing year, but it would potentially result in a worse profit condition in a following fishing year because it would require post-season overage adjustments if the ACTs were exceeded and AMs were enacted. The third alternative, which would establish a stock ACL of zero, would result in the largest profit reductions to both the commercial sector and for-hire component of the recreational sector.

Two alternatives, including the preferred alternative, were considered for revising the commercial AM. The only alternative to the preferred alternative is the no action alternative which would retain the current commercial AM. This would result in lesser short-term profit reductions than the preferred alternative. The downside of the no action alternative is that it would subject the commercial sector to a greater likelihood of facing a post-season AM the following fishing year that would reduce the following year's ACL and ACT and therefore commercial vessel profits as well would be reduced. In the long-term, it appears that the preferred alternative would have a greater potential of rebuilding the stock within the rebuilding timeframe so as to eventually allow for a higher ACT and ACL.

Two alternatives, including the preferred alternative, were considered for revising the recreational AM. The only alternative to the preferred alternative is the no action alternative. The no action alternative would result in greater short-term profits than the preferred alternative. Its downside is that it would subject the sector to a greater likelihood of facing a post-season AM that would reduce the following year's ACL and ACT and therefore for-hire vessel profits as well in the following fishing year. In the long-term, it appears that the preferred alternative would have a greater potential of rebuilding the stock within the rebuilding timeframe so as to eventually allow for a higher ACT and ACL.

Three alternatives, including the preferred alternative, were considered for commercial management measures. The first alternative is the no action alternative and would have no effects on vessel profits. The second alternative, which would establish a commercial vessel trip limit, while maintaining the March 1–May 31 seasonal closure, includes four options. The preferred option would establish a commercial

trip limit of 2,000 lb (907 kg), which as noted above would result in an annual revenue reduction of \$96,000. The other options would establish a commercial trip limit of 1,500 lb (680 kg), 1,000 lb (454 kg), or 500 lb (227 kg). Given the preferred ACL/ACT alternative, these other options would result in annual revenue reductions of \$95,000, \$97,000, and \$198,000, respectively. These other trip limit options would result in a longer fishing season than the preferred option. The commercial trip limit of 1,500 lb (680 kg) would result in a slightly longer season and lower revenue reduction than the preferred option because revenue gains from a longer fishing season would outweigh revenue losses from a lower trip limit. For the other two trip limit options however, the trip limits are so low that revenue gains from a longer fishing season would not outweigh revenue losses from a lower trip limit. Profit reductions would also likely occur with these other options.

The third alternative, which would eliminate the March 1–May 31 seasonal closure, includes four trip limit options. The trip limit options are 2,000 lb (907 kg), 1,500 lb (680 kg), 1,000 lb (454 kg), or 500 lb (227 kg). Given the preferred ACL/ACT alternative, these options would result in annual revenue reductions of \$123,000, \$120,000, \$115,000, and \$110,000 respectively for the trip limit alternatives. These revenue reductions for trip limits not linked with a seasonal closure are greater when compared to trip limits linked with a seasonal closure because they would result in a longer quota closure during the fishing year. Profit reductions would also likely occur with these options.

In Amendment 35, the Council considered several actions for which the no-action alternative was the preferred alternative.

Four alternatives were considered for modifying the recreational minimum size limit for greater amberjack. The first alternative is the no action alternative, which would not affect the profits of for-hire vessels. The other alternatives would raise the recreational minimum size limit to 32 in (81 cm), 34 in (86 cm), or 36 in (91 cm), fork length. These other alternatives would possibly result in for-hire vessel profit reductions to the extent that some trips would be cancelled.

Five alternatives were considered for modifying the recreational closed season for greater amberjack. The preferred alternative is the no action alternative which would not affect the profits of for-hire vessels. The second alternative would remove the fixed

closed season so that the recreational sector would open on January 1 and would remain open until the recreational ACT (recreational quota) is reached. This alternative would result in a short-term profit increase of \$75,000 annually to charterboats and an unknown profit increase to headboats under the preferred ACL/ACT alternative. These profit increases hinge on the assumption that displaced effort due to a quota closure would not shift to the open season. Any effort shift would likely negate such profit increases.

The third alternative would modify the recreational sector's seasonal closure to March 1–May 31. This alternative would result in a profit loss of approximately \$300,000 annually to charterboats and an unknown profit loss to headboats. Profit losses would be less if displaced effort from the closed months shifted to the open months. The fourth alternative would modify the recreational seasonal closure to January 1–May 31. This alternative would result in a profit loss of approximately \$400,000 to charterboats and an unknown profit loss to headboats. Profit losses would be less if displaced effort from the closed months shifted to the open months. The fifth alternative would modify the recreational seasonal closure to June 1–July 23. In the absence of effort shifting, this alternative would result in a short-term profit increase of approximately \$80,000 annually to charterboats and an unknown profit increase to headboats. Any effort shift would tend to negate these profit increases.

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 vessel permit holders in the Gulf reef fish fishery.

List of Subjects in 50 CFR Part 622

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

Dated: November 7, 2012.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, 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 § 622.42, paragraphs (a)(1)(v) and (a)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(v) Greater amberjack—409,000 lb (185,519 kg), round weight.

* * * * *

(2) * * *

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 1,130,000 lb (512,559 kg), round weight.

* * * * *

■ 3. In § 622.44, paragraph (d) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(d) *Gulf greater amberjack.* Until the quota specified in § 622.42 (a)(1)(v) is reached, 2,000 lb (907 kg), round weight. See § 622.43 (a)(1)(i) for the limitations regarding greater amberjack after the quota is reached.

* * * * *

■ 4. In § 622.49, paragraph (a)(1) is revised to read as follows:

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

(a) * * *

(1) *Greater amberjack.* (i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the annual catch target (ACT) specified in § 622.42(a)(1)(v) (commercial quota), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (a)(1)(i)(A) of this section, if commercial landings, as estimated by the SRD, exceed the

commercial ACL, as specified in paragraph (a)(1)(i)(C) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACT (commercial quota) and the commercial ACL for that following year by the amount of any commercial ACL overage in the prior fishing year.

(C) The commercial ACL for greater amberjack is 481,000 lb (218,178 kg), round weight.

(ii) *Recreational sector*—(A) If recreational landings, as estimated by the SRD, reach or are projected to reach the ACT specified in § 622.42 (a)(2)(ii) (recreational quota), the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (a)(1)(ii)(A) of this section, if recreational landings, as estimated by the SRD, exceed the recreational ACL, as specified in paragraph (a)(1)(ii)(C) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACT (recreational quota) and the recreational ACL for that following year by the amount of any recreational ACL overage in the prior fishing year.

(C) The recreational ACL for greater amberjack is 1,299,000 lb (589,216 kg), round weight.

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[FR Doc. 2012-27540 Filed 11-9-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737-2141-02]

RIN 0648-XC346

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Central Regulatory Area of the Gulf of Alaska Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear to

vessels using pot gear and vessels using jig gear in the Central Regulatory Area of the Gulf of Alaska management area. This action is necessary to allow the 2012 total allowable catch of Pacific cod to be harvested.

DATES: Effective November 7, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Gulf of Alaska (GOA) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2012 Pacific cod total allowable catch specified for catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 15,954 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012), after a 1,627 mt apportionment to the trawl catcher vessel sector under the Central GOA Rockfish Program (§ 679.81(c)(4)(ii)). The Administrator, Alaska Region (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 1,800 mt of the 2012 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B)(4). In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that the pot and jig sectors currently have the capacity to harvest this excess allocation and reallocates 1,500 mt to vessels using pot gear and 300 mt to vessels using jig gear.

The harvest specifications for Pacific cod included in the final 2012 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012) are revised as follows: 14,154 mt for catcher vessels using trawl gear, 13,255 mt for vessels using pot gear, and 727 mt to vessels using jig gear. This action does not reduce the Pacific cod apportionment (1,627 mt) made to the trawl catcher vessel sector operating under the Central GOA Rockfish Program.