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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 121004516-3498-02]

RIN 0648-BC64

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag 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 establishes a closure date for the 2013 recreational sector for the harvest of gag based on the projected annual catch target (ACT), and reduces the geographic extent of the recreational shallow-water grouper (SWG) fixed seasonal closure. In the Gulf of Mexico (Gulf), SWG consists of gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper.

The purpose of this rule is to help achieve optimum yield (OY) for the Gulf gag and other SWG resources and prevent overfishing from the stocks in the SWG complex.

**DATES:** This rule is effective July 5, 2013.

**ADDRESSES:** Electronic copies of the framework action, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

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

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf includes SWG and 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 February 21, 2013, NMFS published a proposed rule for the framework action and requested public comments (78 FR 12012). 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 this final rule are provided below.

This final rule: (1) Establishes a closure date for the recreational sector for the harvest of gag based on when the ACT is projected to be reached, rather than closing on November 1, 2013, as prescribed under current regulations; and (2) modifies the geographic extent of the recreational SWG fixed seasonal closure, which occurs from February 1 through March 31, each year, to allow recreational SWG fishing within Federal waters shoreward of the 20-fathom boundary during the closure. Both measures are intended to prevent overfishing of gag. However, while the second measure will reduce restrictions on fishermen wanting to harvest SWG in nearshore waters during the closure, the reduction in the geographic extent of the closure still provides some spawning season protection for several SWG species, but provides a better opportunity for the recreational sector to achieve OY from the stocks in the SWG complex in the Gulf.

**Management Measures Contained in This Final Rule***Recreational Gag Fishing Season*

The recreational gag fishing season opens on July 1, each year. Currently, the season closes on November 1, each year, and remains closed until the following July. This final rule sets the closure date of the recreational sector for gag based on when the ACT is projected to be reached. NMFS will monitor recreational gag landings in-season and if NMFS projects the recreational gag ACL will be reached before the expected ACT closure date, NMFS may publish a different closure date in the **Federal Register**.

Given a 2013 ACT of 1.287 million lb (0.584 million kg), gutted weight, and assuming compatible state regulations, NMFS projected at the time of the proposed rule that the recreational gag fishing season would remain open until sometime between November 11 and December 3, 2013. In 2013, four Gulf coast counties in Florida established recreational gag fishing seasons in state waters that are inconsistent with the 2013 Federal season. All other Gulf coast counties are consistent with the

season for Federal waters. Therefore, the effect of these inconsistent seasons on gag harvest has been factored into projections of how long the Federal season may remain open based on the ACT.

Using updated landings data, NMFS now projects the ACT for the recreational sector for gag will be reached on December 3, 2013. Therefore, the recreational sector for gag will open at 12:01 a.m., local time, on July 1, 2013, and close at 12:01 a.m., local time, December 3, 2013, unless NMFS determines, using in-season landings data, that the ACL will be reached before December 3, 2013, at which time NMFS will publish a new closure date in the **Federal Register**.

During the closure, the bag and possession limit of gag in or from the Gulf exclusive economic zone (EEZ) is zero. For persons in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, this bag and possession limit applies without regard to where such species were harvested, *i.e.* in state or Federal waters. The recreational sector for gag will reopen on July 1, 2014, the start of the 2014 recreational fishing season.

*Recreational SWG Fixed Seasonal Closure*

This final rule modifies the geographic extent of the February 1 through March 31 recreational SWG fixed seasonal closure, so that it applies only to Federal waters seaward of the 20-fathom boundary as established by the coordinates in 50 CFR 622.34(d). This modification will continue to provide protection for spawning gag as well as for other SWG species that spawn in waters deeper than 20 fathoms in February and March, while allowing fishermen to harvest SWG shoreward of the 20-fathom contour. The coordinates of the boundary follow the 20-fathom reef fish bottom longline boundary from the Florida Keys north and west to Cape San Blas, as specified in Table 1 of Appendix B to 50 CFR Part 622. However, where the longline boundary moves out to 50 fathoms west of Cape San Blas, this rule establishes new 20-fathom boundary coordinates for waters off Cape San Blas to the U.S. and Mexico border.

**Comments and Responses**

NMFS received a total of 23 individual comments on the framework action and the proposed rule. Seven individual comments supported all or a part of the rule. One Federal agency indicated they had no objection to the framework action or the rule. The

remaining comments opposed the rule. The comments specific to this framework action or proposed rule are grouped into 7 topics. These topics and NMFS' respective responses are summarized below.

*Comment 1:* Alternative gag recreational seasons, beyond the proposed season from July 1 until the ACT is projected to be reached, should be considered. A part of this consideration should be to ensure the season coincides with seasons for other important reef fish species like red snapper and greater amberjack.

*Response:* The Council considered several gag season alternatives in the framework action including split seasons and those based on matching the gag season with the seasons of other reef fish. However, the Council selected a single gag season beginning July 1 and ending when the ACT is projected to be reached (December 3, 2013) because this season is estimated to achieve the longest fishing season consistent with the harvest reductions outlined in the 10-year gag rebuilding plan. Other seasons considered by the Council tended to occur when gag harvest rates were higher and reduced the total season length by more than 30 to 60 days. The Council concluded the greatest benefits to the recreational sector would be achieved with a longer gag season.

*Comment 2:* The assumptions used to determine the 2013 gag season dates and lengths are overly optimistic and will likely result in ACLs being exceeded.

*Response:* NMFS disagrees that the assumptions used were overly optimistic and would likely result in ACLs being exceeded. The 2013 gag season length is projected based on landings data to best reflect current fishing conditions. The projection model, as described in Appendix D of the framework action, estimates the closure date by assessing total removals (*i.e.*, landed and discarded dead fish). This model was used to establish the October 31 closure date for the 2012 fishing season and preliminary recreational landings data for 2012 estimate only 72 percent of the ACL was caught, suggesting the model is not likely to overestimate the season length. The projections are also based on harvesting the ACT [1.287 million lb (0.584 million kg), gutted weight], which is more conservative than the ACL (1.495 million lb, or 0.678 million kg, gutted weight). In addition, landings will be monitored during the fishing year, and if these data indicate the ACL would be met prior to the season closure date, recreational gag fishing will be

closed when the ACL is projected to be reached.

*Comment 3:* The level of harvest used to derive the season length does not match on-the-water observations of gag abundance. In addition, fishing effort is likely down with the current level of fuel prices, which would support a longer season.

*Response:* The Council did not consider and this rule does not address changes to the harvest limits established in Amendment 32 to the FMP (77 FR 6988, February 10, 2012). To project the gag season length, a projection model (Appendix D of the framework action) was developed by NMFS and reviewed by the Council's Science and Statistical Committee. The model uses Southeast Fisheries Science Center's ACL database and is based on current levels of fishing effort by using actual landings information to estimate 2013 fishing effort.

*Comment 4:* Changes to the SWG spawning closure should be rejected until NMFS and the Council evaluate the likely biological consequences for gag and other SWG stocks by removing the spawning closure.

*Response:* NMFS disagrees that the change to the SWG spawning closure should be rejected and that additional evaluation of the biological consequences of the change is necessary. The Council considered the stock status of gag and other SWG species, as well as the biological consequences for these species, when evaluating the impacts of modifying the SWG seasonal spawning closure. The Council determined that this modification would continue to protect spawning aggregations of gag and other grouper species such as red grouper and scamp because these species spawn primarily in waters deeper than 20 fathoms. During the offshore February and March seasonal closure, fishing effort for SWG may increase shoreward of 20 fathoms. However, the harvest of SWG species is regulated with bag limits, size limits, and the use of ACTs, ACLs, and accountability measures (AMs), which are designed to protect SWG stocks from overfishing and help achieve OY.

*Comment 5:* Closing waters seaward of 20 fathoms in February and March will be more difficult to enforce than the current February and March closure of all Gulf waters. There is no way to determine where a fish was caught after a vessel reaches the shore.

*Response:* NMFS agrees that a seasonal-area closure can be more difficult to enforce than a traditional Gulf-wide seasonal closure, which can be enforced dockside. However, the

Council determined that enforcement concerns were outweighed by the benefits of opening waters shoreward of 20 fathoms to SWG harvest (with the exception of gag, which does not open until July 1 each year), which will allow for-hire businesses to book grouper fishing trips and private anglers to keep grouper they catch when fishing shoreward of 20 fathoms during February and March.

*Comment 6:* To protect SWG stocks, there should be no fishing during the spawning periods.

*Response:* NMFS disagrees that a prohibition on all fishing during spawning is required to protect SWG stocks. The proposed seasonal-area closure is expected to afford protection to all of the SWG species. The closure covers some part of peak spawning for each of these species, except yellowmouth grouper, and provides protection for all spawning during February and March in waters deeper than 20 fathoms, which is where most of the spawning occurs. The Council determined, and NMFS agrees, that limiting the seasonal closure to waters deeper than 20 fathoms will continue to provide sufficient protection for SWG spawning while reducing socio-economic impacts on the recreational sector.

*Comment 7:* Private anglers should have a year-round season and more restrictions should be added to the for-hire and commercial sectors.

*Response:* The Council did not consider and this rule does not address regulatory changes to the commercial sector or restrictions that would apply only to the for-hire component of the recreational sector. A year-round recreational season for SWG species, other than gag, is possible shoreward of 20 fathoms as long as the AMs for these SWG species do not require a closure. For gag, the harvest levels under the rebuilding plan do not allow for a year-round recreational harvest.

### Changes From the Proposed Rule

On April 17, 2013, NMFS published in the **Federal Register** an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations for the regulated entities. Rather, the rule merely reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the regulatory text; it does not change the specific regulatory requirements that were contained in the proposed rule. Therefore, as a result of

this reorganization, the seasonal closure text previously located at § 622.34(u) is now at § 622.34(d) and the text previously located at § 622.34(v) is now at § 622.34(e).

The proposed rule included the term “regulatory amendment” to describe the document developed by the Council to implement the management measures contained in this final rule. However, NMFS has determined that it is more specific to use the term “framework action” to describe this document because the management measures contained in this final rule may be implemented through the Gulf reef fish framework procedures as defined in Amendment 38 to the FMP (78 FR 6218, January 30, 2013); therefore NMFS uses this term throughout this final rule.

**Classification**

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule and framework action are necessary for the conservation and management of the reef fish fishery and are 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. No changes to the final rule were made in

response to public comments. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Fisheries, Fishing, Gulf of Mexico, Recreational sector, Gag, Shallow-water grouper.

Dated: May 30, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the 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 § 622.34, paragraphs (d) and (e) are revised to read as follows:

**§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.**

\* \* \* \* \*

(d) *Seasonal closure of the recreational sector for shallow-water grouper (SWG).* The recreational sector for SWG, in or from the Gulf EEZ, is closed each year from February 1 through March 31, in the portion of the Gulf EEZ seaward of rhumb lines connecting, in order, the points in the following table. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ seaward of the following rhumb lines is zero.

Point	North latitude	West longitude
1 .....	24°48.0'	82°48.0'
2 .....	25°07.5'	82°34.0'
3 .....	26°26.0'	82°59.0'
4 .....	27°30.0'	83°21.5'
5 .....	28°10.0'	83°45.0'
6 .....	28°11.0'	84°00.0'
7 .....	28°11.0'	84°07.0'
8 .....	28°26.6'	84°24.8'
9 .....	28°42.5'	84°24.8'
10 .....	29°05.0'	84°47.0'
11 .....	29°02.5'	85°09.0'
12 .....	29°21.0'	85°30.0'
13 .....	29°27.9'	85°51.7'
14 .....	29°45.8'	85°51.0'
15 .....	30°05.6'	86°18.5'
16 .....	30°07.5'	86°56.5'
17 .....	29°43.9'	87°33.8'
18 .....	29°43.0'	88°18.5'
19 .....	At State/EEZ line, follow State/EEZ line to point 20	88°56.0'
20 .....	At State/EEZ line	89°28.4'
21 .....	29°02.0'	89°45.5'
22 .....	28°32.7'	90°21.5'
23 .....	28°24.8'	90°52.7'
24 .....	28°42.3'	92°14.4'
25 .....	28°34.2'	92°30.4'
26 .....	28°27.6'	95°00.0'
27 .....	28°20.0'	95°06.9'
28 .....	28°02.2'	96°11.1'
29 .....	27°46.5'	96°38.1'
30 .....	27°15.0'	97°00.0'
31 .....	26°45.5'	97°01.4'
32 .....	At EEZ	96°51.0'

(e) *Seasonal closure of the recreational sector for gag.*

The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through June 30 and December 3 through December 31, each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

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