

qualifies for exemption from the general prohibition on the sale of billfish.

The U.S. West Coast Highly Migratory Fishery Management Plan (Plan) includes the striped marlin as a management unit species and prohibits sale of the species. As stated in the Pacific Fishery Management Council's Plan, striped marlin is considered to have far greater value as a recreational rather than commercial target species. The Plan is not the only measure addressing striped marlin. California has prohibited sale and importation of Pacific striped marlin since 1937, and with a limited exception for black marlin, marlin meat, whether fresh, smoked, canned, or preserved by any means, may not be bought or sold, or possessed or transported for the purpose of sale in the state.

### Public Comments

NMFS is considering issuing regulations to implement the BCA. Rulemaking is needed to provide notice to the regulated community, increase public understanding of the elements of the billfish prohibitions, facilitate enforcement, and ensure consistent implementation of the BCA nationally. Through this ANPR, NMFS seeks the public's views on the potential scope of any future regulations to implement the BCA, including the scope of the exemption in section 4(c) of the BCA and the possible use of a modified version of the current billfish COE to document that billfish offered for sale qualifies for exemption from the general prohibition on sale. Also, what, if any, restrictions can NMFS impose on the transportation and sale of billfish caught by U.S. vessels and landed in Hawaii or the Pacific Insular Areas?

To help determine the scope of issues to be addressed and to identify significant issues related to this action, NMFS is soliciting written comments on this ANPR. The public is encouraged to submit comments related to the specific ideas mentioned in this ANPR, as well as any additional ideas to improve implementation of the Billfish Conservation Act of 2012.

**Authority:** 16 U.S.C. 1827a.

Dated: March 29, 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.*

[FR Doc. 2013-07866 Filed 4-3-13; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 130212129-3284-01]

RIN 0648-BC98

### 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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in a framework action 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). If implemented, this rule would increase the commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2013 fishing year. This proposed rule is intended to help achieve optimum yield (OY) for the Gulf red snapper resource without increasing the risk of red snapper experiencing overfishing.

**DATES:** Written comments must be received on or before April 19, 2013.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "NOAA-NMFS-2013-0055" by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)/#!docketDetail;D=NOAA-NMFS-2013-0055, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will

be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the framework action, which includes an environmental assessment 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:** Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727-824-5305; email: [Cynthia.Meyer@noaa.gov](mailto:Cynthia.Meyer@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).

### Background

The Southeast Data, Assessment, and Review (SEDAR) update assessment for Gulf red snapper, conducted in August 2009 (SEDAR 9), determined that overfishing had ended for the red snapper stock, and that the acceptable biological catch (ABC) may be increased. The stock, however, is still overfished and is under a rebuilding plan through 2032. The next SEDAR benchmark stock assessment currently scheduled for Gulf red snapper will be conducted in 2013.

The Council's Scientific and Statistical Committee (SSC) met in November 2012, to review the updated landings data and recommended a new ABC for the 2013 fishing year. For 2013, the SSC recommended an ABC of 8.46 million lb (3.83 million kg). The Council met in February 2013, and voted to implement this new ABC through the 2013 Gulf red snapper framework action.

### Management Measures Contained in This Proposed Rule

This rule would set the 2013 commercial and recreational quotas for red snapper based on the ABC recommended by the SSC and on the current commercial and recreational allocations (51-percent commercial and 49-percent recreational). Therefore, the 2013 commercial quota would be set at 4.315 million lb (1.957 million kg), round weight, and the 2013 recreational

quota would be set at 4.145 million lb (1.880 million kg), round weight.

The Council also considered modifying the red snapper recreational bag limit, but decided to maintain the current 2-fish per angler bag limit.

The red snapper management measures contained in this proposed rule would achieve the goal set by National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY for the fishery.

### Red Snapper Recreational Fishing Season

Under 50 CFR 622.34 (m), the red snapper recreational fishing season opens each year on June 1 and closes when the recreational quota is projected to be reached. Prior to June 1 each year, NOAA projects the closing date based on the previous year's data, and notifies the public of the closing date for the upcoming season. If subsequent data indicate that the quota has not been reached by that closing date, NMFS may reopen the season.

After finalized 2012 recreational landings data are available and before the season opens on June 1, 2013, NMFS will announce when the 2013 quota is projected to be harvested. NMFS may announce when the 2013 quota is projected to be harvested in the final rule associated with this action. The 2013 season would be shorter than the 2012 season as a result of an increase in the average size of the red snapper harvested, and the increase in catch rates. Because the red snapper population is in a rebuilding plan, population abundance is expected to increase, which is expected to lead to increased quotas and higher catch rates.

NMFS implemented an emergency rule to authorize NMFS to set the closure date of the red snapper recreational fishing season in the exclusive economic zone (EEZ) off individual states (78 FR 17882, March 25, 2013). The closure dates off each Gulf state would be based on the recreational quota increase contained in this proposed rule and any state's inconsistent regulations. The extent to which NMFS would adjust a state's Federal season is contingent upon the estimated landings from states with any inconsistent regulations. The more a state exceeds its apportionment of the annual quota, the greater the Federal season off that state is likely to be reduced to compensate for any quota overage.

The emergency rule contains tentative closure dates in the EEZ off each Gulf

state. These tentative closure dates are based on a recreational quota of 4.145 million lb (1.880 million kg), round weight, and inconsistent state regulations in Texas, Louisiana, and Florida. The tentative closure dates contained in the emergency rule are as follows: Texas, June 12, 2013; Louisiana, June 9, 2013; Mississippi, June 28, 2013; Alabama, June 28, 2013; and Florida, June 21, 2013. These dates could change if states change their regulations in state waters or additional states (Mississippi and Alabama) implement inconsistent regulations in their state waters. To determine these closure dates, NMFS analyzed the catch rates for each state. The amount each state's Federal season would be shortened is contingent on estimates of landings when the Federal season is closed. The more a state exceeds its apportionment of the annual quota, the more the Federal season must be reduced off that state to compensate for the overage. NMFS estimates catch rates on the order of 1.5 to 3 times greater than the current state water catch rates due to factors such as increasing catch rates and fish size, higher bag limits, weekend fishing, peak season fishing, increases in stock abundance, potentially significant levels of deliberate or accidental non-compliance by constituents with state/Federal boundaries during incompatible regulatory periods, and the fact that some for-hire vessels are not federally permitted and would contribute to landings when the Federal season is closed. For the season projections, NMFS used 2 times the catch rate because using 1.5 times the catch rate would potentially be an underestimate and using 3 times the catch rate could be too conservative. Final official closure dates will be announced prior to the start of the season on June 1, 2013, and may be announced in the final rule for this action.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed 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 that this proposed rule, if implemented, would not have a significant economic impact

on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to set 2013 quotas for the commercial and recreational harvest of red snapper in the Gulf EEZ that are consistent with the red snapper rebuilding plan in order to achieve OY. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not introduce any changes to current reporting, record-keeping, or other compliance requirements.

This rule, if implemented, would be expected to directly affect all commercial and for-hire vessels that harvest red snapper. In addition to needing red snapper allocation, a commercial reef fish permit is required to harvest red snapper in the Gulf EEZ in excess of the bag limit and to sell red snapper. An estimated 890 vessels possess a valid (non-expired) or renewable commercial reef fish permit. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after permit expiration. However, over the period 2007–2011, an average of only 333 vessels per year recorded commercial red snapper harvests. As a result, for the purpose of this assessment, the number of potentially affected commercial vessels is estimated to range from 333–890. The average commercial vessel in the Gulf reef fish fishery is estimated to earn approximately \$50,000 (2011 dollars) in annual gross revenue, while the average vessel with red snapper landings is estimated to earn approximately \$96,000.

A Federal reef fish for-hire vessel permit is required for for-hire vessels to harvest red snapper in the Gulf EEZ. On November 21, 2012, 1,364 vessels had valid or renewable reef fish for-hire permits. 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. Although the for-hire permit does not distinguish between headboats and charterboats, an estimated 69 headboats operate in the Gulf. As a result, 1,295 of the vessels with valid or renewable reef fish for-hire permits are expected to operate as charterboats. The average charterboat is estimated to earn approximately \$80,000 (2011 dollars) in gross annual revenue, while the average headboat is estimated to earn approximately \$242,000.

NMFS has not identified any other small entities that would be expected to

be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The revenue threshold for a business involved in the for-hire fishing industry is \$7.0 million (NAICS code 713990, recreational industries). All commercial and for-hire vessels expected to be directly affected by this proposed rule are believed to be small business entities.

This rule, if implemented, would increase the 2013 red snapper commercial quota by 194,000 lb (87,997 kg), round weight, and the 2013 red snapper recreational quota by 186,000 lb (84,368 kg), round weight. The proposed increase in the commercial quota would be expected to result in an increase in gross revenue (ex-vessel revenue minus the 3-percent cost recovery fee) for commercial vessels that harvest red snapper of approximately \$721,000 (2011 dollars), or approximately \$810–\$2,165 per vessel (\$721,000/890 vessels = \$810 per vessel; \$721,000/333 vessels = \$2,165 per vessel). The expected range

in the increase in gross revenue per vessel would be equal to approximately 1.6 percent (\$810/\$50,000) and 2.3 percent (\$2,165/\$96,000) increases in the average annual revenue per vessel, respectively.

The proposed increase in the recreational quota would be expected to result in an increase in net operating revenue (gross revenue minus operating costs except for labor) for for-hire businesses of approximately \$502,000 (2011 dollars) for charterboats and approximately \$562,000 for headboats. The projected increase in net operating revenue for charterboats would be equal to approximately \$388 per vessel (\$502,000/1,295 vessels), or approximately 0.5 percent (\$388/\$80,000) of average annual revenue per vessel. For headboats, the projected increase in net operating revenue would be equal to approximately \$8,152 per vessel (\$562,000/69 vessels), or approximately 3.4 percent (\$8,152/\$242,000) of average annual revenue per vessel.

In summary, the proposed rule, if implemented, would not be expected to have a significant impact on a substantial number of small entities and, as a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

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

Dated: March 28, 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 proposed to be 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)(i) and (a)(2)(i) are revised to read as follows:

**§ 622.42 Quotas.**

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(a) \* \* \*

(1) \* \* \*

(i) *Red snapper*—4.315 million lb (1.957 million kg), round weight.

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(2) \* \* \*

(i) *Recreational quota for red snapper*—4.145 million lb (1.880 million kg), round weight.

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[FR Doc. 2013–07774 Filed 4–3–13; 8:45 am]

**BILLING CODE 3510–22–P**