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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095-1780-03]

RIN 0648-AY56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Amendment 32

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS published a proposed rule on November 2, 2011 (76 FR 67656) to implement management measures described in Amendment 32 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 32) prepared by the Gulf of Mexico Fishery Management Council (Council). During the comment period for that proposed rule, NMFS identified an inconsistency in the codified text of that rule regarding the accountability measures for recreational gag and red grouper that needs correction. This rule proposes to further revise the recreational accountability measures for gag and red grouper to correctly specify what will occur if the ACL is exceeded and the species is overfished. This proposed rule is intended to end overfishing of gag, allow the gag stock to rebuild, and co-

manage gag and red grouper by implementing concurrent management measures.

DATES: Written comments must be received on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2011-0135" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0135" in the keyword search and click on "search." To view posted comments during the comment period,

enter "NOAA-NMFS-2011-0135" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this rule will not be accepted.

Electronic copies of Amendment 32, which includes a draft environmental impact statement (DEIS), 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: Peter Hood, Southeast Regional Office, NMFS, telephone 727-824-5305; email: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

A proposed rule for Amendment 32 was published on November 2, 2011 (76 FR 67656) with the comment period ending December 2, 2011. That proposed rule included measures to adjust the commercial gag quota and recreational annual catch target (ACT)

for 2012 through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32; adjust the shallow-water grouper quota; adjust the commercial and recreational sector's annual catch limits (ACLs) for gag and red grouper; adjust the commercial ACL for SWG; establish a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish individual fishing quota program in the Gulf of Mexico; set the recreational gag fishing season from July 1 through October 31; reduce the gag commercial size limit to 22 inches (59 cm) total length (TL); and modify the gag and red grouper accountability measures (AMs).

During the comment period for that proposed rule, NMFS identified an inconsistency in the codified text regarding the AMs for gag and red grouper. In § 622.49, paragraph (a)(4)(ii)(C), the codified text for gag recreational AMs states that, "if gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(4)(ii)(D), and gag 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, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is

necessary." However, in § 622.49, paragraph (a)(4)(ii)(B), the codified text states that, "Without regard to overfished status, and in addition to the measures specified in paragraph (a)(4)(ii)(A), if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D), the AA will file a notification with the Office of the Federal Register to maintain the gag target catch level, specified in paragraph (a)(4)(ii)(D), for that following fishing year at the level of the prior year's target catch, unless the best scientific information available determines that maintaining the prior year's target catch is unnecessary." The codified text for red grouper recreational AMs in § 622.49, paragraphs (a)(5)(ii)(C) and (B) is identical to the gag codified text. Therefore, if gag or red grouper are overfished and recreational landings exceed the ACL and an overage adjustment is made to the ACL the following year, the ACL could actually be adjusted to a lower poundage than the annual target catch or ACT. The ACT, according to the National Standard 1 guidelines (74 FR 3178, January 16, 2009) is usually set less than the ACL. "ACT is set at an amount not to exceed the ACL to account for management uncertainty in controlling a fishery's actual catch." Therefore, there should be a buffer between the ACT and the ACL. This rule proposes to rectify this potential inconsistency in the regulations. If the ACL is exceeded and

gag or red grouper are overfished, NMFS proposes that both the ACL and ACT be adjusted by the same ACL overage amount the next fishing year. NMFS also proposed to revise the term "target catch level" with "annual catch target" or "ACT", which is the language used in Amendment 32 and which is consistent with the language used in the codified text for other Gulf and South Atlantic species with ACLs, AMs, and target catches, or ACTs. The codified text contained in this proposed rule only contains the further revisions to the recreational AMs for gag and red grouper. The codified text for all other measures in Amendment 32 is contained in the proposed rule published on November 2, 2011 (76 FR 67656) and is not repeated here.

NMFS is requesting comments for a period of 15 days regarding these additional revisions to the codified text. These management measures, as well as the management measures contained in the proposed rule published on November 2, 2011, will be addressed in one final rule to implement Amendment 32. No other revisions or changes to the proposed rule to implement Amendment 32 are included here. All discussion of the management measures contained in Amendment 32 including the accountability measures are provided in the proposed rule that published on November 2, 2011 (76 FR 67656), and in Amendment 32, and are not repeated here.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the AA has determined that this proposed rule is consistent with Amendment 32, 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.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for the proposed rule to implement Amendment 32 (76 FR 67656). The IRFA analyzed all of the measures contained in Amendment 32, including the accountability measures in this rule, in the rule that published on November 2, 2011 and in Amendment 32, and therefore, are not repeated here. A copy of the full analysis is available from NMFS (see ADDRESSES).

This proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

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

Dated: January 6, 2012

Paul N. Doremus,
Deputy Assistant Administrator
For Operations,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622, as proposed to be amended at 76 FR 67656, November 2, 2011, is proposed to be further 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 § 622.49, paragraphs (a)(4)(ii), and (a)(5)(ii) are revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability measures (AMs).

(a) * * *

(4) * * *

(ii) Recreational sector. (A) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (a)(4)(ii)(D), 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. On and after the effective date of such a notification, the bag and possession limit of gag in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, i.e. in state or Federal waters. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in the following fishing year.

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A), if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D), the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D), for that following fishing year at the level of the prior year's

ACT, unless the best scientific information available determines that maintaining the prior year's target catch is unnecessary. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(C) In addition to the measures specified in paragraphs (a) (4) (ii) (A) and (B), if gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a) (4) (ii) (D), and gag 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, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The applicable recreational ACLs for gag, in gutted weight, are 1.232 million lb (0.559 million kg) for 2012, 1.495 million lb (0.678 million kg) for 2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years. The recreational ACTs for gag, in gutted weight, are 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013,

1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(5) * * *

(ii) Recreational sector. (A) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (a)(5)(ii)(D), 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. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(B) If red grouper are not overfished, and in addition to the measures specified in paragraph (a)(5)(ii)(A), if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D), the AA will file a notification with the Office of the Federal Register

to maintain the red grouper ACT, specified in paragraph (a) (5) (ii) (D), for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the bag limit by one fish and reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year. The minimum red grouper bag limit for 2014 and subsequent fishing years is two fish.

(C) In addition to the measures specified in paragraphs (a) (5) (ii) (A) and (B), if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a) (5) (ii) (D), and red grouper 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, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The recreational ACL for red grouper, in gutted weight, is 1.90 million lb (0.862 million kg) for 2012 and subsequent

fishing years. The recreational ACT for red grouper, in gutted weight, is 1.730 million lb (0.785 million kg) for 2012 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

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