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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 150817720-5720-01]**

**RIN 0648-BF21**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack 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), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this action would revise the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs), the commercial trip limit, and the recreational minimum size limit for greater amberjack in the Gulf of Mexico (Gulf) exclusive economic zone. Additionally, this rule

would correct an error in the Gulf gray triggerfish recreational accountability measures (AMs). The purpose of this rule is to modify Gulf greater amberjack management measures to end overfishing and achieve optimal yield for the greater amberjack resource.

**DATES:** Written comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on the proposed rule, identified by "NOAA-NMFS-2015-0094" by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0094](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0094), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Richard Malinowski, 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).

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web Site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2015/greater\\_amberjack\\_framework/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2015/greater_amberjack_framework/index.html).

**FOR FURTHER INFORMATION CONTACT:** Richard Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: [rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery 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).

### **Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to achieve on a continuing basis the optimum yield from federally managed fish stocks. This mandate is intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production

and recreational opportunities, while also protecting marine ecosystems.

The greater amberjack resource in the Gulf was declared overfished by NMFS on February 9, 2001. Secretarial Amendment 2 established a greater amberjack rebuilding plan that started in 2003 and was scheduled to rebuild the stock in 2012 (68 FR 39898, July 3, 2003). In 2006, a Southeast Data, Assessment and Review (SEDAR) benchmark stock assessment (SEDAR 9) occurred and was subsequently updated in 2010 (SEDAR 9 Update). In response to new scientific information from SEDAR 9 and the SEDAR 9 Update, the rebuilding plan was revised in both Amendments 30A and 35 to the FMP (73 FR 38139, July 3, 2008, and 77 FR 67574, December 13, 2012). However, the rebuilding time period ended in 2012, without the stock being rebuilt.

A 2014 stock assessment indicates the Gulf greater amberjack stock remains overfished and is undergoing overfishing. The Council's Scientific and Statistical Committee (SSC) reviewed this assessment at their June 2014 meeting and used the acceptable biological catch (ABC) control rule to recommend an ABC equivalent to 75 percent of the maximum fishing mortality threshold to end overfishing and rebuild the stock. The ABCs recommended by the Council's SSC in this framework action are: 1,720,000 lb (780,179 kg) for 2015; 2,230,000 lb (1,011,511 kg) for 2016; 2,490,000 lb (1,129,445 kg) for 2017; and 2,620,000 lb (1,188,412 kg) for 2018.

In August 2014, pursuant to section 304(e) (2) of the Magnuson-Stevens Act, NMFS notified the Council of the 2014 stock assessment results that indicated that the greater amberjack stock continued to be overfished and undergoing overfishing. Following that notification, the Council was required under section 304(e) (3) of the Magnuson-Stevens Act to prepare a plan amendment or regulations within 2 years to end overfishing immediately and rebuild the greater amberjack stock.

For this framework action, the Council chose to reduce the current stock ACL of 1,780,000 lb (807,394 kg) to the SSC's ABC recommendation for 2015 of 1,720,000 lb (780,179 kg). Furthermore, the Council decided to maintain the 2015 catch levels through 2018, which results in an ABC and stock ACL that will be 49 percent of the 2018 overfishing limit (OFL), and is expected to rebuild the stock by 2019. The Council also considered an alternative in the framework action that would have set the stock ACL at zero. However, this alternative, which is projected to rebuild the stock by 2017, would have the greatest negative socio-economic impacts on fishing communities for relatively little biological benefit.

Although the Council did not explicitly discuss its obligations under section 304(e) (3) of the Magnuson-Stevens Act, the framework action and this proposed rule fulfill the Council's responsibility to "prepare and implement a fishery management plan, plan amendment,

or proposed regulations for the fishery” under that provision. Consistent with the requirements of sections 304(e) (3) and (4), the framework action and proposed rule are projected to end overfishing immediately and rebuild the stock in as short as time possible, taking into account the needs of fishing communities. The specified time for rebuilding is 4 years, well below the maximum time of 10 years specified in section 304(4) (A) (ii) of the Magnuson-Stevens Act, and the harvest restrictions are fairly and equitably allocated between the commercial and recreational sectors by virtue of the established ACL allocation, the increased recreational size limit, and the decreased commercial trip limit.

#### **Management Measures Contained in this Proposed Rule**

This rule would revise the commercial and recreational ACLs and ACTs (which are expressed as quotas in the regulatory text), the commercial trip limit, and the recreational minimum size limit for greater amberjack in the Gulf.

##### *Commercial and Recreational ACLs and ACTs*

This rule would revise the commercial and recreational ACLs and ACTs for Gulf greater amberjack. All ACL and ACT weights are described in round weight. The final rule for Amendment 35 to the FMP set the current commercial ACL at 481,000 lb (218,178 kg) and the current commercial ACT at 409,000 lb (185,519 kg). That final rule also set

the current recreational ACL at 1,299,000 lb (589,216 kg) and the current recreational ACT at 1,130,000 lb (512,559 kg).

This proposed rule would reduce the commercial and recreational ACLs and ACTs. The current sector allocation of 27 percent for the commercial sector and 73 percent for the recreational sector would not change through this framework action. The commercial ACL would be set at 464,400 lb (210,648 kg) and the commercial ACT would be set at 394,740 lb (179,051 kg). The recreational ACL would be set at 1,255,600 lb (569,531 kg) and the recreational ACT would be set at 1,092,372 lb (495,492 kg).

#### *Commercial Trip Limit*

The current greater amberjack commercial trip limit was established in Amendment 35 to the FMP at 2,000 lb (907 kg), round weight, in an effort to reduce harvest rates, prevent commercial ACL overages, and provide a longer fishing season for the commercial sector (77 FR 67574, November 13, 2012). However, in 2013, the commercial ACL and ACT were still exceeded by approximately 12 percent, triggering the commercial AMs and closing the commercial sector in season. This rule would reduce the commercial trip limit to 1,500 lb (680 kg), gutted weight; 1,560 lb (708 kg), round weight. The Council determined that the proposed trip limit would further reduce the likelihood of exceeding the commercial ACL and ACT and could extend the length of the commercial fishing season.

### *Recreational Size Limit*

This rule would revise the greater amberjack recreational minimum size limit. In 2008, Amendment 30A to the FMP set the greater amberjack recreational minimum size limit at 30 inches (76 cm), fork length (FL), (73 FR 38139, July 3, 2008).

A greater amberjack with a 30-inch (76-cm), FL, is approximately 2 years old and the majority of the fish at that size have likely not yet reached sexual maturity. At the proposed recreational minimum size limit of 34 inches (86.4 cm), FL, it is estimated that 85 percent of females are reproductively mature. Additionally, based upon a review of greater amberjack recreational landings from 2012 through 2013, 34 inches (86.4 cm), FL, was the most frequently landed size of greater amberjack. The Council determined that increasing the recreational minimum size limit from 30 inches (76 cm), FL, to 34 inches (86.4 cm), FL, would provide an opportunity for a greater number of sexually mature greater amberjack to spawn, which could assist in Council efforts to end overfishing and rebuild the stock.

### **Other Actions Contained in the Framework Action**

In addition to the measures being proposed in this rule, the framework action would revise the greater amberjack ABC and OFL based upon the results of SEDAR 33 and the Council's SSC recommendation. All ABC and OFL weights are described in round weight. The current greater amberjack ABC is 1,780,000 lb (807,394 kg) and the current

OFL is 2,380,000 lb (1,079,550 kg), which were established in Amendment 35 to the FMP (77 FR 67574, November 13, 2012). This framework action would revise the ABC and OFL for 4 years, beginning in 2015. The ABC, which is equal to the stock ACL would be set at 1,720,000 lb (780,179 kg). The OFL would be set at 2,660,000 lb (1,206,556 kg) for 2015; 3,210,000 lb (1,456,032 kg) for 2016; 3,420,000 lb (1,551,286 kg) for 2017; and 3,510,000 lb (1,592,109 kg) for 2018, and subsequent years.

The framework action also contained an action to modify the greater amberjack recreational closed season. However, the Council decided not to revise the recreational season at this time. Therefore, the current recreational closed season of June 1 through July 31 remains in effect.

#### **Additional Proposed Changes to Codified Text**

Amendment 30A to the FMP implemented ACLs and AMs for Gulf gray triggerfish (73 FR 38139, July 3, 2008). The recreational AM was a post-season AM that reduced the length of the following recreational fishing season by the amount necessary to ensure recreational landings did not exceed the recreational ACT the following fishing year. To determine a reduced season, recreational landings were evaluated relative to the recreational ACL based on a moving multi-year average of landings. In Amendment 37 to the FMP, this post-season AM was replaced with an in-season AM (which is based on a single season of

landings data), so the recreational sector closes when the recreational ACT is reached or projected to be reached (78 FR 27084, May 9, 2013). However, during the implementation of Amendment 37, the last sentence in § 622.41(b)(2)(iii), which states that "Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP," was not removed. NMFS has only recently noticed this error. This rule corrects this error by removing this sentence. The recreational ACL and ACT for gray triggerfish implemented in Amendment 37 to the FMP remain unchanged.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, 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 for this rule, as required by section 603 of the RFA, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained

at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

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

This proposed rule, if implemented, would be expected to directly affect all commercial vessels that harvest Gulf greater amberjack under the FMP. Changes to recreational ACLs, ACTs, and/or minimum size limits in this proposed rule would not directly apply to or regulate charter vessel and headboat (for-hire) businesses. Any impact to the profitability or competitiveness of for-hire fishing businesses would be the result of changes in for-hire angler demand and would therefore be indirect in nature. The RFA does not consider recreational anglers, who would be directly affected by this proposed rule, to be small entities, so they are outside the scope of this analysis and only the effects on commercial vessels were analyzed.

As of March 25, 2015, there were 863 vessels with valid or renewable Gulf reef fish commercial vessel permits. On average (2009 through 2013), 211 vessels commercially landed greater amberjack each year from Gulf Federal waters. Their average annual vessel-level

revenue for 2009 through 2013 was approximately \$130,000 (2013 dollars), of which \$2,400 was from greater amberjack.

No other small entities that would be directly affected by this proposed rule have been identified.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including commercial finfish harvesters (NAICS code 114111). A business primarily involved in finfish 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 \$20.5 million for all its affiliated operations worldwide. All of the vessels directly regulated by this rule are believed to be small entities based on the SBA size criteria.

Because all entities expected to be affected by this proposed rule are small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This proposed rule would reduce the current greater amberjack commercial ACT by 14,260 lb (6,468 kg), round weight, from 409,000 lb (185,519 kg) to 394,740 lb (179,051 kg), round weight, or 3.5 percent. Additionally, this proposed rule would reduce the greater amberjack commercial trip limit from 2,000 lb (907 kg), round weight,

to 1,560 lb (708 kg), round weight; 1,500 lb (680 kg), gutted weight. On its own, the reduction in the commercial ACT would be expected to result in a shorter fishing season and fewer commercial trips that harvest greater amberjack. Conversely, the reduced commercial trip limit would be expected to increase the commercial fishing season length and the overall number of trips necessary to harvest the full commercial ACT. When the actions to reduce the commercial ACT and the trip limit are analyzed together, the expected recurring annual reduction in total ex-vessel revenue from this proposed rule is estimated to be \$20,703 (2013 dollars), assuming there is no substitution of other species and no change in effort, harvest rates, or prices. In addition, the season is predicted to be 5 days longer under the preferred commercial ACT and trip limit alternatives than under the no action alternatives for these actions. Assuming the reduction in greater amberjack revenues is distributed evenly across the average number of vessels that commercially harvest greater amberjack per year (211 vessels), the annual per-vessel loss would be \$98 (2013 dollars), or less than 1 percent of the average annual revenue earned by these vessels for all species harvested. Because this estimate is based on average performance, some vessels may be affected more or less than others, depending on their overall catch composition, landing capacity, and fishing behavior.

Thirty vessels, on average per year (2009 through 2013), were

identified that commercially landed greater amberjack in excess of 1,500 lb (680 kg), gutted weight, on a single trip (14 percent of the average number of vessels that harvested greater amberjack each year). In 2013, the total weight of greater amberjack harvested in excess of 1,500 lb (680 kg), gutted weight, per trip accounted for approximately 10 percent of total greater amberjack landings. Thus, for the 211 vessels that commercially harvest greater amberjack, the proposed reduction in the commercial trip limit, assuming effort remains constant, would be expected to reduce total commercial greater amberjack harvests by approximately 39,000 lb (17,690 kg), round weight, and \$46,800 (2013 dollars) in total ex-vessel revenue annually. Averaged across the 30 vessels per year with trip harvests above 1,500 lb (680 kg), gutted weight, this reduction would equal approximately \$1,560 (2013 dollars) per vessel, or approximately 1 percent of their average annual revenue. These losses would be reduced if increased landings of other species can be substituted for greater amberjack landings or if new trips harvesting greater amberjack were to occur. It is assumed that the full commercial ACT would be harvested under the preferred trip limit alternative. Therefore, if the trip limit change implemented by this proposed rule results in a decrease in greater amberjack landings and revenues for some vessels, it would result in an increase in greater amberjack landings and revenues for other vessels.

The following discussion analyzes the alternatives that were not selected as preferred by the Council. Only the actions which contain alternatives that would have direct economic effects on small entities merit inclusion in the following discussion.

Four alternatives were considered for the action to modify the commercial and recreational ACLs and ACTs for Gulf greater amberjack. The first alternative, the no action alternative, would not be expected to have any direct economic effects. This alternative was not selected because the stock ACL would exceed the ABC calculated by the most recent greater amberjack assessment and recommended by the SSC and would, therefore, be inconsistent with the NS 1 guidelines. The second alternative would set the stock ACL from 2015 through 2018 equal to the ABC values recommended by the SSC. This alternative included two sub-options. The first sub-option would use the Council's ACL/ACT control rule as established in the Generic ACL/AM Amendment (76 FR 82044, December 29, 2011), which would set the commercial ACT at a level reduced by 15 percent from the commercial ACL for greater amberjack and set the recreational ACT at a level reduced by 13 percent from the recreational ACL. The second sub-option would not use the ACL/ACT control rule and instead would apply a 20-percent buffer that would reduce both the recreational and commercial ACLs by 20 percent to establish the recreational and commercial ACTs. This alternative would increase the stock ACL each year from 2015 through 2018, which

would be expected to result in greater economic benefits than the preferred alternative in the framework action. However, this alternative was not selected as preferred by the Council as a result of the following factors: the stock remains overfished and is undergoing overfishing, the 10-year rebuilding plan time period ended and the stock has not been rebuilt, and the stock biomass has been relatively stable (at overfished levels) since 2000, while experiencing harvest levels below what is currently projected to rebuild the stock in upcoming years. The third alternative is the preferred alternative, which would set a constant stock ACL equal to the 2015 ABC value recommended by the SSC. The same two sub-options for setting the ACT that were considered for the second alternative were also considered for the third alternative. The first sub-option, selected as preferred by the Council, would apply a 15-percent buffer to the commercial ACL to set the commercial ACT and apply a 13-percent buffer to the recreational ACL to set the recreational ACT. The second sub-option would not use the ACL/ACT control rule and instead would apply a 20-percent buffer that would reduce both the recreational and commercial ACLs by 20 percent to establish the recreational and commercial ACTs. The fourth alternative would set the stock ACL and stock ACT at zero. The fourth alternative would stop all directed harvest of greater amberjack and would be expected to result in greater economic losses than the preferred ACL/ACT alternative.

Five alternatives were considered for the action to modify the greater amberjack commercial trip limit. The first alternative, the no action alternative, would maintain the current 2,000 lb (907 kg), round weight, trip limit and would not be expected to have any direct economic effects. The second alternative is the preferred alternative, which would establish a 1,500 lb (680 kg), gutted weight, trip limit for greater amberjack. The third, fourth, and fifth alternatives would have established 1,000 lb (454 kg), 750 lb (340 kg), and 500 lb (227 lb), gutted weight trip limits, respectively. Although these three alternatives would be expected to extend the season, they would increase the likelihood that trips are no longer profitable and decrease the likelihood that the full commercial ACT would be harvested during the fishing year. As such, these three alternatives would be expected to result in greater economic losses to affected small entities than the preferred trip limit alternative.

An item contained in this proposed rule that is not part of the framework action is the removal of the last sentence in § 622.41(b)(2)(iii), "Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP." This sentence, which pertains to the evaluation of recreational landings of gray triggerfish relative to the ACL, was inadvertently not removed in the final rule implementing Amendment 37 to the FMP (78 FR 27084, May 9, 2013). The removal of this sentence

will clarify the criteria used to trigger recreational AMs as written in the Federal regulations; however, it is not expected to have any effect on current management practices. This is because NMFS has managed gray triggerfish in accordance with the preferred alternatives specified in Amendment 37 since its implementation. Therefore, this is an administrative change only and is not expected to have any direct economic effects on small entities. As such, this component of the proposed rule is outside the scope of the RFA.

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

Commercial, Fisheries, Fishing, Greater amberjack, Gulf, Recreational, Reef fish.

Dated: September 11, 2015.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH**

**ATLANTIC**

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

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

2. In § 622.37, revise paragraph (c) (4) to read as follows:

**§ 622.37 Size Limits.**

\* \* \* \* \*

(c) \* \* \*

(4) *Greater amberjack*--34 inches (86.4 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.38(b) (1) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

\* \* \* \* \*

3. In § 622.39, revise paragraphs (a) (1) (v) and (a) (2) (ii) to read as follows:

**§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(v) *Greater amberjack*--394,740 lb (179,051 kg), round weight.

\* \* \* \* \*

(2) \* \* \*

(ii) *Recreational quota for greater amberjack*. The recreational

quota for greater amberjack is 1,092,372 lb (495,492 kg), round weight.

\* \* \* \* \*

4. In § 622.41, revise paragraphs (a) (1) (iii), (a) (2) (iii), and (b) (2) (iii) to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(iii) The commercial ACL for greater amberjack is 464,400 lb (210,648 kg), round weight.

(2) \* \* \*

(iii) The recreational ACL for greater amberjack is 1,255,600 lb (569,531 kg), round weight.

(b) \* \* \*

(2) \* \* \*

(iii) The recreational ACL for gray triggerfish is 241,200 lb (109,406 kg), round weight. The recreational ACT for gray triggerfish is 217,100 lb (98,475 kg), round weight.

\* \* \* \* \*

5. In § 622.43, revise paragraph (a) to read as follows:

**§ 622.43 Commercial trip limits.**

\* \* \* \* \*

(a) *Gulf greater amberjack*. Until the quota specified in § 622.39(a)(1)(v) is reached, 1,500 lb (680 kg), gutted weight; 1,560 lb (708 kg), round weight. See § 622.39(b) for the limitations regarding greater amberjack after the quota is reached.

\* \* \* \* \*

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