



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 150826781-5999-02]**

**RIN 0648-BF33, 0648-BE91**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2016 Red Snapper Commercial Quota Retention**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations 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). This final rule withholds 4.9 percent of the 2016 red snapper commercial quota prior to the annual distribution of red snapper allocation to the Individual Fishing Quota (IFQ) program shareholders on January 1, 2016. This final rule allows the allocations being established through Amendment 28 to the FMP (Amendment 28) to be effective for the 2016 fishing year should Amendment 28 be approved by the Secretary of

Commerce (Secretary) in 2016. This final rule also makes a technical correction to re-insert regulatory text that a previous rulemaking inadvertently omitted, which specifies that the recreational annual catch limit (ACL) for red snapper is equal to the total recreational quota.

**DATES:** This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** 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 (SERO) Web site at

*[http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2015/rs\\_framework\\_2016\\_quota/documents/pdfs/retain\\_2016\\_red\\_snapper\\_commercial\\_quota\\_ea.pdf](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2015/rs_framework_2016_quota/documents/pdfs/retain_2016_red_snapper_commercial_quota_ea.pdf)*

**FOR FURTHER INFORMATION CONTACT:** Richard Malinowski, NMFS SERO, telephone: 727-824-5305, or e-mail:

*[rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov)*.

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

On October 19, 2015, NMFS published a proposed rule for the framework action and requested public comment (80 FR 63190). 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 the framework action and this final rule is provided below.

*Management Measures Contained in this Final Rule*

This final rule withholds 4.9 percent of the 2016 red snapper commercial quota, equal to 352,000 lb (159,665 kg), round weight, and 317,117 lb (143,842 kg), gutted weight, prior to the annual distribution of allocation to the IFQ program shareholders on January 1, 2016. The framework procedures of the FMP include the authority to retain a portion of an annual quota in anticipation of future regulatory changes during the same fishing year. This final rule allows the allocations being established through Amendment 28 to be effective for the 2016 fishing year should the Secretary approve Amendment 28 in 2016. If NMFS does not implement Amendment 28, NMFS will distribute the withheld 4.9 percent of the 2016 red snapper commercial quota to shareholders based on the shares held as of the date of distribution.

*Other Changes to the Codified Text*

This final rule fixes an error in § 622.41(q)(2)(i)

for the recreational sector of Gulf red snapper. This final rule re-inserts a sentence of regulatory text originally published in the final rule implementing Amendment 40 to the FMP (80 FR 22422, April 22, 2015), which specifies that the recreational ACL for red snapper is equal to the total recreational quota. The regulatory text was inadvertently omitted in a subsequent correcting amendment (80 FR 58219, September 28, 2015) to a final rule for a framework action that increased the commercial and recreational quotas for Gulf red snapper in the 2015, 2016, and 2017 fishing years (80 FR 24832, May 1, 2015). This final rule corrects the error by re-inserting the regulatory text into § 622.41(q)(2)(i). This action is unrelated to the actions described in this framework action.

### **Comments and Responses**

NMFS received 46 comment submissions from individuals, commercial fishermen, and a commercial fishermen's association on the framework action and the proposed rule, along with other issues. Many of the comments NMFS received were about Amendment 28 and alternative management strategies for red snapper, for example, expanding state waters and advocating for state rather than Federal management. Such comments were beyond the scope of the proposed rule and, therefore, have not been addressed in

this final rule. The comments that relate to the framework action and the proposed rule are summarized and responded to below.

*Comment 1:* The red snapper commercial quota should not be withheld until Amendment 28 is approved and implemented by NMFS. The resulting reallocation of the red snapper commercial quota would then apply to the 2017 fishing year.

*Response:* NMFS disagrees that the commercial quota necessary to implement Amendment 28 in the 2016 fishing year should not be withheld. The Council approved Amendment 28 for review and implementation in August 2015 with the expectation that the revised allocations and quotas would be implemented in 2016, if approved by the Secretary. This will not be possible unless that portion of the commercial quota is not distributed to shareholders on January 1, 2016, the date on which NMFS distributes annual red snapper allocation to shareholders. If Amendment 28 is not approved by the Secretary, the withheld red snapper commercial quota will be distributed as soon as possible to the current red snapper IFQ shareholders based on their current shares held as of the date of distribution.

*Comment 2:* Withholding IFQ allocation cannot be accomplished through framework procedures. NMFS regulations at 50 CFR § 622.42(a) list actions that can be established

or modified in accordance with the framework procedures of the FMP. Withholding IFQ allocation in anticipation of reallocation is not one of the described actions that can be accomplished by framework procedures. NMFS and the Council are not modifying approved framework items such as the red snapper quotas or the ACLs through this framework action; that is what Amendment 28 would do if and when it is approved. NMFS, therefore, lacks authority to implement this action using framework procedures.

*Response:* NMFS disagrees. The regulations at 50 CFR § 622.42(a) refer to the framework procedures of the FMP and list quotas as one of the management measures that may be modified. The framework procedures for the FMP that were established with the Generic ACL and Accountability Measures Amendment (76 FR 82044, December 29, 2011; [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/generic/archives/generic\\_acl\\_am\\_amend\\_sept\\_2011.pdf](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/generic/archives/generic_acl_am_amend_sept_2011.pdf)) list the regulatory changes that may be implemented and expressly include "retention of portion of an annual quota in anticipation of future regulatory changes during the same fishing year." Thus, this framework action and regulations are in accordance with the FMP (as revised through the Generic ACL and Accountability Measures Amendment), and regulations at 50 CFR § 622.42(a).

*Comment 3:* Reducing each shareholder's allocation of red snapper by approximately five percent could reduce access to quota that was leased out to the grouper fishery for bycatch coverage. This would result in negative biological consequences that are not analyzed in the framework action.

*Response:* NMFS disagrees. Withholding the red snapper commercial quota until a decision to approve or disapprove Amendment 28 is made does not restrict the ability of the shareholders to continue to contribute to the private quota bank they developed. Any long-term impacts on bycatch mortality anticipated from a permanent shift in allocation to the recreational sector would be a consequence of Amendment 28 and its implementing regulations, not this rule.

*Comment 4:* Withholding a portion of an individual's quota indefinitely disrupts fishermen's business plans, particularly for fishermen who harvest large portions or all of their allocation early in the year, leading to inefficiencies in the allocation leasing marketplace which would reduce profitability and introduce economic and social costs to the IFQ program.

*Response:* NMFS disagrees. As stated in the proposed rule for this framework action, withholding a portion of

the commercial quota may result in a reduction in normal total revenue, alteration of the flow of receipts, and disruption of normal business operation, consistent with the comment. These effects, however, are expected to be minor because of the small amount of quota withheld (4.9 percent) and the likely short timeframe during which withholding occurs. Thus, the full value of the quota being withheld would not be lost. Because red snapper commercial harvest occurs throughout the year, and is not subject to "race to fish" (derby) conditions, withholding this small portion is not expected to severely limit the availability of allocation for purchase or trade early in the year, nor result in a market glut if allocation is subsequently returned to shareholders. This action only applies to the 2016 fishing year. As a result, the economic and social consequences are of limited scope and duration and are not expected to harm individual businesses or the industry beyond as already described. If Amendment 28 is approved by the Secretary of Commerce and the quota is not returned to shareholders, this would be a consequence of the rule for Amendment 28 and not this current framework action and final rule.

**Classification**

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the framework action, 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.

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 final rule.

The Chief Counsel for Regulation of the Department of Commerce (DOC) certified to the Chief Counsel for advocacy of the Small Business Administration (SBA) 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 determination was published in the proposed rule and is not repeated here. NMFS received no significant comments regarding the certification. However, one general comment on the expected economic effects of this rule is addressed in the Comments and Response section of this rule. As a result, a final regulatory flexibility analysis was not required and was not prepared.

As discussed in the background section of this final rule, this rule also re-inserts a sentence of regulatory text originally published in the final rule implementing Amendment 40 (80 FR 22422, April 22, 2015). The regulatory text was inadvertently omitted in a subsequent correcting amendment (80 FR 58219, September 28, 2015) to a final rule that implemented a framework amendment for red snapper in the Gulf reef fish fishery (80 FR 24832, May 1, 2015). The DOC Chief Counsel for Regulation certified to the Chief Counsel for advocacy of the SBA that the final rules implementing both Amendment 40 and the framework amendment would not have a significant economic impact on a substantial number of small entities. The re-insertion of this regulatory text is not expected to have direct adverse economic effects on a substantial number of small entities because it is an administrative correcting action. The final rule that originally published the regulation was certified to not have a significant economic impact on a substantial number of small entities, and the public may believe the omitted text is already included in the regulations. This change is needed to ensure that the public is aware of the correct recreational harvest limit (quota) and accountability measures for recreationally-caught Gulf red snapper.

Pursuant to 5 U.S.C. 553(b) (B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this correcting action because it would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the public received notice and an opportunity to comment on the proposed rules for the framework amendment and Amendment 40 and the final rule for Amendment 40 included this regulatory text. This final rule reinstates the regulatory text that was inadvertently omitted from the correcting amendment that published on September 28, 2015 (80 FR 58219). If this final rule was delayed to allow for notice and opportunity for public comment, it could cause confusion because the public believes that the omitted text is already included in the regulations.

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

Commercial, Fisheries, Fishing, Gulf of Mexico,  
Recreational, Red snapper, Reef fish.

Dated: November 23, 2015

---

Eileen Sobeck,  
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 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 § 622.39, add paragraphs (a) (1) (i) (B) (1) and (2)  
to read as follows:

**§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) \* \* \*

(1) NMFS will withhold distribution of 4.9 percent of the 2016 IFQ allocation of red snapper commercial quota on January 1, 2016, totaling 352,000 lb (159,665 kg), round weight, of the 2016 red snapper commercial quota specified in this paragraph (a) (1) (i) (B).

(2) As determined by NMFS, remaining 2016 IFQ allocation of red snapper will be distributed to the current shareholders based on their current shares held as of the date of distribution.

\* \* \* \* \*

3. In § 622.41, revise paragraph (q) (2) (i) to read as follows:

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

\* \* \* \* \*

(q) \* \* \*

(2) \* \* \*

(i) The recreational ACL is equal to the total recreational quota specified in § 622.39(a) (2) (i) (A). The AA will determine the length of the red snapper

recreational fishing season, or recreational fishing seasons for the Federal charter vessel/headboat and private angling components, based on when recreational landings are projected to reach the recreational ACT, or respective recreational component ACT specified in paragraph (q) (2) (iii) of this section, and announce the closure date(s) in the **Federal Register**. These seasons will serve as in-season accountability measures. On and after the effective date of the recreational closure or recreational component closure notifications, the bag and possession limit for red snapper or for the respective component is zero. When the recreational sector or Federal charter vessel/headboat component is closed, 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.

\* \* \* \* \*

[FR Doc. 2015-30194 Filed: 11/25/2015 8:45 am; Publication Date: 11/27/2015]