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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160211104-6339-02]

RIN 0648-BF70

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 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 action revises the recreational closed season for gag and the recreational minimum size limits for gag and black grouper in the Gulf of Mexico (Gulf) exclusive economic zone. The purpose of this final rule is to optimize recreational opportunities to harvest gag and to address inconsistencies in the recreational minimum size limits for gag and black grouper in the Gulf and South Atlantic.

DATES: This final 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 Web Site at

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2016/gag_and_black_grouper_framework/index.html

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

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes gag and black grouper, 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 March 3, 2016, NMFS published a proposed rule for the framework action and requested public comment (81 FR 11166). The proposed rule and Amendment 35 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.

The 2014 Southeast Data, Assessment and Review (SEDAR 33) benchmark stock assessment indicates that the Gulf gag stock is not overfished or undergoing overfishing. However, as described in the framework action, the Council's Reef Fish Advisory Panel, the

Council's Science and Statistical Committee (SSC), and the public all suggested that the Council use caution when setting the gag annual catch limits (ACL) and annual catch targets (ACT) because SEDAR 33 resulted in a large increase in the overfishing limit compared to the previous gag assessment. Therefore, the Council decided not to modify the Gulf gag ACL or ACT in this framework action.

The 2010 SEDAR 19 benchmark assessment for black grouper found that the Gulf black grouper stock was neither overfished nor undergoing overfishing.

Management Measures Contained in this Final Rule

This final rule revises the recreational closed season for gag and the recreational minimum size limits for gag and black grouper in the Gulf.

Gag Recreational Closed Season

The current closed season for the gag recreational sector is January 1 through June 30 and December 3 through December 31, annually. This closed season was established in Amendment 32 to the FMP to help prevent the gag recreational ACL from being exceeded (77 FR 6988, February 10, 2012).

This final rule revises the gag recreational closed season to be from January 1 to May 31, annually. This revised closed season is expected to reduce the amount of dead discards of gag that occur during the Gulf's recreational season for red snapper that begins on June

1, annually, and to extend the gag recreational fishing season beyond the current December closure date to provide the opportunity for the recreational sector to harvest the recreational ACL.

Gag and Black Grouper Minimum Size Limits

The current gag and black grouper recreational minimum size limits in Gulf Federal waters are both set at 22 inches (55.9 cm), total length (TL). The current gag and black grouper minimum size limit in South Atlantic Federal waters is 24 inches (61.0 cm), TL, for both species and for both the commercial and recreational sectors. For the state of Florida, in state waters off Monroe County in the Gulf, the recreational minimum size limit for gag and black grouper is 24 inches (61.0 cm), TL. This final rule increases the recreational minimum size limit in Gulf Federal waters for both species to 24 inches (61.0 cm), TL, to be consistent with the Federal waters of the South Atlantic and state waters off Monroe County, Florida. The Council decided that the benefits of having a size limit for these species that is consistent with both the South Atlantic and the state size limits for the waters off Monroe County, Florida, will outweigh any impacts of increased discard rates for these species. Furthermore, gag are sometimes misidentified as black grouper and having the same recreational minimum size limit for gag and black grouper may assist the public in complying with the applicable regulations for gag and black grouper. Additionally, increasing the recreational minimum size

limit for these species is expected to provide the opportunity for more gag and black grouper to become sexually mature and spawn.

Comments and Responses

A total of 16 comments were received on the framework action and the proposed rule. Ten of the comments supported the actions in the rule, one comment was against the actions in the rule, and five comments were not related to the actions in the framework action or the proposed rule. Specific comments related to the actions in the framework action and the proposed rule as well as NMFS' respective responses, are summarized below.

Comment 1: The use of slot limits for gag and black grouper would allow larger fish with more eggs to proliferate.

Response: NMFS agrees that the use a slot limit could allow older, larger fish to remain in the population and reproduce. However, this would depend on the slot limit chosen and a slot limit would not allow for consistent size limits for these species between the Gulf, South Atlantic, and State of Florida waters off of Monroe County. Therefore, NMFS agrees with the Council's decision to select a minimum size limit of 24 inches (61.0 cm), TL, for both gag and black grouper.

Comment 2: The gag recreational sector should be open year round or for 10 months each year.

Response: NMFS disagrees. Two of the purposes of the framework action are to: 1) allow more recreational opportunities to harvest

gag without increasing the risk of exceeding the recreational ACL; and 2) allow the opening of the recreational gag season to coincide with the opening of the red snapper recreational season. The Council determined, and NMFS agrees, that modifying the season from July 1 through December 2 to June 1 through December 31 achieves these purposes. Further, the Council's preferred alternative retains the spring closure, which protects gag spawning aggregations that are at their peak during February and March.

Comment 3: The Council should implement a minimum size limit of 23 inches (58.4 cm), TL, instead of the 24 inch (61.0 cm), TL, size limit.

Response: NMFS disagrees. A minimum size limit of 23 inches (58.4 cm), TL, was not considered as an alternative by the Council because it would not meet the relevant purpose of the framework action, which is to address the inconsistencies in the size limits between Gulf of Mexico waters, South Atlantic waters, and Florida waters off Monroe County. Both the South Atlantic Fishery Management Council and state of Florida have a 24 inch (61.0 cm), TL, minimum size limit for gag and black grouper. Therefore, the Council determined, and NMFS agrees, that it is appropriate to change the size limited in Gulf of Mexico waters to 24 inches (61.0 cm), TL, to be consistent with the South Atlantic and state of Florida regulations.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of Gulf gag and black grouper and 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, recordkeeping, or other compliance requirements are introduced by this final rule.

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 rule 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. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Black grouper, Fisheries, Fishing, Gag, Gulf, Recreational, Reef fish, Size limits.

Dated: April 19, 2016

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 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 § 622.34, paragraph (e) is revised to read as follows:
§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(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 May 31. During the closure, the bag and possession limits for gag in or from the Gulf EEZ are zero.

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3. In § 622.37, paragraphs (b) (1) and (b) (5) (ii) are revised to read as follows:

§ 622.37 Size limits.

* * * * *

(b) * * *

(1) *Gag*--(i) For a person not subject to the bag limit specified in § 622.38(b) (2)--22 inches (55.9 cm), TL.

(ii) For a person subject to the bag limit specified in § 622.38(b) (2)--24 inches (61.0 cm), TL.

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(5) * * *

(ii) For a person subject to the bag limit specified in § 622.38(b) (2)--24 inches (61.0 cm), TL.

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