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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170515489-7489-01]

RIN 0648-BG89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures; Compliance with Court Order

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

ACTION: Final rule.

SUMMARY: This final rule revises the Gulf of Mexico (Gulf) red snapper commercial and recreational sector allocations of the stock annual catch limit (ACL), the commercial and recreational quotas, and the recreational annual catch targets (ACTs), including ACTs for the private angling and for-hire (charter vessels and headboats) components of the recreational sector. A court order directs NMFS to reinstate the previous red snapper sector allocations, and the corresponding sector quotas (which are equivalent to the ACLs), to 51 percent commercial and 49 percent recreational. The intent of this final rule is to ensure

that the regulations reflect the sector allocations and corresponding catch levels as required by the court order.

DATES: This final rule is effective on June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *kelli.odonnell@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery includes red snapper and is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management 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). All weights for red snapper below apply as round weight.

The Secretary of Commerce approved Amendment 28 to the FMP on March 23, 2016. The purpose of Amendment 28 was to reallocate the red snapper harvest consistent with the 2014 red snapper update assessment to ensure the allowable catch and recovery benefits from a rebuilding stock were fairly and equitably allocated between the commercial and recreational sectors to achieve optimum yield. On April 28,

2016, NMFS published a final rule implementing Amendment 28 (81 FR 25576).

The final rule for Amendment 28 revised the allocation of the red snapper ACL between the commercial and recreational sectors to be 48.5 percent and 51.5 percent, respectively, and consequently revised the commercial and recreational quotas and ACLs, as well as the recreational ACTs (81 FR 25576, April 28, 2016). However, a court decision in *Guindon v. Pritzker*, 2017 WL 875775 (D.D.C. March 3, 2017), vacated Amendment 28 and its implementing final rule. The court order directs NMFS to reinstate the sector allocations of red snapper to 51 percent commercial and 49 percent recreational, which were in effect prior to the implementation of the Amendment 28 final rule. This results in a total commercial quota of 7,007,000 lb (3,178,000 kg) and a total recreational quota of 6,733,000 lb (3,054,000 kg). The total recreational quota is further divided to a private angling quota and ACT of 3,885,000 lb (1,762,000 kg), and 3,108,000 lb (1,410,000 kg), respectively; and a Federal for-hire component quota and ACT of 2,848,000 lb (1,292,000 kg), and 2,278,000 lb (1,033,000 kg), respectively. The recreational component

quotas and ACTs are in effect through the 2022 fishing year.

All other provisions that are currently applicable to the Gulf reef fish fishery and red snapper remain unchanged as a result of this final rule.

Classification

The Assistant Administrator for NOAA Fisheries (AA) has determined that this final rule is consistent with the March 3, 2017, court order, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because this rulemaking is required by court order and prior notice and opportunity for public comment are not required under 5 U.S.C. 553, or any other law, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 603-605, do not apply to this final rule. In addition, because the changes required by the court order that are identified in this final rule are non-discretionary, the National Environmental Policy Act does not apply to this final rule.

The AA finds good cause to waive notice and public comment on this action because it is unnecessary and

contrary to the public interest, as provided by 5 U.S.C. 553(b) (B). This action is limited in scope and ensures that the regulatory text provides accurate information to the regulated public that is consistent with a Federal court order. NMFS does not have discretion to take other action, as there is no alternative to complying with the requirements of the court order.

Furthermore, the AA finds good cause to waive the 30-day delay in effectiveness, as provided by 5 U.S.C. 553(d) (3), as such delay would be contrary to the public interest because the measures contained in this final rule are necessary to ensure that the Gulf reef fish fishery is conducted in compliance with a Federal court order. If the requirements are not implemented immediately, then red snapper harvest will not be managed in accordance with the court order.

List of Subjects in 50 CFR Part 622

Allocation, Commercial, Fisheries, Fishing, Gulf of Mexico, Recreational, Red snapper.

Dated: June 2, 2017.

Samuel D. Rauch, III,

Acting 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, revise paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Commercial quota for red snapper.* For fishing year 2017 and subsequent fishing years--7.007 million lb (3.178 million kg), round weight.

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(2) * * *

(i) *Recreational quota for red snapper--(A) Total recreational quota (Federal charter vessel/headboat and private angling component quotas combined).* For fishing

year 2017 and subsequent fishing years--6.733 million lb (3.054 million kg), round weight.

(B) *Federal charter vessel/headboat component quota.*

The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a) (2) (i) (A) of this section, will apply to the recreational sector. For fishing years 2017 through 2022--2.848 million lb (1.292 million kg), round weight.

(C) *Private angling component quota.*

The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a) (2) (i) (A) of this section, will apply to the recreational sector. For fishing years

2017 through 2022--3.885 million lb (1.762 million kg),
round weight.

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

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

* * * * *

(q) * * *

(2) * * *

(iii) *Recreational ACT for red snapper--(A) Total
recreational ACT (Federal charter vessel/headboat and
private angling component ACTs combined)*. The total
recreational ACT is 5.386 million lb (2.443 million kg),
round weight.

(B) *Federal charter vessel/headboat component ACT*. The
Federal charter vessel/headboat component ACT applies to
vessels that have been issued a valid Federal charter
vessel/headboat permit for Gulf reef fish any time during
the fishing year. This component ACT is effective for only
the 2015 through 2022 fishing years. For the 2023 and
subsequent fishing years, the applicable total recreational
ACT, specified in paragraph (q)(2)(iii)(A) of this section,

will apply to the recreational sector. The component ACT is 2.278 million lb (1.033 million kg), round weight, for fishing years 2017 through 2022.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q) (2) (iii) (A) of this section, will apply to the recreational sector. The component ACT is 3.108 million lb (1.410 million kg), round weight, for fishing years 2017 through 2022.

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