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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170816768-7768-01]

RIN 0648-BH14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Modifications to Greater Amberjack Allowable Harvest and Rebuilding Plan

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 proposed rule would revise the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs), and modify the recreational fixed closed season for greater amberjack in the Gulf of Mexico (Gulf) exclusive economic zone. The purpose of this proposed rule and the framework action is to adjust the rebuilding time period, to revise the sector ACLs and ACTs, and to incorporate updated stock status

information to end overfishing and rebuild the greater amberjack stock in the Gulf.

DATES: Written comments must be received on or before [*insert date 15 calendar days after BH14 date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2017-0116" 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-2017-0116, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kelli O'Donnell, 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 without change. All personal identifying information (e.g., name, address), 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/2017/GAJ_Framework/gaj_framework.pdf

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, Southeast Regional Office, NMFS, telephone: 727-824-5305, email:

Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes greater amberjack, is managed under the FMP. The Council prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the optimum yield from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation.

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 which started in 2003 and ended in 2012 (68 FR 39898; July 3, 2003). In 2006, a Southeast

Data Assessment and Review (SEDAR) benchmark stock assessment (SEDAR 9) was completed for greater amberjack and was subsequently updated in 2010 (SEDAR 9 Update). In response to results from SEDAR 9 that showed the stock continued to be overfished and undergoing overfishing, the rebuilding plan was revised in Amendment 30A to the FMP (73 FR 38139; July 3, 2008). Results from the SEDAR 9 Update showed the stock continued to be overfished and undergoing overfishing, thereby necessitating further adjustment of the greater amberjack rebuilding plan, implemented in Amendment 35 to the FMP (77 FR 67574; December 13, 2012). However, after the time period for rebuilding the stock that was put in effect through the final rule for Secretarial Amendment 2 ended in 2012, NMFS determined in a 2014 stock assessment (SEDAR 33) that the stock was not rebuilt, and remained overfished and was undergoing overfishing. In response to the results of SEDAR 33, the rebuilding plan was revised and the catch levels were reduced in a 2015 framework action (80 FR 75432; December 2, 2015). The current rebuilding time period, established by the 2015 framework action, ends in 2019.

A 2016 update to SEDAR 33 (SEDAR 33 Update) indicated the Gulf greater amberjack stock remained overfished and was undergoing overfishing, and would not rebuild by 2019, as previously estimated. The Council's Scientific and Statistical Committee (SSC) reviewed

this assessment at their March 2017 meeting and provided the Council new overfishing limits (OFL) and acceptable biological catches (ABC) for a period of 3 years beginning in 2018. The ABCs recommended by the Council's SSC are: 1,182,000 lb (536,146 kg) for 2018; 1,489,000 lb (675,399 kg) for 2019; and 1,794,000 lb (813,744 kg) for 2020. All weights described in this proposed rule are in pounds round weight. Constraining catch to the ABC (equivalent to 75 percent of the maximum fishing mortality threshold) is expected to end overfishing and rebuild the stock by 2027.

In May 2017, pursuant to paragraph (7) of section 304(e) of the Magnuson-Stevens Act (16 U.S.C. 1854(e)), NMFS notified the Council of the 2016 SEDAR 33 Update 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 regulations within 2 years to end overfishing immediately and rebuild the greater amberjack stock.

The Council decided to set the stock ACL equal to the SSC's ABC recommendation for 2018 through 2020, keeping the stock ACL for 2020 in effect for subsequent years unless changed. The Council did not consider any change to the allocation of the stock ACL, which is 72 percent to the recreational sector and 27 percent to the commercial

sector. To account for management uncertainty, the Council applied the ACL/ACT control rule from the Generic Annual Catch Limits/Accountability Measures Amendment (76 FR 82044; December 29, 2011) (using landings from 2013 through 2016) and established a 13 percent buffer between the commercial ACL and ACT and a 17 percent buffer between the recreational ACL and ACT. The revised sector ACLs and ACTs are expected to rebuild the stock by 2027. The Council also considered alternatives that would have set the stock ACL equal to the lowest ABC recommended by the SSC (constant catch ACL), rebuilding the stock by 2024, or set the stock ACL at zero, rebuilding the stock by 2022. However, because the constant catch ACL and zero ACL alternatives would have greater negative socio-economic impacts on fishing communities for relatively minor biological benefits, the Council determined that the 10-year rebuilding time period that ends in 2027 was as short as possible, taking into account the status and biology of the stock and the needs of the associated fishing communities.

Management Measures Contained in this Proposed Rule

This proposed rule would revise the commercial and recreational ACLs and ACTs (which are expressed as quotas in the regulatory text), and would revise the recreational fixed closed season for greater amberjack in the Gulf.

Commercial and Recreational ACLs and ACTs

The current commercial ACL is 464,400 lb (210,648 kg) and the commercial ACT is 394,740 lb (179,051 kg). The current recreational ACL is 1,255,600 lb (569,530 kg) and the recreational ACT is 1,092,372 lb (495,492 kg).

This proposed rule would revise the commercial and recreational ACLs and ACTs for Gulf greater amberjack based on the results of the SEDAR 33 Update and the ABC recommendations from the Council's SSC. This proposed rule would set the commercial ACL at 319,140 lb (144,759 kg) for 2018, 402,030 lb (182,357 kg) for 2019, and 484,380 lb (219,711 kg) for 2020 and subsequent years. The commercial ACT would be set at 277,651 lb (125,940 kg) for 2018, 349,766 lb (158,651 kg) for 2019, and 421,411 lb (191,148 kg) for 2020 and subsequent years. The recreational ACL would be set at 862,860 lb (391,386 kg) for 2018, 1,086,970 lb (493,041 kg) for 2019, and 1,309,620 lb (594,033 kg) for 2020 and subsequent years. The recreational ACT would be set at 716,173 lb (354,850 kg) for 2018, 902,185 lb (409,223 kg) for 2019, and 1,086,985 lb (493,047 kg) for 2020 and subsequent years.

Recreational Fixed Closed Season

This proposed rule would revise the greater amberjack recreational fixed closed season from June 1 through July 31, which was established in the final rule for Amendment 35 to the FMP (77 FR

67574; November 13, 2012). This closed season was implemented to restrict harvest during times of peak fishing effort in order to prevent a recreational in-season quota closure, and thus effectively provide a longer fishing season for the recreational sector. The June 1 through July 31 greater amberjack recreational fixed closed season also was intended to allow for the harvest of one highly targeted species (red snapper) when the fishing season for the other species (greater amberjack) was closed. However, in-season closures of the greater amberjack have continued to occur, and the reduction of the recreational red snapper season, which opens on June 1 each year, has resulted in closures for both of these species simultaneously. This proposed rule would change the recreational fixed closed season for greater amberjack to January 1 through June 30. The Council determined that extending the length of the recreational fixed closed season to the six-month period of January 1 through June 30 would protect greater amberjack during peak spawning in the majority of the Gulf (March through April), thereby contributing to rebuilding the greater amberjack stock. The Council also determined that this proposed 6-month fixed closed season would reduce the likelihood that the recreational sector would exceed its ACL. The Council intended this new 6-month fixed closed season to be a temporary measure to give the Council time to develop and complete a subsequent framework action

that would allow a spring and fall recreational fishing season. At the October 2017 meeting, the Council approved a subsequent framework action that would modify the 6-month fixed closed season to create two separate fishing seasons: a spring season open from May 1 through May 31, and a fall season open from August 1 through October 31.

Actions Contained in the Framework Action not Codified through this Proposed Rule

In addition to the measures proposed in this rule, the framework action would revise the greater amberjack ABC and OFL based upon the results of the SEDAR 33 Update and the Council's SSC recommendations. The current greater amberjack ABC is 1,720,000 lb (780,179 kg), and the current OFL is 3,420,000 lb (1,551,286 kg), which were established in the final rule implementing the 2015 framework action (80 FR 75432; December 2, 2015). This framework action would revise the ABC and OFL for 3 years, beginning in 2018. The ABC, which is equal to the stock ACL, would be set at 1,182,000 lb (536,146 kg) for 2018, 1,489,000 lb (675,399 kg) for 2019, and 1,794,000 lb (813,744 kg) for 2020 and subsequent years. The OFL would be set at 1,500,000 lb (680,388 kg) for 2018; 1,836,000 lb (832,795 kg) for 2019; and 2,167,000 lb (982,934 kg) for 2020 and subsequent years.

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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained in the preamble of this rule at the beginning of the **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY** section. 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, the requirements of the Paperwork Reduction Act do not apply to this proposed rule.

This proposed rule, if implemented, would be expected to directly

affect all federally permitted commercial reef fish vessels that harvest Gulf greater amberjack under the FMP. Changing recreational ACLs and ACTs and modifying the fixed seasonal closure in this proposed rule would not directly affect 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, therefore, would 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. Thus, only the effects on commercial vessels were analyzed. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

As of October 2, 2017, there were 841 vessels with valid or renewable Federal Gulf reef fish commercial vessel permits. From 2010 through 2015, an average of 185 federally permitted commercial reef fish vessels per year landed greater amberjack in the Gulf (Federal

and state waters). These vessels, combined, averaged 522 trips per year in the Gulf on which greater amberjack were landed, and 2,935 other trips in the Gulf on which no greater amberjack were landed or trips that occurred in the South Atlantic. The average annual total dockside revenue (2015 dollars) was approximately \$0.54 million from greater amberjack, approximately \$4.44 million from other species co-harvested with greater amberjack (on the same trips), and approximately \$26.75 million from other trips by these vessels in the Gulf on which no greater amberjack were harvested or on trips that occurred in the South Atlantic. Total average annual revenue from all species harvested by vessels harvesting greater amberjack in the Gulf was approximately \$31.74 million, or approximately \$171,971 per vessel. These vessels generated approximately 1.7 percent of their total fishing revenues from greater amberjack. Based on the foregoing revenue information, all commercial vessels affected by the proposed rule are assumed to be small entities.

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

Modifying the greater amberjack ACLs and ACTs starting in 2018

is projected to rebuild the stock by 2027. The revisions to the sector ACLs and ACTs would result in total ex-vessel revenue reductions of approximately \$161,000 in 2018 and \$62,000 in 2019. Beginning in 2020, total ex-vessel revenues would increase annually by approximately \$36,000. Over the entire rebuilding period (2018-2027), total ex-vessel revenues would increase by approximately \$70,000 for all vessels combined, or \$378 per vessel. It is possible that some vessels may experience profit reductions, particularly in the first two years of the rebuilding period, but on average, the profit reductions would be relatively small because ex-vessel revenues from greater amberjack account for only 1.7 percent of total ex-vessel revenues for an average vessel. More economic benefits, such as higher ex-vessel revenues, may be expected after the stock is rebuilt in 2027 when less stringent measures, such as higher ACLs/ACTs, could be established.

The information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Greater amberjack, Gulf,

Recreational, Reef fish.

Dated: November 14, 2017.

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 § 622.34, revise paragraph (c) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(c) *Seasonal closure of the recreational sector for greater amberjack.* The recreational sector for greater amberjack in or from the Gulf EEZ is closed from January 1 through June 30, each year. During

the closure, the bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

* * * * *

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--(A) For fishing year 2018--277,651 lb (125,940.38 kg), round weight.

(B) For fishing year 2019--349,766 lb (158,651 kg), round weight.

(C) For fishing year 2020 and subsequent years--421,411 lb (191,149 kg), round weight.

* * * * *

(2) * * *

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack, in round weight, is 716,173 lb (324,851 kg), for 2018, 902,185 lb (409,224 kg), for 2019, 1,086,985 lb (493,048 kg), for 2020 and subsequent fishing years.

* * * * *

4. In § 622.41, revise paragraphs (a) (1) (iii) and (a) (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, in round weight, is 319,140 lb (144,759 kg), for 2018, 402,030 lb (182,358 kg), for 2019, and 484,380 lb (219,711 kg), for 2020 and subsequent fishing years.

(2) * * *

(iii) The recreational ACL for greater amberjack, in round weight, is 862,860 lb (391,387 kg), for 2018, 1,086,970 lb (493,041 kg), for 2019, and 1,309,620 (594,034 kg), for 2020 and subsequent fishing years.

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