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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170505465-7999-02]

RIN 0648-BG87

**Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish
Management Measures; Amendment 46**

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 Amendment 46 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) (Amendment 46). For gray triggerfish, this final rule revises the recreational fixed closed season, recreational bag limit, recreational minimum size limit, and commercial trip limit. Additionally, Amendment 46 establishes a new rebuilding time period for the Gulf of Mexico (Gulf) gray triggerfish stock. The purpose of this final rule is to implement management measures to assist in rebuilding the Gulf gray triggerfish stock

and achieve optimum yield (OY).

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

ADDRESSES: Electronic copies of Amendment 46, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/am46_gray_trigger/documents/pdfs/gulf_reef_am46_gray_trigg_final.pdf.

FOR FURTHER INFORMATION CONTACT: Lauren Waters, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: *Lauren.Waters@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes gray triggerfish, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C 1801 *et seq.*).

On August 30, 2017, NMFS published a notice of availability for Amendment 46 and requested public comment (82 FR 41205). On

September 25, 2017, NMFS published a proposed rule for Amendment 46 and requested public comment (82 FR 44551). The proposed rule and Amendment 46 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 46 and implemented by this final rule is provided below.

The most recent Southeast Data, Assessment, and Review (SEDAR) stock assessment for gray triggerfish was completed and reviewed by the Council's Scientific and Statistical Committee (SSC) in October 2015 (SEDAR 43). SEDAR 43 indicated that the gray triggerfish stock was not experiencing overfishing but remained overfished and would not be rebuilt by the end of 2017 as previously projected. On November 2, 2015, NMFS notified the Council that the gray triggerfish stock was not making adequate progress toward rebuilding, and the Council subsequently began development of Amendment 46 to establish a new rebuilding time period and other management measures to achieve OY and rebuild the stock.

Management Measures Contained in this Final Rule

For gray triggerfish, this final rule revises the recreational fixed closed season, recreational bag limit, recreational minimum size limit, and commercial trip limit. NMFS

and the Council are implementing changes to the recreational management measures to help constrain recreational landings to the recreational annual catch target (ACT) and to avoid triggering accountability measures (AMs) resulting in an in-season closure or post-season payback that would occur if landings exceed the recreational annual catch limit (ACL). The increase in the commercial trip limit will allow those commercial fishermen who encounter gray triggerfish to harvest more fish per trip while continuing to constrain commercial landings to the commercial ACT.

Recreational Seasonal Closure

The current recreational seasonal closure for gray triggerfish in the Gulf is from June 1 through July 31, and was established in Amendment 37 to the FMP to protect gray triggerfish during the peak spawning season and help constrain landings to the recreational ACT (78 FR 27084, May 5, 2013). However, recreational landings have exceeded the recreational ACL or adjusted ACL the last 4 years. This final rule establishes an additional recreational fixed closed season for gray triggerfish from January 1 through the end of February, which is expected to reduce recreational landings and help

rebuild the stock within the rebuilding time period established in Amendment 46.

Recreational Bag Limit

The current recreational bag limit was set in Amendment 37 and is 2-fish per person per day within the overall 20-fish aggregate reef fish bag limit. This final rule reduces the recreational gray triggerfish bag limit to 1 fish per person per day within the 20-fish aggregate reef fish bag limit.

As described in Amendment 46, from 2013 through 2015, approximately 10 percent of recreational trips with reef fish landings harvested 2 gray triggerfish within the 20-fish aggregate bag limit. NMFS expects the change to the bag limit to reduce recreational landings by 15 percent, which will help constrain harvest to the recreational ACT and allow the sector to remain open through the end of the fishing year.

Recreational Minimum Size Limit

The current recreational minimum size limit for gray triggerfish is 14 inches (35.6 cm), fork length (FL), and was established in Amendment 30A to the FMP (73 FR 38139, July 3, 2008). This final rule increases the minimum size limit to 15 inches (38.1 cm), FL. Increasing the recreational minimum size limit will increase the gray triggerfish stock spawning

potential by maintaining larger-sized fish, which produce more eggs, and is expected to help slow recreational harvest.

Commercial Trip Limit

The current commercial trip limit is 12 fish per trip, and was established in Amendment 37 to help constrain commercial harvest to the commercial ACT and avoid an in-season closure as a result of the AMs being triggered (78 FR 27084, May 5, 2013). This final rule increases the trip limit to 16 fish per trip.

As described in Amendment 46, since implementation of the 12 fish commercial trip limit in 2013, commercial landings have been consistently below the commercial ACT. Analysis of commercial trips demonstrated that 80 percent of trips caught 10 gray triggerfish or less. This indicates that gray triggerfish is primarily a non-target species by the commercial sector and that increasing the commercial trip limit will likely result in only a small change in the weight projected to be landed during a fishing year. However, increasing the commercial trip limit will allow those fishermen who encounter the species the opportunity to harvest more fish. This will help achieve OY for the stock while continuing to constrain commercial landings to the commercial ACT, which is consistent with rebuilding the stock within the rebuilding time period.

Measures in Amendment 46 Not Codified Through This Final Rule

In addition to the measures implemented and codified by this final rule, Amendment 46 contains actions to establish a rebuilding timeframe and to consider alternatives for the commercial and recreational ACTs and ACLs.

Rebuilding Time Period and Commercial and Recreational ACTs and ACLs

Amendment 37 established a 5-year rebuilding time period, expiring in 2017, and the current gray triggerfish commercial and recreational ACTs and ACLs. Amendment 46 establishes a new rebuilding time period for the Gulf gray triggerfish stock as a result of the stock status determined through SEDAR 43, and maintains the current commercial and recreational ACLs and ACTs.

In Amendment 46, the Council determined that a 9-year rebuilding time period was as short as possible, taking into account the status and biology of the stock and the needs of the associated fishing communities. Although the acceptable biological catch recommendation by the SSC associated with the 9-year time period allowed for an increase in harvest, the Council chose to adopt a more conservative approach and maintain the current commercial and recreational ACLs and ACTs for gray

triggerfish that were set through the final rule for Amendment 37 (78 FR 27084, May 9, 2013).

Comments and Responses

NMFS received 26 comment submissions from individuals on the notice of availability and proposed rule for Amendment 46. Eleven of the individual comments agreed with portions of, or the entirety of, the actions in Amendment 46 and proposed rule. Other submissions addressed issues beyond the scope of the actions considered in Amendment 46 and the proposed rule, such as revising the sector allocations, separating the recreational sector into private and charter vessel/headboat components, and starting a tag program. Specific comments related to the actions contained in Amendment 46 and the proposed rule are summarized and responded to below.

Comment 1: Increasing the commercial trip limit while implementing further restrictions on the recreational sector is not fair and is not consistent with rebuilding a gray triggerfish stock that is currently determined to be overfished.

Response: NMFS disagrees. Amendment 37 to the FMP set the current sector ACTs and ACLs using an allocation of 79 percent of the stock ACL to the recreational sector and 21 percent of the stock ACL to the commercial sector (78 FR 27084, May 9,

2013). There are in-season AMs that close harvest for the recreational and commercial sectors when they reach or are projected to reach their respective ACT. However, the recreational sector has exceeded both the recreational ACT and ACL each year from 2013 through 2016. The commercial sector has not exceeded the commercial ACT since 2013. Therefore, the Council determined, and NMFS agrees, that it is appropriate to implement additional harvest restrictions for the recreational sector while increasing the trip limit for the commercial sector. The recreational management measures will reduce the risk of the recreational sector exceeding its ACL and provide for a longer recreational season. The increase in the commercial trip limit will help achieve OY while the stock continues to rebuild.

In developing Amendment 46, the Council reviewed five trips limits alternatives and determined that a trip limit of 16 fish per trip best addressed the needs of fishing communities while continuing to constrain commercial landings to the commercial ACL. The trip limit being implemented in this final rule is expected to result in a minor increase in annual commercial landings of 2.79 percent a year over the current level of

landings. However, this increase will allow those fishermen who encounter the species the opportunity to harvest more fish.

Comment 2: The gray triggerfish stock is the most abundant that it has been in recent years, and the harvest limits should be increased.

Response: NMFS disagrees that harvest limits should be increased. The SEDAR 43 stock assessment for Gulf gray triggerfish was completed in 2015 and indicated that the gray triggerfish stock was improving and was no longer undergoing overfishing, but remained overfished and would not rebuild by the end of the previously specified rebuilding time period. In Amendment 46, the Council considered alternatives to increase the sector ACTs and ACLs. However, the Council determined, and NMFS agrees, it is not appropriate to increase harvest levels given the prior inadequate progress in rebuilding the stock. Further, maintaining the current harvest levels will increase the likelihood that the stock rebuilds by the end of the new 9-year time period.

Comment 3: A closure in January and February will negatively impact winter residents and tourists in the region.

Response: The Council considered several alternatives for an additional recreational closed season, which is intended to

work with the current June and July seasonal closure, the decrease in the recreational bag limit, and the increase in the recreational minimum size limit and are expected to slow the rate of recreational harvest, constrain recreational harvest to the recreational ACL, and reduce the likelihood of an in-season closure. Alternatives for the additional closed season included, the January through February preferred alternative, a more limited closure in January only, an extended summer closure through August, and a closure for the first 7 months of the year. NMFS understands that any closed season may negatively impact those who would like to fish during that time. However, fishing effort and landings are generally lower at the beginning of the year. Therefore, the Council determined, and NMFS agrees, that adding the 2-month closed season at the beginning of the year will help achieve the desired reduction in landings while minimizing, to the extent practicable, the negative impacts on recreational anglers and fishing communities.

Comment 4: Several commenters stated that the recreational minimum size limit should not be increased to 15 inches (38.1 cm), FL, and the recreational bag limit should not be decreased to one fish per person per day. One commenter suggested a slot

limit of 12 inches to 16 inches (30.5 cm to 40.6 cm) as opposed to an increase in the minimum size limit.

Response: NMFS disagrees that the recreational bag limit and size limit should not be modified as implemented in this final rule. As noted in the response to Comment 3, the closed seasons, bag limit, and size limit are intended to work together to slow recreational harvest, constrain recreational harvest to the recreational ACL, and reduce the likelihood of an in-season closure. In addition, because larger fish are more fertile, the increase in the minimum size limit is expected to benefit the gray triggerfish stock by increasing spawning potential.

With respect to the suggestion to implement a slot limit, this is beyond the scope of what was considered in Amendment 46 and the proposed rule. Further, the suggested slot limit would not likely achieve the desired reduction in recreational harvest or the benefits to the stock associated with allowing the fish additional time to spawn before they are harvested.

Comment 5: The methods for verifying commercial catch and the methods for calculating the current stock population and ACL for gray triggerfish in the Gulf are unclear and should be published.

Response: The current ACLs for gray triggerfish were established in Amendment 37 and are available for public review at the Web site

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am37/documents/pdfs/rf_amend37.pdf. These ACLs were based on the stock population estimates and projections included in the SEDAR 9 update assessment that was completed in 2011 and can be found at the Web site

http://sedarweb.org/docs/sar/SEDAR9_SAR1%20GOM%20Gray%20Triggerfish.pdf. The most recent stock population estimates are included in SEDAR 43, which can be found at the Web site

http://sedarweb.org/docs/sar/S43_SAR_FINAL.pdf. Amendment 46 explains the results of SEDAR 43 and the basis for retaining the current ACLs.

Commercial landings are verified through vessel and dealer reporting. Any fisher whose vessel has a commercial Federal vessel permit for Gulf reef fish must report their landings within 7 days of a trip through the commercial logbook program. Data from dealers' reports submitted electronically are used to monitor the gray triggerfish ACLs. All dealers in the Gulf are required to have a single Federal permit to purchase managed species and must submit their reports once per week. These

datasets are updated weekly and are available for review at the following Web site:

http://sero.nmfs.noaa.gov/sustainable_fisheries/acl_monitoring/commercial_gulf/index.html.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 46, 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 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 adverse 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 public comments were made related

to the economic implications and potential impacts on small businesses, and no changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gray triggerfish, Gulf, Recreational.

Dated: December 12, 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 amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, 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 (f) to read as follows:
§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(f) *Seasonal closures for gray triggerfish.* The recreational sector for gray triggerfish in or from the Gulf EEZ is closed from January 1 through the end of February, and from June 1 through July 31, each year. During a recreational closure, the bag and possession limits for gray triggerfish in or from the Gulf EEZ are zero. The commercial sector for gray triggerfish in or from the Gulf EEZ is closed from June 1 through July 31, each year. During the period of both the commercial and recreational closure, all harvest or possession in or from the Gulf EEZ of gray triggerfish is prohibited and the sale and purchase of gray triggerfish taken from the Gulf EEZ is prohibited.

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3. In § 622.37, revise paragraph (c)(1) to read as follows:

§ 622.37 Size limits.

* * * * *

(c) * * *

(1) *Gray triggerfish.* (i) For a person not subject to the bag limit specified in § 622.38(b)(5)—14 inches (35.6 cm), fork length.

(ii) For a person subject to the bag limit specified in §

622.38(b) (5)—15 inches (38.1 cm), fork length.

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4. In § 622.38, revise paragraph (b) (5) to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(5) Gulf reef fish, combined, excluding those specified in paragraphs (b) (1) through (4) and paragraphs (b) (6) and (7) of this section—20. In addition, within the 20-fish aggregate reef fish bag limit, no more than 1 fish may be gray triggerfish and no more than 10 fish may be vermilion snapper.

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

§ 622.43 Commercial trip limits.

* * * * *

(b) *Gray triggerfish*. Until the commercial ACT (commercial quota) specified in § 622.39(a) (1) (vi) is reached--16 fish. See § 622.39(b) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

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