



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-XF539

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 44

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

ACTION: Notification of Agency decision.

SUMMARY: NMFS announces the approval of Amendment 44 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) as submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). Amendment 44 revises minimum stock size thresholds (MSST) for seven stocks in the Gulf of Mexico (Gulf) reef fish fishery management unit. The MSST is revised for the gag, red grouper, red snapper, vermilion snapper, gray triggerfish, greater amberjack, and hogfish stocks. The need for Amendment 44 is to provide a sufficient buffer between spawning stock biomass at maximum sustainable yield (B_{MSY}) and MSST to reduce the likelihood that stock status changes frequently between overfished and not overfished as a

result of scientific uncertainty or natural fluctuations in biomass levels.

DATES: The amendment was approved December 21, 2017.

ADDRESSES: Electronic copies of Amendment 44 may be obtained from *www.regulations.gov* or the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov*. Amendment 44 includes an environmental assessment and a fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *peter.hood@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.*). Amendment 44 was prepared by the Council and will be incorporated into the management of Gulf reef fish through the FMP.

On September 25, 2017, NMFS published a notice of availability (NOA) for Amendment 44 and requested public comment (82 FR 44582).

In 1999, the Council submitted the Generic Sustainable Fisheries Act Amendment to comply with status determination criteria (SDC) requirements of the Sustainable Fisheries Act of 1996. NMFS approved most of the fishing mortality threshold (MFMT) criteria, but disapproved all of the definitions for maximum sustainable yield (MSY), optimum yield (OY), and MSST. The Council subsequently began establishing these reference points and SDC on a species-specific basis as stock assessments were later conducted, and is currently preparing a plan amendment to address all of the unassessed reef fish stocks. Amendment 44 focuses on those assessed stocks with MSSTs, which are gag, red grouper, red snapper, vermilion snapper, gray triggerfish, greater amberjack, and hogfish. Red snapper, gray triggerfish, and greater amberjack are currently considered overfished because their stock size is below MSST and are under rebuilding plans. The other four stocks are not considered overfished (gag, red grouper, vermilion snapper, and hogfish) because their stock size is above MSST.

For most of the assessed federally managed reef fish stocks in the Gulf with defined MSSTs, the overfished status, when applied, has been evaluated using the formula: $(1-M) * B_{MSY}$ (M is the natural mortality rate and B is a measure of stock biomass). For some stocks that have a very

low natural mortality rate, the formula $(1-M) * B_{MSY}$ results in an MSST that is very close to the B_{MSY} . For example, red snapper is a moderately long-lived fish that has a natural mortality rate of about 0.1. The above formula results in an MSST of 90 percent of B_{MSY} . In such situations it can be difficult to determine if a stock is actually less than MSST due to the imprecision and accuracy of the data used in stock assessments. In addition, natural fluctuations in stock biomass levels around the B_{MSY} level may temporarily reduce the stock biomass to be less than MSST. Setting a greater buffer between B_{MSY} and MSST can reduce the risk of mistakenly declaring a stock overfished.

In Amendment 44, the Council evaluated MSSTs ranging from $0.85 * B_{MSY}$ (or proxy) to $0.50 * B_{MSY}$ (or proxy), and selected $0.50 * B_{MSY}$ (or proxy) as its preferred alternative. This is consistent with the National Standard 1 (NS1) guidelines and reduces the likelihood of a stock being declared overfished as a result of scientific uncertainty or natural fluctuations in biomass levels. Setting the MSST at this level could result in a very restrictive rebuilding plan if the biomass level of a stock drops below the MSST and NMFS declares that the stock is overfished. However, the Council determined that the requirements for overfishing limits (OFLs), annual catch limits (ACLs), and

accountability measures (AMs), reduce the probability that sustained overfishing would occur and cause a stock to fall below the MSST.

NMFS expects that with the approval of Amendment 44, the Gulf red snapper and gray triggerfish stocks will be reclassified as not overfished, but rebuilding, because the biomass for these two stocks is currently estimated to be greater than 50 percent of B_{MSY} . The greater amberjack stock will remain classified as overfished.

Procedural Aspects of Amendment 44

Because none of the measures included in the amendment involve regulatory changes, no proposed or final rule was prepared. The provisions of Amendment 44 are not specified in regulations but are considered an amendment to the FMP.

Comments and Responses

NMFS received 23 comments on the NOA. Twelve comments were in favor of approving the amendment and four were in opposition. Other comments received were not relevant to Amendment 44, expressing frustration with fishing regulations and their implementation in general. Comments specific to the action in Amendment 44 and NMFS' responses to those comments are summarized below.

Comment 1: NMFS should disapprove Amendment 44 for several reasons. First, the current MSST definitions appear

to be working well and are not likely to cause stocks from being unnecessarily declared overfished due to natural variability in fish populations. Second, reducing the MSST to $0.5 * B_{MSY}$ will allow these stocks to be further depleted before they are declared overfished, which will increase the economic severity of rebuilding and put the stocks at a greater risk of collapse. Third, there is too much uncertainty in the stock assessments to lower the MSST and continue to ensure the protection of these stocks.

Response: NMFS disagrees that Amendment 44 should be disapproved. Amendment 44 revises the MSST for seven stocks from either $0.75 * B_{MSY}$ (hogfish) or $(1-M) * B_{MSY}$ (the other six species) to $0.5 * B_{MSY}$. The National Standard 1 Guidelines allow the Council to consider a variety of factors in determining the appropriate MSST (50 C.F.R. 622.310(e)(2)(ii)(B)). In Amendment 44, the Council considered natural variability in fish populations, the time it would take a stock to recover from various MSST levels, and the risk of stock biomass declining below the MSST due to overfishing. The Southeast Fisheries Science Center (SEFSC) evaluated the likelihood of stock biomass falling below the MSST due to natural fluctuations. This evaluation, which is included in Appendix C of Amendment 44, found that when recruitment and natural mortality

estimates are varied, stock biomass levels declining below MSST at the $(1-M) * B_{MSY}$ level for reasons other than overfishing ranged from 5 to 30 percent depending on a species' life history characteristics. This likelihood of a stock declining below MSST increases as the as natural mortality rate decreases. Therefore, the Council determined, and NMFS agrees, that there is concern that some stocks with low natural mortality rates could be determined to be overfished because of natural variations in the population and the small buffers between MSST and B_{MSY} .

The SEFSC also analyzed how long it would take stocks with various life history characteristics to recover from various MSST levels. This analysis is included in Appendix D of Amendment 44 and found that for all species analyzed (including red snapper and gray triggerfish), recovery would occur in the absence of fishing mortality in 10 years or less under any of the MSST levels, including the MSST of $0.5 * B_{MSY}$. The Council understood that specifying an MSST of $0.5 * B_{MSY}$ could result in the need for a restrictive rebuilding plan if a stock was determined to be overfished. However, the Council determined, and NMFS agrees, that the risk of sustained overfishing causing a stock to become overfished is minimal given the requirement to prevent

overfishing and use of OFLs, ACLs, and AMs, to achieve this objective.

With respect to stock assessments, there is a level of uncertainty in the data used. However, consistent with National Standard 2, these assessments use the best scientific information available to provide information on stock status. In addition, for the reasons stated above, the Council determined that the revised MSSTs, when used in combination with OFLs, ACLs, and AMs, will continue to provide the appropriate level of protection for these stocks. Thus, it is not appropriate to disapprove Amendment 44 based on uncertainty in the stock assessments.

Comment 2: This action to revise the MSST will result in a decrease in the allowable catch for these stocks.

Response: Revising the MSST will not directly affect catch levels for the seven stocks in Amendment 44. The MSST is the threshold used to determine whether a stock is overfished. If the stock biomass falls below MSST, the stock is considered to be overfished and a rebuilding plan is required. Therefore, the MSST may indirectly affect catch levels for a stock if harvest needs to be restricted for some period of time so the stock can recover. However, of the seven stocks included in Amendment 44, four are not overfished (gag, red grouper, vermilion snapper, and

hogfish) and that determination will not change with the revision to the MSSTs for these stocks. The remaining three stocks (red snapper, gray triggerfish, and greater amberjack) are currently classified as overfished but, with the approval of Amendment 44, NMFS expects that red snapper and gray triggerfish stocks will be reclassified as not overfished. However, they will still be subject to their respective rebuilding plans until B_{MSY} is reached. The greater amberjack stock would continue to be classified as overfished until that stock's biomass exceeds the MSST of $0.5 * B_{MSY}$.

Comment 3: NMFS must revisit the previous rulemaking that implemented the quota overage adjustment (payback) for the red snapper recreational sector to correct an error in the regulations that links the recreational payback to "overfished" status as opposed to "rebuilding status."

Response: NMFS disagrees that it is necessary to revisit the rulemaking that implemented the red snapper recreational AMs (80 FR 14328, March 19, 2015). The reference to overfished status in the red snapper recreational AM in 50 CFR 622.41(q)(2)(ii) was not an error. This provision was added to the regulations through a framework action in 2015. Although the framework action referred to "rebuilding," the codified text for the

framework that was reviewed and deemed necessary by the Council linked the quota payback provision to overfished status, which was consistent with the other payback provisions for Gulf-managed species that were already in effect prior to that time, such as those for gray triggerfish (50 CFR 622.41(b)(2)(ii)), gag (50 CFR 622.41(d)(2)(iii)), and red grouper (50 CFR 622.41(e)(2)(iii)).

Although the approval of Amendment 44 may result in the red snapper stock no longer being classified as overfished because the biomass for this stock is currently estimated to be greater than 50 percent of B_{MSY} , the stock continues to be subject to the rebuilding plan established in Amendment 27 to the FMP (73 FR 5117, January 29, 2008). NMFS is required to review the rebuilding progress at routine intervals and notify the Council if there has been inadequate progress toward rebuilding. If notified, the Council would be required to take action consistent with the rebuilding plan requirements in section 305(e) of the Magnuson-Stevens Act.

In addition, NMFS and the Council have reduced the likelihood of the red snapper recreational ACL being exceeded by the use of recreational annual catch targets (ACTs) to set the Federal charter vessel/headboat (for-

hire) and the private angling component recreational season lengths. However, if an overage of the recreational ACL does occur more than once in the last 4 years, the National Standard 1 Guidelines advise the Council to reevaluate the system of ACLs and AMs, and if necessary, modify the system to improve its performance and effectiveness (50 CFR 600.310(e)(7)). If the ACL is exceeded to such an extent that overfishing occurs, the Guidelines state that the Secretary of Commerce will immediately notify the Council and the Council should evaluate the cause of overfishing, address the issue that caused overfishing, and reevaluate the ACLs and AMs to make sure they are adequate (50 CFR 600.310(j)). All of these safeguards will help ensure that the ACLs and AMs continue to function effectively to prevent overfishing and rebuild the stock consistent with the established rebuilding plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory
Programs,

National Marine Fisheries Service.

[FR Doc. 2017-28058 Filed: 12/27/2017 8:45 am; Publication Date: 12/28/2017]