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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 180724688-9135-02]

RIN 0648-BI39

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Revisions to Red
Snapper and Hogfish 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 two framework actions to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf), as prepared by the Gulf of Mexico Fishery Management Council (Council). The framework actions are titled "Modify the Annual Catch Limit (ACL) for the Gulf Red Snapper and Hogfish Stocks" (ACL Framework Action) and "Modify the Red Snapper Recreational Annual Catch Targets (ACT)" (ACT Framework Action). This final rule modifies Gulf red snapper commercial and recreational ACLs (quotas) and ACTs, as well as the Gulf

hogfish (West Florida stock) stock ACL, as a result of recent stock assessments for each species. Additionally, this final rule reduces the Federal charter vessel/headboat (for-hire) component's red snapper ACT buffer to a level that will allow a greater harvest in 2019 while continuing to constrain landings to the component and total recreational ACLs. The purposes of this final rule are to respond to updated stock assessment information, maximize socio-economic opportunities for red snapper in the Federal for-hire component, and to continue to achieve optimum yield (OY) for each stock.

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

ADDRESSES: Electronic copies of the two framework actions, each including 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 <https://www.fisheries.noaa.gov/action/framework-action-modification-recreational-red-snapper-annual-catch-target-buffers-0>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The FMP, which includes red snapper and hogfish, was prepared by the 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) (16 U.S.C. 1801 *et seq.*).

On December 4, 2018, NMFS published a proposed rule for the framework actions and requested public comment (83 FR 62555). The proposed rule and the framework actions outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework actions and implemented by this final rule is described below.

All weights described in this final rule are in round (whole) weight.

Background

Red Snapper

The current red snapper stock ACL is equal to the acceptable biological catch (ABC) of 13.74 million lb (6.23 million kg); 51 percent is allocated to the commercial sector and 49 percent to the recreational sector. The recreational sector's ACL is further divided into the private angling component (57.7 percent) and Federal for-hire component (42.3

percent). In addition, recreational ACTs are in place for the recreational sector and its respective components to reduce the likelihood of exceeding the respective ACLs. The commercial sector does not have an ACT because it is managed under an individual fishing quota program that effectively constrains landings to the commercial ACL.

The current red snapper sector ACLs are 7.007 million lb (3.178 million kg) for the commercial sector and 6.733 million lb (3.054 million kg) for the recreational sector. The current recreational component ACLs are 2.848 million lb (1.292 million kg) for the for-hire component and 3.885 million lb (1.762 million kg) for the private angling component.

The current red snapper recreational ACT is 5.386 million lb (2.443 million kg). The Federal for-hire component ACT is 2.278 million lb (1.033 million kg) and the private angling component ACT is 3.108 million lb (1.410 million kg). The component ACLs and ACTs are effective through 2022, after which sector separation ends and the recreational sector will be managed through a recreational ACL and an ACT, but no component ACLs or ACTs.

The Southeast Data, Assessment, and Review (SEDAR) 52 stock assessment for Gulf red snapper indicated the Gulf red snapper

stock is not overfished or undergoing overfishing, and is still rebuilding consistent with the plan to rebuild the stock by 2032. Based on the SEDAR 52 results, the Scientific and Statistical Committee (SSC) determined the red snapper ABC could be increased, and recommended two different ABC options to the Council: a declining yield stream and a constant catch scenario. The Council used the constant catch recommendation to set the ABC at 15.1 million lb (6.85 million kg).

Because the Federal for-hire component has not exceeded its applicable ACL or ACT, the ACT Framework Action was developed to reduce the buffer between the Federal for-hire component ACT and ACL. The Council did not consider decreasing the private angling component ACT buffer because this component exceeded its ACL in 2 of the past 3 years. Application of the Council's ACL/ACT Control Rule resulted in a suggested buffer of 9 percent for the Federal for-hire component. The Council decided to change the Federal for-hire component ACT for the 2019 fishing year to reflect this reduced buffer. All five Gulf states received exempted fishing permits (EFPs) from NMFS for the 2018 and 2019 fishing years to allow them to test limited state management of the private angling component. Each state was allocated a percentage of the private angling ACL and each state determined

whether to manage a reduced portion of its ACL to account for management uncertainty. Therefore, the Council determined that the reduction in the Federal for-hire component ACT buffer should be limited to 2019.

Hogfish

The West Florida stock of hogfish is contained completely within the jurisdiction of the Council and includes hogfish in the Gulf exclusive economic zone (EEZ) except south of 25°09' N. lat. off the west coast of Florida. As implemented through Amendment 43 to the FMP, the West Florida stock ACL is 159,300 lb (72,257 kg) for the 2019 and subsequent fishing years (82 FR 34574, July 25, 2017). The stock ACL is equal to the ABC. There is no ACT designated for West Florida hogfish.

The SEDAR 37 Update assessment for the West Florida hogfish stock indicated the West Florida stock is not overfished or undergoing overfishing. The Council's SSC reviewed the assessment in May 2018, and provided new ABC recommendations based on an increasing yield stream. As a result of uncertainties in the update assessment, the SSC did not provide ABC recommendations beyond 2021.

Management Measures Contained in this Final Rule

For red snapper, this final rule revises the commercial and

recreational sector ACLs and ACTs. For the 2019 fishing year, the for-hire component ACT will be set 9 percent below the component ACL. For hogfish, this final rule revises the stock ACL for the West Florida stock.

Red Snapper ACLs, ACTs, and For-Hire Component ACT Buffer

Through this final rule, the total red snapper ACL will increase from 13.74 million lb (6.23 million kg) to 15.1 million lb (6.85 million kg). Using the current sector allocation ratios, the resulting ACLs are 7.701 million lb (3.493 million kg) for the commercial sector, 7.399 million lb (3.356 million kg) for the recreational sector, 3.130 million lb (1.420 million kg) for the Federal for-hire component, and 4.269 million lb (1.936 million kg) for the private angling component.

As described in the ACT Framework Action, this final rule temporarily reduces the Federal for-hire component ACL/ACT buffer from 20 percent to 9 percent in 2019, which in turn increases the Federal for-hire component ACT. This consequently increases the recreational ACT as it is the sum of the Federal for-hire and private angling component's ACTs.

For the 2019 fishing year, the recreational ACT is 6.263 million lb (2.841 million kg) and the Federal for-hire component ACT is 2.848 million lb (1.292 million kg). For 2020 and

subsequent fishing years, the recreational ACT will be 5.919 million lb (2.830 million kg) and the Federal for-hire component ACT will be 2.504 million lb (1.136 million kg) for the 2020 through 2022 fishing years. The private angling component ACT will be 3.415 million lb (1.549 million kg) for the 2019 through 2022 fishing years.

Hogfish Stock ACL

The ACL Framework Action sets the hogfish stock ACLs equal to the Council's SSC recommended ABCs of 129,500 lb (58,740 kg) for 2019, 141,300 lb (64,093 kg) for 2020, and 150,400 lb (68,220 kg) for 2021 and subsequent fishing years, unless changed by the Council.

Comments and Responses

A total of 12 comments were received on the proposed rule for the framework actions. Several comments expressed support for increasing the red snapper ACLs, decreasing the buffer between the Federal for-hire component ACL and ACT, and reducing the hogfish ACL. Other comments were outside the scope of this action and are not responded to here. These include comments related to changing the recreational season, increasing the red snapper bag limit, and allocating the hogfish ACL between the commercial and recreational sectors. Comments that are specific

to the actions in the proposed rule are summarized and responded to below. No changes to this final rule were made as a result of these public comments.

Comment 1: The 20 percent buffer for Federal for-hire component between the ACL and ACT should be maintained as a precautionary measure to minimize the chance of recreational harvests exceeding the ACL.

Response: NMFS does not agree that the 20 percent buffer for Federal for-hire component between the ACL and ACT should be maintained in 2019. The Federal for-hire component has not exceeded its ACL or ACT since sector separation was established in 2015 in Amendment 40 to the FMP (80 FR 22422, April 22, 2015). Therefore, the Council re-evaluated the established buffer for the Federal for-hire component. The 9 percent buffer selected by the Council was derived using the ACL/ACT Control Rule, which evaluates factors such as whether there are recent harvest overages, the percent standard error in Federal for-hire landing estimates, stock status, and whether in-season accountability measures are used. This reduction in the buffer is precautionary because it takes into account recent information that indicates NMFS can project a season length that constrains for-hire landings to the ACT, and is effective only

for 2019 to coincide with the second year of Gulf state management of the private angling component under the EFPs.

Comment 2: Instead of reducing the red snapper buffer between the Federal for-hire component ACL and ACT, there should be more days added to the Federal for-hire fishing season as a result of the increase in the ACL.

Response: NMFS expects the increase in the Federal for-hire ACL as well as the reduction in the buffer between the Federal for-hire component ACL and ACT to allow more fishing days for the Federal for-hire component. NMFS is required to project the length of the Federal for-hire season length based on the ACT. Regardless of the ACL, reducing the buffer between the ACT and ACL will increase the ACT, and a larger ACT is expected to result in a longer Federal for-hire season length.

Comment 3: One comment expressed confusion about how the hogfish minimum size limit is relevant to the action to reduce the red snapper Federal for-hire component buffer.

Response: The hogfish minimum size limit is not relevant to action to reduce the Federal for-hire component buffer, and was not discussed in this context. This final rule combines two framework actions submitted by the Council: (1) the ACL Framework Action, which increases the red snapper ACLs and ACTs

and decreases the hogfish stock ACL; and (2) the ACT Framework Action, which addresses only changing the red snapper buffer between the Federal for-hire component ACL and ACT. In the ACL Framework Action, the red snapper minimum size limit is discussed relative to the red snapper ACL and ACT increases and the hogfish minimum size limit, which was increased in 2017, is discussed relative to the hogfish ACL decrease. There is no comparison of the minimum size limits between these two species. Similarly, the proposed rule mentions the recent change in the hogfish minimum size limit only in the discussion of the change to the hogfish ACL. Neither the ACT Framework Action nor the section of the of the proposed rule addressing that action discusses the hogfish minimum size limit.

Comment 4: It is not clear why the hogfish ACL needs to be reduced so soon after increasing the minimum size limit.

Response: The reduction to the West Florida hogfish stock ACL is based on the ABC recommendation of the Council's SSC. The SSC's recommendation was based on the 2018 SEDAR 37 update stock assessment and accounts for increased uncertainty in the stock assessment results. Because the ACL cannot exceed the ABC, the Council determined the ACL should be changed to equal the new ABC.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the framework actions, 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 (EO) 12866. This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

The Magnuson-Stevens Act provides the statutory basis for this final 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 (SBA) during the proposed rule stage that this rule, if adopted, 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 from the public or SBA's Chief Counsel for Advocacy 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 is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Hogfish, Gulf, Recreational, Red snapper.

Dated: February 27, 2019.

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 § 622.39, revise paragraphs (a)(1)(i) and (a)(2)(i)

to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Commercial quota for red snapper--7.701 million lb (3.493 million kg), round weight.

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(2) * * *

(i) *Recreational quota for red snapper--(A) Total recreational.* The total recreational quota is 7.399 million lb (3.356 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 through the 2022 fishing year. 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. The Federal charter vessel/headboat component quota is 3.130 million lb (1.420 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 through the 2022 fishing year. 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. The private angling component quota is 4.269 million lb (1.936 million kg), round weight.

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

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

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(p) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the

Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for hogfish, in round weight, in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida, is 129,500 lb (58,740 kg), for the 2019 fishing year, 141,300 lb (64,093 kg), for the 2020 fishing year, and 150,400 lb (68,220 kg) for the 2021 fishing year and subsequent fishing years. See § 622.193(u) (2) for the ACLs, ACT, and AMs for hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.

(q) * * *

(2) * * *

(iii) (A) *Total recreational ACT*. For the 2019 fishing year, the total recreational ACT is 6.263 million lb (2.841 million kg), round weight. For the 2020 and subsequent fishing years, the total recreational ACT is 5.919 million lb (2.830 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 through the 2022 fishing year. For the 2019 fishing year, the component ACT is 2.848 million lb

(1.292 million kg), round weight. For the 2020, 2021, and 2022 fishing years, the component ACT is 2.504 million lb (1.136 million lb), round weight. 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.

(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 through the 2022 fishing year. The component ACT is 3.415 million lb (1.549 million kg), round weight. 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.

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