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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200204-0046]

RIN 0648-BJ28

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper 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 a framework action 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). This final rule modifies the red snapper Federal charter vessel/headboat (for-hire) component's annual catch target (ACT) for the 2020 and subsequent fishing years. The purpose of this final rule and the framework action is to allow for greater harvest of red snapper by the Federal for-hire component

while continuing to constrain landings to the Federal for-hire component and total recreational annual catch limits (ACL).

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

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment (EA), a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-action-fishery-management-plan-reef-fish-resources-gulf-mexico-modification>.

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, 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 November 12, 2019, NMFS published a proposed rule for the framework action and requested public comment (84 FR 61003). The proposed rule and the framework action 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

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, ACTs are in place for the recreational sector and its respective components. The ACT is a level of catch reduced from the ACL to account for management uncertainty. The separate recreational component ACLs and ACTs were implemented in 2015 and were set to expire in 2022 (81 FR 86971, December

2, 2016). However, Amendments 50A-F to the FMP continue the separation of the private angling and Federal for-hire components. These amendments were approved on November 6 and the final rule for Amendments 50 A-F was effective on February 6, 2020 (85 FR 6819, February 6, 2020).

The regulations require NMFS to project the component fishing seasons based on the respective ACTs. The ACTs were implemented to reduce the likelihood of exceeding the private angling or Federal for-hire component ACLs, as well as the total recreational ACL. 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.

Because the Federal for-hire component has not exceeded its ACL since the components were separated, the Council developed a framework action in 2018 to reduce the 20 percent buffer between the Federal for-hire component ACL and ACT for 2019 only (84 FR 7828, March 5, 2019). The 2018 framework action set the Federal for-hire component ACT 9 percent less than the component ACL. This buffer was based on the application of the Council's ACL/ACT Control Rule, which recommends a buffer based on factors such as

recent harvest overages, the percent standard error in Federal for-hire landing estimates, stock status, and whether in-season accountability measures (AMs) are used.

The reduction in the Federal for-hire component's ACL/ACT buffer was effective only for 2019 to coincide with the second year of temporary changes to the management of the private angling component. 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 to a reduced portion of its ACL. The Council determined that the reduction in the Federal for-hire component ACT buffer should be limited to 2019 because of the increased risk of the recreational sector ACL being exceeded after the EFPs are no longer in effect. Under the EFPs, any overages by the private-angling component are deducted from the subsequent year's state ACL.

In the current framework action, the Council did not consider decreasing the private angling component ACT buffer because the Council had already submitted to NMFS

for review Amendments 50A-F to the FMP. These amendments delegate authority to each of the Gulf states to establish specific management measures applicable to private anglers in Gulf Federal waters who are landing red snapper in that state, including the length of the fishing season. Similar to the EFPs, these amendments allocate a percentage of the private angling ACL, each state determines whether to manage to a reduced portion of its ACL, and any overage of the state's ACL would be deducted from that state's ACL the following fishing year. Given the changes in private recreational component management established in Amendments 50A-F, the Council determined that it is appropriate to keep the 9 percent Federal for-hire ACL/ACT buffer beyond 2019.

Management Measures Contained in this Final Rule

For red snapper, this final rule sets the Federal for-hire component ACL/ACT buffer at 9 percent below the component ACL which results in a Federal for-hire component ACT of 2.848 million lb (1.292 million kg). The 9 percent buffer results in a component ACT that is 344,000 lb (156,036 kg) greater than the ACT using the previous 20 percent buffer. NMFS expects this increase in the ACT to

result in a Federal for-hire season that is approximately 7 to 8 days longer in 2020 than if the lower ACT were used to project the season.

Comments and Responses

NMFS received 43 comments on the proposed rule for the framework action from individuals, charter fishing organizations, and non-governmental organizations. Most of the comments (26 comments) were in favor of reducing the Federal for-hire component buffer between the ACL and ACT, noting that the for-hire component will increase its accountability with improved data collection, there will be economic benefits from a longer Federal for-hire season, and the Gulf states will be managing the private angling component through Amendments 50A-F to the FMP. Thirteen comments opposed reducing the buffer between the ACL and ACT and four comments did not address the proposed action. In addition, several comments included suggested changes to red snapper management that are outside the scope of the proposed rule, such as changes to recreational bag limits and fishing seasons, reallocation of the red snapper total allowable catch, and state management of the Federal for-hire component. Comments specific to the proposed rule and

the framework action are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: The Federal for-hire component ACT should not be increased to help ensure that red snapper landings do not exceed the recreational ACL and that there is no delay in the recovery of the stock.

Response: NMFS disagrees that keeping the lower Federal for-hire component ACT is necessary to ensure landings do not exceed the recreational ACL and the red snapper stock continues to rebuild on schedule. An ACT is a level of catch set below an ACL to account for management uncertainty. Through an emergency rule in 2014, NMFS implemented a recreational ACT for red snapper that is 20 percent below the recreational ACL, and used that ACT to determine the length of the recreational fishing season (79 FR 27768, May 15, 2014). A framework action implemented in 2015 made this ACT more permanent (80 FR 14328, March 19, 2015). When the Federal for-hire component and private angling components were separated in 2015, the recreational ACL was allocated between the components, with corresponding ACTs set 20 percent below the component ACLs

(80 FR 22422, April 22, 2015). Using this lower level of catch to estimate the season length reduces the likelihood the ACL will be exceeded in a given year.

NMFS has been successful in constraining Federal for-hire component landings below the component ACL. With the exception of 2018, the Federal for-hire component has not exceeded its ACT. In 2018, Federal for-hire landings were above the ACT, but still 13 percent below the component ACL. In 2019, NMFS reduced the buffer between the Federal for-hire component ACL and ACT to 9 percent and set a Federal for-hire component season from June 1 through August 1 (84 FR 7828; March 5, 2019). Preliminary landing estimates for 2019 show only 91 percent of the component ACT and 83 percent of the component ACL have been harvested through August 31, 2019.

Further, as previously explained, through Amendment 50 to the FMP, each Gulf state is now setting its private angling season, is required to constrain landings to the state ACL, and must pay back any overage of its ACL the following the fishing year. There have been concerns about how NMFS will assess whether the state ACLs and the overfishing limit (OFL) have been exceeded because each

state's ACL was calculated using landings from the Marine Recreational Information Program, but each state is monitoring its landings using its own reporting system, which may result in estimates that are not directly comparable to the ACL. NMFS is working with the Gulf states to develop a peer-reviewed calibration that is expected to be available in the spring of 2020. When the calibration is available, NMFS intends to apply it to the state ACLs established in the final rule implementing Amendments 50A-F, and implement catch levels in the appropriate state currencies. This will help ensure that total red snapper landings do not exceed that overfishing limit and that the red snapper stock continues to rebuild as anticipated.

Comment 2: The Federal for-hire component should not have a longer fishing season than the private angling component.

Response: NMFS disagrees that the Federal for-hire component season should be constrained by the length of the private angling season. The Council and NMFS separated the recreational sector into the private angling and Federal for-hire components, in part, to allow for the development and implementation of management measures better tailored

to the specific needs of the separate components. Through EFPs in 2018 and 2019, and now through Amendments 50A-F to the FMP, the Gulf states are setting the season for the private angling component. These state seasons may be longer or shorter than the Federal for-hire component season depending on the management strategy implemented by each state.

Comment 3: The buffer between the for-hire component ACL and ACT should be based on biological factors and not by the amount of fish that are harvested.

Response: Biological factors were taken into account when establishing the recreational sector and component ACLs and ACTs. The 9 percent buffer between the ACL and ACT for the Federal for-hire component was derived from the Council's ACL/ACT Control Rule. This control rule uses factors such as stock status, recent harvest overages, the percent standard error in Federal for-hire landing estimates, and whether in-season AMs are in place. Biological factors such as age and size at maturity as well as the size composition of the stock are accounted for in stock assessments, which dictate the stock status. In addition, stock assessments are the basis for setting red

snapper ABCs and OFLs upon which the sector and component ACLs and ACTs are based.

Comment 4: Before reducing the buffer between the Federal for-hire component ACL and ACT, other actions, NMFS should take into account the effects of other actions on the red snapper stock, such as state management of the private angling component and the potential decrease in juvenile red snapper target bycatch reduction goal from shrimp trawls.

Response: The framework action implemented through this final rule includes an EA, in which the effects of the action, including cumulative effects, are analyzed. In the cumulative effects analysis, NMFS identified several reasonably foreseeable Gulf reef fish actions, including state management of the private angling component, and concluded that these actions in combination with the reduction of buffer between the Federal for-hire component ACL and ACT, and other past or present actions are unlikely to result in significant impacts. NMFS did not include in that analysis any anticipated impacts from the implementation of Amendment 18 to the FMP for the Shrimp Fishery of the Gulf of Mexico U.S. Waters (Shrimp Amendment

18). Shrimp Amendment 18 was approved on October 25, 2019, and, when implemented, will reduce the target reduction goal for juvenile red snapper mortality in the Federal Gulf penaeid shrimp trawl fishery, which may allow for an increase in shrimp trawl effort. Analyses in that amendment indicate that lowering the target reduction goal should have no impact on red snapper rebuilding. NMFS has prepared an addendum to the cumulative effects analysis in the EA for this framework action to include Shrimp Amendment 18, and has determined that impacts from the current framework action in combination with any impacts from the implementation of Shrimp Amendment 18 as well as other past actions, present actions, and reasonably foreseeable future actions described in the EA, are not expected to be significant.

Classification

The Regional Administrator, Southeast Region, has determined that this final rule is consistent with the framework action, 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 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 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. None of the public comments that were received specifically addressed the certification and NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Recreational, Red snapper.

Dated: February 6, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator,
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 § 622.41, revise paragraph (q)(2)(iii)(B) to read as follows:

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

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(q) * * *

(2) * * *

(iii) * * *

(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. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed. The component ACT is 2.848 million lb (1.292 million kg), round weight.

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[FR Doc. 2020-02699 Filed: 2/19/2020 8:45 am; Publication Date: 2/20/2020]