



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 201103-0289]

RIN 0648-BJ20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray 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 Amendment 51 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf) (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 51). This final rule revises the harvest levels for the gray snapper stock. In addition, Amendment 51 establishes and modifies status determination criteria for the stock. The purposes of Amendment 51 and this final rule are to end overfishing of gray snapper 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 51, which includes an environmental assessment, a fishery impact

statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-51-establish-gray-snapper-status-determination-criteria-and-modify-annual-catch>.

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, which includes gray snapper, 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).

On February 28, 2020, NMFS published a notice of availability for Amendment 51 and requested public comment (85 FR 11937). NMFS approved Amendment 51 on May 18, 2020. On July 6, 2020, NMFS published a proposed rule for Amendment 51 and requested public comment (85 FR 40181). The proposed rule and Amendment 51 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 51 and implemented by this final rule is described below.

Unless otherwise noted, all weights in this proposed rule are in round weight.

Background

Gray snapper in the Gulf exclusive economic zone (EEZ) are managed as a single stock with a stock annual catch limit (ACL), and a stock annual catch target (ACT). There is no allocation of the stock ACL between the commercial and recreational sectors. Generally, the fishing season is open year-round, January 1 through December 31. However, accountability measures (AMs) for gray snapper specify that if commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year. The gray snapper ACL and AMs were implemented in 2012 (76 FR 82044; December 29, 2011) and the stock ACL of 2.42 million lb (1.1 million kg) was not exceeded between 2012 and 2019. However, landings in 2014 and 2016 did exceed the new ACLs being implemented through this final rule.

In 2018, the stock status of gray snapper was evaluated for the first time through a Southeast Data, Assessment, and Review benchmark stock assessment (SEDAR 51). The Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 51 and accepted the assessment as the best scientific information available. The SSC determined that the stock is undergoing overfishing as of 2015, which was the last year of data included in the assessment,

because the fishing mortality rate (F) exceeded the current maximum fishing mortality threshold (MFMT). The SSC was not able to determine whether the stock is overfished, because the maximum sustainable yield (MSY) and minimum stock size threshold (MSST) for gray snapper were not specified in the FMP at that time.

SEDAR 51 could not estimate the actual MSY with the best scientific information available. Therefore, the Council considered alternatives for an MSY proxy that uses the spawning potential ratio (SPR). The SPR is the ratio of the average number of eggs per fish over its lifetime when the stock is fished compared to the same value when the stock is not fished. The SPR assumes that a certain amount of fish must survive and spawn in order to replenish the stock. The Council selected the yield when fishing at $F_{26\%SPR}$ for an MSY proxy to balance protection of the gray snapper stock with an increase in social and economic benefits for fishers targeting the species that is expected to result from allowing more harvest. The SSC recognized that this proxy is scientifically acceptable and this proxy is consistent with the MSY proxy for Gulf red snapper.

As a result of the increasing uncertainty with long-range projections, the SSC only provided overfishing limit (OFL) and acceptable biological catch (ABC) recommendations for the gray snapper stock through 2021. From SEDAR 51, the OFLs associated with the MSY proxy selected by the Council

are 2.58 million lb (1.17 million kg) for 2020, and 2.57 million lb (1.17 million kg) for 2021, and the ABCs recommended by the SSC are 2.51 million lb (1.14 million kg) for 2020 and subsequent years.

Management Measure Contained in This Final Rule

This final rule revises the ACL for the Gulf gray snapper stock, and removes the ACT.

Annual Catch Limits and Annual Catch Target

The current ACL for gray snapper is 2.42 million lb (1.1 million kg) and was established based on average landings from 1999 through 2008. The current ACT is set 14 percent below the ACL, at 2.08 million lb.

To determine the new ACLs, the Council used its ACL/ACT control rule to determine whether to apply a buffer to the ABC recommendations to account for management uncertainty. The results indicated that an 11 percent buffer is appropriate. When applied to the 2020-2021 ABC recommendations, the resulting gray snapper stock ACLs in this final rule are 2.24 million lb (1.02 million kg) for the 2020 fishing year, and 2.23 million lb (1.01 million kg) for 2021, and subsequent years. The Council decided to remove the ACT for gray snapper because it has not been used for management since its implementation in 2012.

Management Measures Contained in Amendment 51 but not Codified in this Final Rule

Amendment 51 modifies the OFL and ABC for the gray

snapper stock as previously explained. Amendment 51 also modifies the MFMT and specifies the MSY, MSST, and OY for the stock. NMFS uses the MSST and MFMT to determine whether a stock is overfished or undergoing overfishing, respectively. If the stock biomass falls below the MSST, then the stock is considered overfished and the Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to achieve MSY on a continuing basis. In years when there is a stock assessment, if fishing mortality exceeds the MFMT, a stock is considered to be undergoing overfishing, because this level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition. In years in which there is no assessment, overfishing occurs if landings exceed the OFL.

Amendment 51 set the MSY proxy as the yield when fishing at $F_{26\%SPR}$. MFMT was changed from $F_{30\%SPR}$ to $F_{26\%SPR}$, and the MSST is 50 percent of the biomass at MSY or the MSY proxy. The OY is the yield when fishing at 90 percent of F_{MSY} (or MSY proxy). As noted previously, under the current MFMT, overfishing was occurring as of 2015. Under the new MFMT of $F_{26\%SPR}$, projections from SEDAR 51 suggest that overfishing ended in 2017. Under the new MSST, the stock is not overfished.

Comments and Responses

NMFS received 11 comments on the notice of

availability and 9 comments on the proposed rule for Amendment 51. The majority of the comments supported actions in the proposed rule and Amendment 51. Some comments supporting the action suggested that additional management measures are necessary to protect the stock, such as reducing the recreational bag limit and increasing the minimum size limit.

Comments specific to Amendment 51 and the proposed rule are grouped as appropriate and summarized below, each followed by the response.

Comment 1: Further restrictions are needed to protect the gray snapper stock beyond the actions in Amendment 51. These include reducing the recreational bag limit and increasing the stock minimum size limit.

Response: NMFS disagrees that additional management measures, such as reduced bag limits and increased minimum size limits, are needed at this time to further protect the gray snapper stock. The ACLs established through this final rule are reduced from the Council's SSC ABC recommendation by 11 percent and are consistent with achieving OY. As previously noted, landings between 2012 and 2019 have not exceeded the applicable ACL, but landings in 2014 and 2016 were greater than the ACLs being implemented through this final rule. If the ACL is exceeded, the AM for gray snapper requires that NMFS monitor landings the following year and close the recreational and commercial sectors if landings

are projected to reach the ACL. Further, the National Standard 1 Guidelines provide that, if catch exceeds the ACL more than once in the last 4 years, the system of ACLs and AMs should be reevaluated, and modified if necessary to improve its performance and effectiveness. The Council could also consider whether additional management measures such as revising the recreational bag limit and the minimum size limits, are necessary.

Comment 2: Because Amendment 51 does not consider gray snapper bycatch from the Gulf shrimp trawl fishery, the basis for the proposed measures is flawed.

Response: Gray snapper bycatch, including that from the shrimp trawl fishery, was examined in the SEDAR 51 stock assessment, which the Council's SSC accepted as the best scientific information available. The members of the SEDAR 51 data workshop concluded that gray snapper bycatch estimates from the shrimp fishery were inconsequential. As a result, shrimp trawl bycatch data were excluded from the assessment model and were not considered in Amendment 51.

Comment 3: No further regulations related to the harvest of gray snapper are necessary because the current regulations are adequate to protect the gray snapper stock.

Response: NMFS disagrees. The Council's SSC reviewed the results of SEDAR 51, accepted the assessment as the best scientific information available, and recommended new OFLs and ABCs. Consistent with National Standards 1 and 2,

the Council took action to update the gray snapper catch levels and determined that it is appropriate to have an 11 percent buffer between the ACL and ABC to account for management uncertainty and reduce the likelihood of overfishing. This final rule does not change any other regulations for gray snapper fishing, such as the recreational bag limit or the minimum size limit.

Comment 4: The reduction in the gray snapper ACL is not fair and reasonable because it favors the commercial sector.

Response: NMFS disagrees that the gray snapper management measures implemented through this final rule favor the commercial sector over the recreational sector. Gray snapper are managed using a stock ACL that is not allocated between the commercial and recreational sectors. Thus, each sector has an equal opportunity to harvest gray snapper, and the recreational harvest of gray snapper has been much greater than the commercial harvest. The most recent 5 years of landings data used in Amendment 51 (2013-2017) indicate that recreational landings were between 1.836 and 2.203 million lb (0.833 and 0.999 million kg) while commercial landings were between 0.136 and 0.200 million lb (0.062 and 0.091 million kg).

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that

this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an E.O. 13771 regulatory action because this action is not significant under E.O. 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 or recordkeeping compliance requirements are introduced in this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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 economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments from the public were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gray snapper,

Gulf, Reef fish.

Dated: November 3, 2020.

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 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 (1) to read as follows:

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

* * * * *

(1) *Gray snapper*. 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 gray snapper, in round weight, is 2.24 million lb (1.02 million kg) for the 2020 fishing year, and 2.23 million lb (1.01 million kg) for the 2021 and subsequent fishing years.

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