



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230420-0107]

RIN 0648-BL29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Harvest Levels

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 under 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). This final rule revises the annual catch limit (ACL) for vermilion snapper in the Gulf of Mexico (Gulf). The purpose of this final rule is to prevent overfishing of Gulf vermilion snapper and to 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 the framework action, 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 website at https://www.fisheries.noaa.gov/action/modification-gulf-mexico-vermilion-snapper-overfishing-limit-acceptable-biological-catch-and?check_logged_in=1.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes vermilion 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).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production

and recreational opportunities, and protecting marine ecosystems.

On December 6, 2022, NMFS published a proposed rule for the framework action and requested public comment (87 FR 74588). 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 action and implemented by this final rule is described below.

All weights described in this final rule are in round weight.

The current catch limits were specified in Amendment 47 to the FMP (83 FR 22210, May 14, 2018) and are based on the results of the 2016 Southeast Data Assessment Review (SEDAR) stock assessment (SEDAR 45), and the recommendations of the Council's Scientific and Statistical Committee (SSC). The SSC recommended a declining overfishing limit (OFL) and the OFL for 2021 and beyond specified in Amendment 47 is 3,490,000 lb (1,623,861 kg). The SSC also provided two recommendations for the acceptable biological catch (ABC): one derived from fishing at 75 percent of the MSY proxy, which declined from 2017 through 2021, and one derived using the average of the 2017-2021 ABCs, which resulted in a constant ABC. The Council chose to adopt the constant catch ABC of 3,110,000 lb

(1,410,672 kg), and set the annual catch limit (ACL) equal to the ABC. Vermilion snapper annual landings have been less than this ACL since the implementation of the stock ACL in 2012, with the exception of 2018 when it was exceeded by 3 percent.

In 2020, a new assessment (SEDAR 67) was completed for vermilion snapper using data through the 2017 fishing year. The SEDAR 67 results indicate the stock is not overfished and not experiencing overfishing. SEDAR 67 included new data sources, including historical recreational catch and effort data adjusted to be consistent with the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES). MRIP transitioned from the legacy Coastal Household Telephone Survey (CHTS) to the new FES mail survey. The FES was launched in 2015, and replaced the CHTS in 2018. Both survey methods collect data needed to estimate marine recreational fishing effort by private anglers on the Atlantic and Gulf coasts. The CHTS used random-digit dialing of homes in coastal counties to contact fishermen. The new mail-based FES uses fishing license and registration information as one way to identify and contact fishermen (supplemented with data from the U.S. Postal Service). MRIP-FES landings estimates are generally greater than those generated by MRIP-CHTS and NMFS

developed a calibration model to allow estimates produced by either survey to be adjusted and be consistent with the estimates produced by the other survey.

To determine how the inclusion of FES-adjusted landings estimates in SEDAR 67 impacted the catch projections for vermilion snapper, the previously accepted assessment model used in SEDAR 45 was updated using the FES data. The same 5-year (2017-2021) average used to set the current ABC was applied to the revised SEDAR 45 projections. This resulted in an FES-based OFL estimate of 6,760,000 lb (3,066,284 kg), which is almost double the current OFL of 3,490,000 lb (1,623,861 kg). Thus, using FES landings estimates in the SEDAR 45 model indicate that the OFL would have been much higher had FES data been available at the time the previous assessment was completed.

The SSC reviewed SEDAR 67, agreed that vermilion snapper is not overfished or undergoing overfishing, and reviewed the SEDAR 67 projections. Due to the uncertainty in the SEDAR 67 assessment and recent recruitment, the SSC determined that the catch levels should be based on the average of the projections from 2021-2025, and recommended an increase in the OFL to 8,600,000 lb (3,900,894 kg) and an increase in the ABC to 7,270,000 lb (3,297,617 kg).

The Council's Reef Fish Advisory Panel (AP) reviewed the SSC recommendations and expressed concerns about setting the ACL equal to the ABC, noting that recent landings have been relatively low. Using MRIP-FES estimates, recreational landings from 2012 through 2020 have generally been below 4,000,000 lb (1,814,369 kg), with the highest landings occurring in 2018 at approximately 4,380,000 lb (1,986,735 kg). The AP recommended that the stock ACL be set at 75 percent of the ABC and the Council agreed with the AP's recommendation. Based on the recommendations from the SSC and the AP, the Council chose to update the catch limits and approved the framework action at its January 2022 meeting.

Management Measures Contained in this Final Rule

This final rule revises the ACL for the Gulf vermilion snapper stock. The current stock ACL for Gulf vermilion snapper is 3.11 million lb (1.41 million kg), is equal to the ABC, and is based on the results of SEDAR 45, which used data from MRIP-CHTS. This final rule increases the total ACL for Gulf vermilion snapper from 3.11 million lb (1.41 million kg) to 5,452,500 lb (2,473,212 kg). The revised ACL is based on SEDAR 67, which used MRIP-FES recreational landing estimates and is equal to 75 percent of the ABC.

Comments and Responses

NMFS received a total of three comments on the proposed rule for the framework action. One comment was not related to the proposed rule or the framework action and suggested recreational bag limit changes for Gulf lane snapper. That comment is not addressed further in this final rule. Specific comments related to the proposed rule and the framework action are grouped as appropriate and responded to below.

Comment 1: The proposed increase to the stock ACL is too high. A better approach would be to increase the ACL gradually over several years while monitoring the ACL to prevent overfishing.

Response: NMFS does not agree that the increase to the stock ACL is too high. Vermilion snapper is not overfished or undergoing overfishing. Further, although the new stock ACL of 5,452,500 lb (2,473,212 kg) is 57 percent greater than the previous ACL of 3.11 million lb (1.41 million kg), the new ACL takes into account scientific and management uncertainty, as well as the change from MRIP-CHTS to MRIP-FES to estimate recreational landings. The Council's SSC recommended an OFL of 8,600,000 lb (3,900,894 kg), which is well above the SSC's ABC recommendation of 7,270,000 lb (3,297,617 kg). This buffer between the OFL and the ABC accounts for scientific uncertainty

and reduces the likelihood of overfishing. The Council accounted for management uncertainty and further reduced the likelihood of overfishing by setting the stock ACL 25 percent below the ABC. Under the current accountability measures, NMFS monitors landings and prohibits harvest of vermilion snapper if the combined commercial and recreational landings reach, or are projected to reach, the stock ACL. In addition, harvest projections from SEDAR 67 used MRIP-FES recreational landings estimates rather than MRIP-CHTS, as used in SEDAR 45. As discussed above, if MRIP-FES landing estimates had been used in SEDAR 45 the current OFL would have been 6,760,000 lb (3,066,284 kg), which is almost double the current OFL of 3,490,000.

Comment 2: Although the vermilion snapper stock assessment supported a significant increase in the catch levels, the terminal year of data used in the assessment was 2017 and recent observations by fishermen indicate that the current stock may not be able to support this increase. The large increase in the stock ACL could also shift more effort to vermilion snapper, jeopardizing the health of the stock.

Response: NMFS understands the concern about the time it takes to conduct a stock assessment and then

use that information for management changes. However, both the SEDAR stock assessment and the Council process are structured to allow the opportunity for scientific, management, and public review and comment. These assessment reviews often take several meetings to complete. The most recent stock assessment for vermilion snapper was completed in 2020 (SEDAR 67), and involved several webinars, including 3 data review webinars. A draft assessment report was then reviewed and edited by the assessment panel prior to submission to the Council. The Council's SSC and the Council reviewed the assessment in June 2020, and the Council then began the process of updating management based in the results of the assessment.

In determining the appropriate catch limits, the Council considered the input of fishermen through their Reef Fish AP and public testimony. The Council's Reef Fish AP recommended that the stock ACL for be set at 75 percent of the ABC based on recorded vermilion snapper landings, which have been relatively low when compared to the new ABC, and concern regarding the status of the stock and harvest levels. The AP also noted that while exceptionally high vermilion snapper recruitment was recorded in recent years, the stock may not be able to sustain the ACL increases considered in the framework action. The majority of

public comments provided during the January 2022 Council meeting supported the ACL recommended by the AP. The Council concurred with the Reef Fish AP and the majority of public comments and selected a more conservative stock ACL to provide more protection to the vermilion snapper stock.

NMFS agrees that the increase in the vermilion snapper stock ACL could cause effort to shift from other reef fish species to vermilion snapper. However, given the multi-species nature of the reef fish fishery and the availability of other species to harvest throughout the year, as well as the magnitude of historical landings, it is unlikely that a shift in effort would be significant enough to result in landings exceeding the new ACL. As explained in the response to *Comment 1*, the Council set the new ACL at a conservative level to help ensure that the increase in allowable harvest would not risk the health of the stock.

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 framework action, the FMP, other provisions of 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 legal 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. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of 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 action 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 were received regarding this certification. As a result, a regulatory flexibility act analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf, Reef fish, Vermilion snapper.

Dated: April 20, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory

Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS
amends 50 CFR part 622 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 the last sentence of
paragraph (j) to read as follows:

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

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(j) * * * The stock ACL for vermilion snapper is
5,452,500 lb (2,473,212 kg), round weight.

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