



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BM27

**Fisheries of the Caribbean, Gulf of Mexico, and South
Atlantic; Snapper-Grouper Fishery of the South Atlantic;
Amendment 53**

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

ACTION: Announcement of availability of fishery management
plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council
(Council) submitted Amendment 53 to the Fishery Management
Plan for the Snapper-Grouper Fishery of the South Atlantic
(FMP) for review, approval, and implementation by NMFS.
Amendment 53 would modify management of South Atlantic gag
and black grouper. For gag, Amendment 53 would establish a
rebuilding plan, revise the overfishing limits, acceptable
biological catch (ABC), annual optimum yield (OY), annual
catch limits (ACLs), sector allocations, commercial trip
limits, recreational bag, vessel, and possession limits,
and recreational accountability measures (AMs). For black
grouper, Amendment 53 would modify the recreational bag,
vessel, and possession limits. The purpose of Amendment 53
is to end overfishing of gag, rebuild the stock, and

achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

DATES: Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on Amendment 53, identified by "NOAA-NMFS-2023-0045," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter "NOAA-NMFS-2023-0045" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter

"N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 53, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-53-rebuilding-plan-gag-and-management-gag-and-black-grouper/>.

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727-824-5305, or email: frank.helies@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to such a plan to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan or amendment to such a plan, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The Council prepared the FMP that is being revised by Amendment 53. If approved, Amendment 53 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council manages the snapper-grouper fishery,

including gag and black grouper, in Federal waters from North Carolina south to the Florida Keys in the South Atlantic under the FMP. 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 that 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.

All weights described in this notice are in gutted weight, unless otherwise specified.

In 2006, the gag stock was assessed through the Southeast Data, Assessment, and Review (SEDAR) process as a benchmark assessment (SEDAR 10). The assessment indicated that the gag stock was not overfished but was undergoing overfishing. The Council and NMFS implemented management measures, including implementing a spawning season closure to end overfishing in Amendment 16 to the FMP (74 FR 30964, July 29, 2009).

In 2014, the gag stock was assessed again through the SEDAR 10 Update as a standard assessment. The assessment indicated that the gag stock was not overfished but was still experiencing overfishing. However, the Council's Scientific and Statistical Committee (SSC) noted that the fishing mortality rate for 2012, and the projected fishing

mortality rate in 2013, based on the actual landings, suggested that overfishing did not occur in 2012 and 2013. Consequently, NMFS determined that the gag stock was not undergoing overfishing. In response to the SEDAR 10 Update, the Council and NMFS modified the ACLs and management measures through the final rule for Regulatory Amendment 22 to the FMP (80 FR 48277, August 12, 2015).

Amendment 53 responds to the most recent stock assessment for South Atlantic gag (SEDAR 71 2021). The Council's SSC reviewed the gag stock assessment (SEDAR 71 2021) at their June 2021 meeting. The assessment followed a standard approach using data through 2019, and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES). The findings of the assessment indicated that the South Atlantic gag stock is overfished and undergoing overfishing. The SSC found that the assessment was conducted using the best scientific information available, was adequate for determining stock status and supporting total fishing level recommendations. NMFS notified the Council of the updated status of the gag stock via letter dated July 23, 2021.

Following a notification from NMFS to a Council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the Council to develop an FMP amendment with actions that immediately end overfishing and

rebuild the affected stock. The Council developed Amendment 53 to respond to the results of SEDAR 71.

The Council requested several different rebuilding projections for the gag stock including a 50 percent and a 70 percent probability of rebuilding under recent low recruitment and longer-term modeled recruitment scenarios. The SSC recommended acceptable biological catch (ABC) values based on a 70 percent probability of rebuilding in 10 years and recruitment based on the long-term recruitment scenario from SEDAR 71. However, in March 2023, the NMFS Southeast Fisheries Science Center advised the Council that unless gag discards were reduced in similar proportion to the reduction in landings, the probability of rebuilding would be below the expected 70 percent probability of rebuilding but still be above 50 percent, as required under the Magnuson-Stevens Act. The Council accepted the SSC's recommended ABC values, as discussed below.

In Amendment 53, the Council would also revise the overfishing limit (OFL) for gag, and update other biological reference points. Amendment 53 would set the OFL to 367,235 lb (166,575 kg), for 2023; 494,338 lb (224,228 kg), for 2024; 605,227 lb (274,526 kg), for 2025; 706,366 lb (320,402 kg), for 2026; 808,266 lb (366,623 kg), for 2027; 912,033 lb (413,691 kg), for 2028; 1,011,133 lb (458,642 kg), for 2029; 1,098,379 lb (498,216 kg), for 2030; 1,171,120 lb (531,211 kg), for 2031; and 1,230,363 lb

(558,083 kg), for 2032 and subsequent fishing years.

The Council intends that Amendment 53 would end overfishing of South Atlantic gag, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

Actions Contained in Amendment 53

Amendment 53 would establish a rebuilding plan, and revise the catch levels (ABCs and ACLs), sector allocations, recreational AMs, and management measures for gag. Management measures for gag would address commercial trip limits, recreational vessel limits, and a prohibition on captain and crew bag limit retention. Because gag and black grouper are often misidentified by recreational fishermen, Amendment 53 would also address recreational vessel limits and a prohibition on captain and crew bag limit retention for black grouper.

Rebuilding Plan for the South Atlantic Gag Stock

Amendment 53 would establish a 10-year rebuilding plan, which is the longest allowable rebuilding scenario (Tmax) allowed for the gag stock by the Magnuson-Stevens Act (16 U.S.C. 1854(e)(4)(A)). In addition, the Magnuson-Stevens Act National Standard 1 Guidelines state that if the stock is projected to rebuild in 10 years or less, then Tmax is 10 years (50 CFR 600.310(j)(3)(i)(B)(1)). The Council intends that their preferred choice of the 10-year timeframe for rebuilding in Amendment 53 beginning in 2023

would reduce the severity of the management measures and thus result in fewer short-term negative social and economic impacts on fishing communities.

ABC and Annual OY

The current OFL of 825,000 lb (374,214 kg) and ABC of 773,000 lb (350,627 kg) are inclusive of Coastal Household Telephone Survey (CHTS) estimates of private recreational and charter landings. The Council's SSC reviewed the latest stock assessment (SEDAR 71) and recommended new ABC levels as determined by SEDAR 71. The assessment and associated ABC recommendations incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and the updated FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the CHTS with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 53, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and is more robust compared to

the MRIP CHTS method. The new ABC recommendations within Amendment 53 also represent the best scientific information available as determined by the SSC.

The Council chose to specify OY for gag on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

Total ACL

Through Regulatory Amendment 22 to the FMP, the total ACL and annual OY were set at 734,350 lb (333,095 kg), which is 95 percent of the current ABC (80 FR 48277, August 12, 2015). In Amendment 53, the Council would revise the ABC based on SEDAR 71 and the recommendation of the SSC, and set the ABC, ACL, and annual OY equal to each other.

Amendment 53 would revise the total ACL and annual OY equal to the recommended ABC of 175,632 lb (79,665 kg), for 2023; 261,171 lb (118,465 kg), for 2024; 348,352 lb (158,010 kg), for 2025; 435,081 lb (197,349 kg), for 2026; 524,625 lb (237,966 kg), for 2027; 617,778 lb (280,219 kg), for 2028; 711,419 lb (322,694 kg), for 2029; 800,088 lb (362,914 kg), for 2030; 879,758 lb (399,052 kg), for 2031; and 948,911 lb (430,419 kg), for 2032 and subsequent fishing years.

Sector Allocations and ACLs

Amendment 53 would revise the commercial and

recreational allocations for gag. The current sector ACLs for gag are based on the commercial and recreational allocations of the total ACL at 51 percent and 49 percent, respectively, that were established through Amendment 16 to the FMP (74 FR 30964, July 29, 2009). The Council used the distribution of landings from 1999 through 2003 to determine the existing allocations.

In Amendment 53, the Council would adjust the commercial and recreational sector allocations based on a unique allocation formula ("split reduction method") developed by the Council that also accounts for the revisions to the calibrated recreational landings estimates from the MRIP FES. This method would implement the reductions in total harvest needed to achieve the new total ACL proportionally for each sector, based upon the distribution of landings under more recent time periods that the Council determined better reflect the way the fishery is currently operating. The Council chose the 5-year average of commercial and recreational (FES) landings from 2015 through 2019, and split the reduction needed to achieve the new reduced ACL in 2023 proportionally among the sectors. Then in each subsequent year throughout the rebuilding plan, as the ACL increases, the ACL poundage increase is allocated equally between both sectors and added to each sector's respective ACL from the previous year. The proposed adjustments would result in allocation

percentages of 49 percent commercial and 51 percent recreational for 2023 through 2026. Each year thereafter would be a 50 percent commercial and 50 percent recreational allocation.

The Council determined that the preferred sector allocation method in Amendment 53 more fairly deals with the initial reduction in landings that results from the updated catch levels, and reduces the proportion of each sector's allowable catch based on recent landings so that the effect on each sector is more equitable. Similarly, the Council noted that the new allocations would achieve a balance between the needs of both sectors and also increase each sector's allowable catch proportionately on a poundage basis throughout the rebuilding plan. The Council determined that the new method distributes both overfishing restrictions and recovery benefits for gag fairly and equitably among both sectors. Thus, the Council considers this allocation method to be fair and equitable to fishery participants in both the commercial and recreational sectors. In addition, this allocation method is also reasonably calculated to promote conservation, since it achieves OY while it remains within the boundaries of a total ACL that is based upon an ABC recommendation that would end overfishing and rebuild the stock, incorporating the best scientific information available.

The current commercial ACL for gag is 347,301 lb

(157,533 kg) and was implemented through the final rule for Amendment 16 to the FMP (74 FR 30964, July 29, 2009). In Amendment 53, the commercial ACLs would be 85,326 lb (38,703 kg), for 2023; 128,096 (58,103 kg), for 2024; 171,687 (77,876 kg), for 2025; 215,051 (97,545 kg), for 2026; 259,823 (117,854 kg), for 2027; 306,400 (138,981 kg), for 2028; 353,220 (160,218 kg), for 2029; 397,555 (180,328 kg), for 2030; 437,390 (198,397 kg), for 2031; and 471,966 lb (214,080 kg), for 2032 and subsequent years.

The current recreational ACL for gag is 359,832 lb (171,807 kg) and was implemented through the final rule for Amendment 16 to the FMP ((74 FR 30964, July 29, 2009). In Amendment 53, the recreational ACLs would be 90,306 lb (40,962 kg), for 2023; 133,075 lb (60,362 kg), for 2024; 176,665 lb (80,134 kg), for 2025; 220,030 lb (99,804 kg), for 2026; 264,802 lb (120,112 kg), for 2027; 311,378 lb (141,239 kg), for 2028; 358,199 lb (162,476 kg), for 2029; 402,533 (182,586 kg), for 2030; 442,368 lb (200,655 kg), for 2031; and 476,945 lb (216,339 kg), for 2032 and subsequent years.

Commercial Trip Limits

The final rule for Regulatory Amendment 14 to the FMP established the current commercial trip limit for gag of 1,000 lb (454 kg), until 75 percent of the commercial quota is met, at which time the commercial trip limit is reduced to 500 lb (227 kg), for the remainder of the fishing year

or until the commercial quota is met (79 FR 66316, December 8, 2014). Amendment 53 would modify the commercial trip limit for gag to be 300 lb (136 kg), without a trip limit reduction.

Under the proposed trip limit, the Council determined that commercial fishermen could retain a sufficient amount of gag over the longest amount of time during a fishing year, and that it would increase the likelihood of gag remaining open to commercial harvest and available to consumers for as long as possible during the year.

Recreational Vessel Limits for Gag and Black Grouper

There is currently no recreational vessel limit for gag or black grouper. The current recreational bag and possession limits for gag and black grouper in the South Atlantic, specified by the final rule for Regulatory Amendment 22 to the FMP, are one fish per person per day within the three fish aggregate for grouper and tilefish, and no more than one of those fish may be a gag or a black grouper.

Given the substantial reduction in harvest needed to end overfishing immediately and to increase the likelihood of rebuilding the gag stock, the Council decided to establish recreational vessel limits for gag that would continue to allow recreational retention and help constrain harvest to the reduced recreational ACL. As previously mentioned, gag and black grouper are often misidentified by

recreational fishermen. Because of these misidentification issues between the two species, coupled with the need to greatly reduce the harvest of gag to end overfishing and rebuild the stock, Amendment 53 would also implement recreational vessel limits to help with harvest constraints for black grouper to indirectly benefit the gag portion of the snapper-grouper fishery.

Amendment 53 would not alter the gag or black grouper recreational bag limits, which would remain one gag or one black grouper per person per day within the three fish aggregate for grouper and tilefish. Amendment 53 would establish a per day gag and black grouper recreational vessel limit for the private angling component and a per trip gag and black grouper vessel limit for the charter vessel and headboat (for-hire) component. These separate vessel limits would be expected to constrain harvest for these two separate components of the recreational sector. Because for-hire vessels may take multiple trips in a single day, the Council determined that a per trip maximum vessel limit would ensure equal access for new customers on a second for-hire trip of the day by not requiring discarding of a gag or black grouper if one was previously caught and kept by a different customer on the first trip of a day.

Amendment 53 would establish a private recreational vessel limit for gag and also a private recreational vessel

limit for black grouper of two fish per vessel per day, not to exceed the daily bag limit of one fish per person per day, whichever is more restrictive. For for-hire recreational vessels, Amendment 53 would establish a vessel limit for gag and also a vessel limit for black grouper of two fish per vessel per trip, not to exceed the daily bag limit of one fish per person per day, whichever is more restrictive.

Prohibition of Captain and Crew Bag Limit Retention for Gag and Black Grouper

The captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit may currently retain the daily bag limit of gag or black grouper as is allowed for each for-hire passenger. Amendment 53 would set the gag and black grouper bag limit for captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit at zero. The Council determined that because of the need to constrain the harvest of gag to the reduced recreational catch levels and because of the misidentification issues previously discussed, continuing to allow captain and crew to retain a daily bag limit of gag or black grouper would increase the potential gag harvest by recreational for-hire anglers and would prevent necessary reductions in the harvest of gag from being achieved.

Recreational AMs

The current recreational AMs for gag were established through Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The AM includes an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL, regardless of whether the stock is overfished. The recreational AM also includes post-season adjustments. If recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. Also, if the total ACL is exceeded and gag are overfished, the length of the recreational fishing season and the recreational ACL are reduced by the amount of the recreational ACL overage.

Amendment 53 would revise the recreational AMs for gag. The current in-season closure AM would be retained and the post-season recreational AM would be revised. If recreational landings for gag exceed the recreational ACL, the length of the following year's recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being exceeded. The proposed AM would remove the current potential duplicate AM application of a reduction in the recreational season length and an overage adjustment (payback) of the recreational ACL overage if the total ACL was exceeded. Under this proposed measure, the AM trigger would not be tied to the total ACL,

but only to the recreational ACL. The proposed AM modification would ensure that overages in the recreational sector do not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the recreational AM being implemented would apply to the recreational fishing season following the year of a recreational ACL overage. Additionally, under the proposed recreational AM, the length of the recreational season would not be reduced if the Regional Administrator determines, using the best scientific information available, that such reduction is unnecessary. Amendment 53 would not revise the commercial AMs because the Council determined that the current commercial AM remains sufficient to ensure commercial landings would not exceed either the current or revised commercial ACL.

Proposed Rule for Amendment 53

A proposed rule to implement Amendment 53 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 53 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 53 for Secretarial review, approval, and implementation. Comments on Amendment 53 must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*. Comments received during the respective comment periods, whether specifically directed to Amendment 53 or the proposed rule, will be considered by NMFS in the decision to approve, partially approve, or disapprove, Amendment 53. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: June 6, 2023.

Jennifer M. Wallace,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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