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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 231101-0258]

RIN 0648-BM46

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Amendment 56

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendment 56 to 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). If implemented for gag in the Gulf of Mexico (Gulf), this proposed rule would revise catch levels, recreational accountability measures (AMs), and the recreational fishing season. In addition, Amendment 56 would establish a rebuilding plan for the overfished stock, revise stock status determination criteria, and

sector harvest allocations. The purpose of this action is to implement a rebuilding plan for gag and revised management measures to end overfishing and rebuild the stock.

DATES: Written comments on this proposed rule must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2023-0103" by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2023-0103" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Dan Luers, NMFS Southeast Regional Office, 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 <https://www.regulations.gov> without change. All personal

identifying information, e.g., name and 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 required fields if you wish to remain anonymous.

An electronic copy of Amendment 56, 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/amendment-56-modifications-catch-limits-sector-allocation-and-recreational-fishing-seasons>.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: daniel.luers@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS, with the advice of the Council, manages the reef fish fishery, which includes gag, under the FMP in Federal waters of the Gulf. The Council prepared the FMP, which the Secretary of Commerce approved, 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 optimum yield (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.

All weights in this proposed rule are given in gutted weight unless indicated otherwise.

Gag in the Gulf exclusive economic zone (EEZ) are found primarily in the eastern Gulf. Juvenile gag are estuarine dependent and are often found in shallow seagrass beds. As gag mature, they move to deeper offshore waters to live and spawn. Gag is managed as a single stock with commercial and recreational catch limits. The allocation of the stock annual catch limit (ACL) between the commercial and recreational sectors established by Amendment 30B to the FMP is currently 39 percent commercial and 61 percent recreational.

Commercial fishing for gag is managed under the individual fishing quota (IFQ) program for groupers and tilefishes (GT-IFQ program), which began January 1, 2010, upon implementation of the final rule for Amendment 29 to

the FMP (74 FR 44732, August 31, 2009; 75 FR 9116, March 1, 2010). Under the GT-IFQ program, the commercial quota for gag is set 23 percent below the gag commercial ACL, and NMFS distributes allocation (in pounds) of gag on January 1 each year to those who hold shares (in percent) of the gag total commercial quota. Both gag and red grouper, another grouper species managed under the GT-IFQ program, have a commercial multi-use provision that allows a portion of the gag quota to be harvested under the red grouper allocation, and vice versa. As explained further in Amendment 56, the multi-use provision is based on the difference between the respective red grouper and gag ACLs and quotas. However, if gag is under a rebuilding plan, as would occur under Amendment 56 and this proposed rule, the percentage of red grouper multi-use allocation is equal to zero. Commercial harvest of gag is also restricted by area closures and a minimum size limit.

NMFS, with the advice of the Council, manages the recreational harvest of gag with an ACL, an annual catch target (ACT) set approximately 10 percent below the ACL, in-season and post-season AMs, seasonal and area closures, a minimum size limit, and daily bag and possession limits.

The most recent stock assessment for gag was completed in 2021 through Southeast Data, Assessment, and Review 72 (SEDAR 72), and concluded that the gag stock is overfished is undergoing overfishing as of 2019. Compared to the previous assessment for gag, SEDAR 72 used several improved data sources, including corrections for the potential misidentification between black grouper and gag, which are similar looking species, to better quantify estimates of commercial discards. SEDAR 72 also used updated recreational catch and effort data from the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey and Fishing Effort Survey (FES) through 2019. MRIP-FES replaced the MRIP Coastal Household Telephone Survey (CHTS) in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). Because MRIP-FES is designed to more accurately measure fishing activity, total recreational fishing effort estimates generated from MRIP-FES are generally higher than both the MRFSS and MRIP-CHTS estimates. Prior to SEDAR 72, the most recent stock assessment for gag was SEDAR 33 Update (2016), which indicated that gag was not subject to overfishing and was not overfished. The SEDAR 33 Update

used recreational catch and effort data generated by MRIP-CHTS.

SEDAR 72 also accounted for observations of red tide mortality directly within the stock assessment model. Gag is vulnerable to red tide events and was negatively affected by these disturbances in 2005, 2014, 2018, and projected for 2021. Modeling changes were also made in SEDAR 72 to improve size estimates of gag retained by commercial and for-hire (charter vessels and headboats) fishermen, and private anglers.

The Council's Scientific and Statistical Committee (SSC) reviewed the results of SEDAR 72 in November 2021 and concluded that the assessment was consistent with the best scientific information available and suitable for informing fisheries management. On January 26, 2022, NMFS notified the Council that gag was overfished and undergoing overfishing. The Magnuson-Stevens Act requires that a rebuilding plan be developed and implemented within 2 years of the notification. The Council developed Amendment 56 to comply with this mandate.

At its January 2022 meeting, the Council requested that the NMFS Southeast Fisheries Science Center update the SEDAR 72 base model by replacing MRIP-FES landings estimates for the Florida private angling mode with landings estimates produced by the Florida Fish and

Wildlife Conservation Commission's State Reef Fish Survey (SRFS). Historically, SRFS estimates a slightly larger harvest of gag by private anglers and state charter vessels (in Florida) than MRIP-CHTS, but estimates a substantially smaller harvest of gag by private anglers and state charter vessels than MRIP-FES. This alternative model run of SEDAR 72 ("SRFS Run") also used MRIP-FES data for the federally permitted charter vessel and shore modes, and Southeast Region Headboat Survey (SRHS) data for federally permitted headboats. The results of the SRFS Run was presented to the Council's SSC at its July 2022 meeting. The SSC found the SEDAR 72 SRFS Run to be consistent with the best scientific information available. The SSC determined that SRFS is a comprehensive survey for the gag private angling component of the recreational sector given that greater than 95 percent of private angling landings of gag are captured by the SRFS sampling frame and the SRFS program's collection protocol has been certified by the NMFS Office of Science and Technology as scientifically rigorous. NMFS worked in conjunction with the State of Florida to develop a calibration model to rescale historic effort estimates so that they could be compared to new estimates from SRFS. This calibration model was reviewed and approved by peer-review through the NOAA

Office of Science and Technology in May 2022. Information about the calibration and the SSC's review of the SEDAR 72 SRFS Run can be found here:

<https://gulfcouncil.org/meetings/scientific-and-statistical-meetings/july-2022/>. The results of the SEDAR 72 SRFS Run were consistent with the results of the SEDAR 72 base model in that both concluded that the gag stock is overfished and undergoing overfishing.

Because Amendment 56 would not likely be implemented until 2024, and the Council recognized that maintaining the 2023 catch limits for gag would continue to allow overfishing, the Council sent a letter to NMFS, dated July 18, 2022 (Appendix A in Amendment 56), requesting interim measures that would reduce overfishing by reducing the gag stock ACL from 3.12 million lb (1.415 million kg) to 661,901 lb (300,233 kg). The Council determined, and NMFS agreed, that for this short-term reduction in harvest it was appropriate to maintain the current sector allocations of 39 percent commercial and 61 percent recreational, and the availability of red grouper multi-use and gag multi-use under the IFQ program. In addition to the reduction in the catch limits, the Council requested that the recreational fishing season for 2023 begin on September 1 and close on November 10, rather than the existing open season of June

1 through December 31. NMFS agreed and implemented these interim measures through a temporary rule effective on May 3, 2023 (88 FR 27701, May 3, 2023). The measures in the temporary rule are effective for 180 days (through October 30, 2023), and NMFS expects to extend them for up to 186 additional days while NMFS reviews public comments on this proposed rule and Amendment 56, and prepares any final regulations. Because the SSC's review of the SEDAR 72 SRFS Run occurred after the Council's decision to request for interim measures for gag, the recreational catch limits in the temporary rule are consistent with MRIP-FES calibrated landings, and are not directly comparable to the catch limits recommended in Amendment 56 and this proposed rule.

Based on the results of the SEDAR 72 SRFS Run and SSC recommendations, the Council recommended the following changes for gag through Amendment 56:

- Revise the maximum sustainable yield (MSY) proxy, OY, and status determination criteria (SDC);
- Establish a rebuilding plan for the stock, and revise the overfishing limit (OFL), acceptable biological catch (ABC), and stock ACL consistent with that rebuilding plan;

- Revise the commercial-recreational allocation of the stock ACL and set new commercial and recreational sector ACLs, sector ACTs, and commercial quota;
- Modify the recreational AMs; and
- Revise the Federal recreational fishing season.

The current MSY proxy is based on the yield associated with a fishing mortality rate (F) associated with the maximum yield per recruit (F_{MAX}). The SSC recommended a more conservative MSY proxy using the yield associated with F that would result in a spawning stock biomass (SSB) of 40 percent spawning potential ratio (SPR), where SPR is the ratio of the SSB to its unfished state. This revised MSY proxy would be used to specify the long-term OY and SDC, and informs the catch level projections produced by the SEDAR 72 SRFS Run.

For gag, the sector allocations of the stock ACL impact the catch level projections produced by SEDAR 72. As more of the stock ACL is allocated to the recreational sector, the proportion of recreational discards and associated mortality increases. Recreational discard mortality rates are assumed to be less than commercial discard mortality rates but the total amount of recreational discards is considerably greater than commercial discards. Generally, a gag caught and released

by a recreational fisherman has a greater likelihood of survival than by a commercial fisherman because of how and where they fish. However, because of the much higher numbers of gag that are released by the recreational sector compared to the commercial sector, the total number of discarded fish that die from recreational fishing exceeds dead discards from commercial fishing. This results in additional mortality for the stock and a lower projected annual yield, which means a lower OFL, ABC, and stock ACL. However, higher number of dead discards is not due to any change in how the recreational sector operates in the fishery but occurs because the SEDAR 72 SRFS Run data estimated greater fishing effort, and consequently a greater number of fish being caught, which included discards and the associated mortality from discarding fish.

In Amendment 56, the Council considered two allocation alternatives: 1) maintaining the current allocation of 39 percent commercial and 61 percent recreational, which was based on MRFSS data from 1986 through 2005, and 2) updating historical recreational landings using SRFS Run calibrated data from the same 1986 through 2005 period, which would result in an allocation of the stock ACL of 35 percent to the commercial sector and 65 percent to the recreational

sector. During the development of these two allocation alternatives, the Council also reviewed allocation options based on five additional historical reference periods from 1986 to 2019. These options differed by less than 1 percent up to less than 4 percent. Because the options were so similar, the Council decided to move forward with detailed analysis of only the two alternatives described above. The Council determined that the second alternative would best represent the historic landings for each sector while accounting for the change from MRFSS data to SRFS data. Based on the results of the SEDAR 72 SRFS Run and using the proposed allocation of 35 percent commercial and 65 percent recreational, the Council recommended OFLs and ABCs for gag during 2024-2028, and also recommended the stock ACL be set equal to the ABC.

Management Measures Contained in This Proposed Rule

If implemented by NMFS, this proposed rule would modify the gag stock and sector ACLs, sector ACTs, commercial quota, recreational AMs, and recreational fishing season.

Annual Catch Limits and Annual Catch Targets

Prior to the implementation of the 2023 temporary rule, the stock ACL was 3.120 million lb (1.415 million kg) and was allocated 39 percent to the commercial sector

and 61 percent to the recreational sector. The resulting commercial ACL and quota were 1.217 million lb (0.552 million kg) and 0.939 million lb (0.426 million kg) respectively, and the recreational ACL and ACT were 1.903 million lb (0.863 million kg) and 1.708 million lb (0.775 million kg) respectively. The commercial ACT is not codified. These catch limits are based on the results of the 2016 SEDAR 33 Update (2016), which included recreational landings estimates generated from MRIP-CHTS. The 2023 temporary rule reduced these catch limits consistent with the Council's request. Therefore, the current commercial ACL and commercial quota are 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg), respectively, and the recreational ACL and ACT are 403,759 lb (183,142 kg) and 362,374 lb (164,370 kg), respectively. These catch limits are based on the results of the initial SEDAR 72 base model run, which included recreational landings estimates generated using MRIP-FES. Amendment 56 and this proposed rule would set the stock ACL for gag at 444,000 lb (201,395 kg) in 2024, and would allocate approximately 35 percent to the commercial sector and approximately 65 percent to the recreational sector. This results in a 155,000-lb (70,307-kg) commercial ACL, and a 288,000-lb (130,635-kg) recreational ACL for 2024. These catch limits are based on the results of the SEDAR 72

SRFS Run, which included recreational landings estimates generated using SRFS. Because of the different recreational landings estimates used to determine the catch limits described above, those catch limits are not directly comparable. However, the proposed catch limits are a significant reduction compared to the catch limits that would go back into effect after the 2023 temporary rule expires.

Amendment 56 and this proposed rule would set catch levels from 2024 through 2028, which increase during the time series. The 2028 catch levels would continue after 2028 unless modified by subsequent rulemaking. All of the catch levels were rounded down to the nearest thousand pounds. Therefore, the sum of the sector ACLs does not equal the stock ACL.

Based on the Council's recommendation, this proposed rule would modify the commercial quota such that it would be set equal to the commercial ACT, and would be approximately 5 percent below the commercial ACL. The current buffer between the commercial ACL and commercial quota is 23 percent. The Council recommended reducing this buffer, because there have been considerable improvements in the estimation of commercial landings and discards of gag since the buffer was put in place through Amendment 32 to the FMP. Further, the fraction of gag

discarded compared to the total number of gag caught has remained low. NMFS does not expect the actions in Amendment 56 and this proposed rule to significantly increase commercial discards of gag. Therefore, the commercial quota would be approximately 95 percent of the commercial ACL.

For the recreational sector, the current buffer between the ACL and ACT is approximately 10 percent. The Council elected to choose a more conservative ACT than if they had applied the ACL and ACT control rule, which would have resulted in the same 10 percent buffer between the ACL and ACT. Instead, the Council decided to double that buffer to increase the probability of rebuilding gag by accounting for uncertainty in managing the recreational harvest and further reducing fishing mortality and discards that result from directed harvest. Thus, this proposed rule would implement a recreational ACT that is approximately 20 percent below the recreational ACL. Table 1 shows the catch levels recommended in Amendment 56, and except for the stock ACL, these catch levels are included in the proposed regulatory text at the end of this rule. Values proposed for 2028 would continue in subsequent fishing years unless modified through a subsequent rulemaking.

Table 1 -- Proposed Stock ACL and Sector Catch Levels

| Year | Stock ACL lb (kg) | Com ACL lb (kg) | Rec ACL lb (kg) | Com ACT & Quota lb (kg) | Rec ACT lb (kg) |
|------|------------------------|----------------------|----------------------|-------------------------------|----------------------|
| 2024 | 444,000 (201,395) | 155,000 (70,307) | 288,000 (130,635) | 147,000 (66,678) | 230,000 (104,326) |
| 2025 | 615,000 (278,959) | 215,000 (97,522) | 399,000 (180,983) | 204,000 (92,533) | 319,000 (144,696) |
| 2026 | 769,000 (348,813) | 269,000 (122,016) | 499,000 (226,343) | 255,000 (115,666) | 399,000 (180,983) |
| 2027 | 943,000 (427,738) | 330,000 (149,685) | 613,000 (278,052) | 313,000 (141,974) | 490,000 (222,260) |
| 2028 | 1,156,000 (524,353) | 404,000 (183,251) | 751,000 (340,648) | 383,000 (173,726) | 600,000 (272,155) |

Note: Values are displayed in gutted weight.

Abbreviations used in this table: Com means commercial and Rec means recreational. Lb is pounds and kg is kilograms.

Recreational Accountability Measures

Currently for the recreational sector, the AMs require NMFS to prohibit harvest of gag for the rest of the fishing year when the recreational ACL is projected to be met. The AMs also state that if the recreational ACL for gag is exceeded in a fishing year, then in the following fishing year, NMFS will maintain the prior year's ACT at the same level, unless the best scientific information available determines that is unnecessary, and the fishing season duration will be set based on the recreational ACT. In addition to the previous measures, if gag is overfished and the recreational ACL is exceeded in a fishing year, NMFS will reduce the ACL and ACT in the following fishing year by the amount of the ACL overage, unless the best scientific information available

determines that is unnecessary. Amendment 56 and this proposed rule would change the AMs to require that NMFS prohibit harvest when the recreational ACT is projected to be met regardless of whether there was an overage of the ACL in the prior year. NMFS and the Council expect this change, in combination with the increased buffer between the recreational ACL and ACT, to decrease the likelihood of recreational harvest exceeding the recreational ACL. The larger buffer between the recreational ACL and ACT would also reduce the level of discards associated with directed harvest, increasing the probability of meeting the 18 years rebuilding time.

This proposed rule would also remove the provision that requires the previous year's ACT to be maintained in the year following an overage of the ACL. Because the stock is overfished and NMFS is required to reduce the ACL and ACT by any overage, an additional adjustment that retains the lower ACT is unnecessary.

Recreational Fishing Season

Before NMFS implemented the temporary recreational fishing season for gag in 2023, the season for Gulf gag began on June 1 and continued through December 31 (74 FR 17603, April 16, 2009). During the effective period of the temporary rule, the recreational fishing season opened on September 1 and was to close on November 10,

2023, unless NMFS projected the recreational ACL would be harvested prior to that date. On October 4, 2023, NMFS published a temporary rule in the **Federal Register** closing the recreational harvest of gag effective on October 19, 2023 (88 FR 68495).

This proposed rule would modify the recreational fishing season for gag so the season would begin each year on September 1. Unlike the season implemented by the temporary rule, Amendment 56 and this proposed rule would not establish a predetermined season closure date. Consistent with the proposed changes to the AMs, NMFS would close the gag recreational season when landings are projected to reach the recreational ACT. NMFS would use the best data available to project the duration of the proposed recreational season in 2024 and in following years. NMFS expects to have better estimates of recreational fishing effort and catch of gag for a season beginning September 1 after data from 2023 are finalized. This should reduce the uncertainty in projecting an appropriate closure date for the 2024 recreational fishing season. Once the ACT for gag is projected to be met and harvest is closed, recreational fishing for gag would not resume before the end of the year because data would not yet be available to determine whether landings did reach the ACT.

**Management Measures in Amendment 56 That Would not be
Codified by This Proposed Rule**

In addition to the measures that would be codified through this proposed rule, Amendment 56 would revise the MSY proxy, OY, and SDC for gag. Amendment 56 would also revise the gag OFL, ABC, and sector allocations.

*Maximum Sustainable Yield, Optimum Yield, and Status
Determination Criteria*

Based on the results of SEDAR 72, Amendment 56 would revise MSY proxy, OY, as well as the SDC used to determine whether overfishing is occurring or the stock is overfished. The proxy for MSY would be defined as the yield when fishing at $F_{40\%SPR}$, where SPR is the ratio of SSB to its unfished state. The maximum fishing mortality threshold (MFMT) would be equal to $F_{40\%SPR}$. The minimum stock size threshold (MSST) would be defined as 50 percent of the biomass at the new MSY proxy. The OY would be conditional on the rebuilding plan, such that if the stock is under a rebuilding plan, OY would be equal to the stock ACL; and if the stock is not under a rebuilding plan, OY would be equal to 90 percent of MSY or its proxy. Currently, MSY is defined in the FMP as F assuming F_{MAX} , and the MFMT is F_{MAX} . The MSST is defined as 50 percent of the biomass at F_{MAX} . The OY is defined as 75 percent of the yield at F_{MAX} . The proposed changes to the

MSY, OY, and SDC represent a more conservative approach to management of that would rebuild the gag stock to a more robust size, which should be more resilient to episodic mortality from red tide, harmful algal blooms, and sustainable levels of fishing mortality.

Stock Rebuilding Plan Timeline and Modification of OFL, ABC, and Sector Allocations

Amendment 56 would establish a rebuilding plan and set the rebuilding time for Gulf gag at 18 years, which is based on the amount of time the stock is expected to take to rebuild if fished at 75 percent of the MSY proxy (yield at $F_{40\%SPR}$). Amendment 56 evaluated two other rebuilding times: 11 years, which is the minimum time to rebuild in the absence of fishing mortality; and 22 years, which is twice the minimum time. In addition, the Council initially considered an alternative rebuilding time of 19 years, which is based on the minimum rebuilding time plus one generation time (8 years for gag). Because this option resulted in a rebuilding time similar to fishing at 75 percent of the MSY proxy, the Council removed this alternative from further consideration (Appendix C in Amendment 56). The Council also discussed whether to consider in more detail a rebuilding time between 11 years and 18 years. The Council decided not to add an additional alternative

because a slightly shorter rebuilding time would provide minimal benefits to the stock but increase the negative impacts to fishing communities.

Consistent with the rebuilding time recommended by the Council, Amendment 56 would revise the OFL and ABC, and set the stock ACL equal to the ABC. In addition, Amendment 56 would revise the sector allocations from 39 percent commercial and 61 percent recreational to 35 percent commercial and 65 percent recreational, and revise the sector ACLs consistent with the revised allocations as discussed earlier in this proposed rule. The current OFL and ABC, and the OFLs and ABCs for 2024 through 2028, which increase over the time series as projected for the rebuilding plan, are shown in Table 2. However, the current OLF and ABC are not directly comparable to the proposed OFLs and ABCs because they are based, in part, on recreational landings estimates produced by the different surveys discussed above. Values in 2028 would continue for subsequent fishing years unless modified through another action by the Council or NMFS.

Table 2 -- Current and Proposed OFLs and ABCs for Gag

| Year | OFL in pounds (kg) | ABC in pounds (kg) |
|------|--------------------------|-----------------------|
| 2023 | 4,180,000 (1,896,016) | 3,120,000 (1,415,208) |
| 2024 | 591,000 (268,073) | 444,000 (201,395) |
| 2025 | 805,000 (365,142) | 615,000 (278,959) |

| | | |
|------|---------------------|---------------------|
| 2026 | 991,000 (449,510) | 769,000 (348,813) |
| 2027 | 1,200,000 (544,311) | 943,000 (427,738) |
| 2028 | 1,454,000 (659,523) | 1,156,000 (524,353) |

Note: Values are displayed in gutted weight. Kg is kilograms. The ABC values also equal the current and proposed stock ACL values for gag.

Proposed Administrative Change to Codified Text not in Amendment 56

NMFS also proposes to clarify the regulations at 50 CFR 622.8(c). These regulations allow NMFS to re-open harvest for a stock in the same fishing year if data indicate that a quota or ACL was not reached as previously projected. Several stocks have ACTs that are also codified as quotas. However, some ACTs, such as the recreational ACT for gag, do not have corresponding quotas, and therefore may not appear to be included in the current authority to re-open. NMFS proposes to modify the regulations in section 622.8(c) to provide a more general reference to allowable harvest levels. This would be consistent with the framework procedures in the relevant Gulf and South Atlantic fishery management plans that allow NMFS to re-open harvest if additional data shows that NMFS closed the season prematurely.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with

Amendment 56, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. A copy of the full analysis is available from NMFS (see the **ADDRESSES** section of this proposed rule). A summary of the IRFA follows.

The objective of this proposed rule is to use the best scientific information available to end overfishing of gag and rebuild the stock to a level commensurate with MSY, consistent with the authority under the Magnuson-

Stevens Act. All monetary estimates in the following analysis are in 2021 dollars.

Amendment 56 would revise the MSY, OY, and SDC for gag based on the results of the updated SEDAR 72 SRFs Run as reviewed by the Council's SSC. The definition of MSY would change from F_{MAX} to the yield when fishing at $F_{40\%SPR}$. The definition of MFMT would change from being equal to F_{MAX} to being equal to the fishing mortality at the F_{MSY} proxy (e.g., $F_{40\%SPR}$). The definition of MSST would change from 50 percent of B_{MAX} to 50 percent of the biomass at MSY or its proxy. OY is currently defined as 75 percent of the yield at F_{MAX} . The proposed definition of OY would be conditional on whether a rebuilding plan is in place. Specifically, if the stock is under a rebuilding plan, OY would be equal to the stock ACL. However, if the stock is not under a rebuilding plan, OY would be equal to 90 percent of MSY or its proxy.

Amendment 56 would also revise the sector allocation of the stock ACL from 39 percent commercial and 61 percent recreational to approximately 35 percent commercial and 65 percent recreational. Amendment 56 would also establish a rebuilding plan based on the amount of time the stock is expected to take to rebuild based on the yield when fishing at 75 percent of $F_{40\%SPR}$, which is equal to 18 years. In turn, the proposed

rebuilding plan in combination with the proposed sector allocation would change the OFL, ABC, stock ACL, commercial ACL, and the recreational ACL. Based on the current allocation of the stock ACL between sectors, the OFL, ABC, stock ACL, commercial ACL, recreational ACL, and commercial quota, and recreational ACT would be 4.180 million lb (1.896 million kg), 3.120 million lb (1.415 million kg), 3.120 million lb (1.415 million kg), 1.217 million lb (0.552 million kg), 1.903 million lb (0.863 million kg), and 0.939 million lb (0.426 million kg), and 1.708 million lb (0.775 million kg), respectively, in 2024 and future years if no action is taken. The recreational portion of the OFL, ABC, stock ACL, the recreational ACL, and the recreational ACT are based on MRIP-CHTS data. Under the proposed sector allocation and rebuilding plan, the OFL, ABC, stock ACL, recreational ACL, commercial ACL, recreational ACT, and commercial quota would be reduced in 2024 and subsequently increase through 2028 as indicated in Tables 1 and 2. The recreational portion of the revised OFL, ABC, stock ACL, the recreational ACL, and the recreational ACT are based on recreational landings estimates used in the SEDAR 72 SRFs Run. Therefore, the different stock ACLs and recreational ACLs and ACTs not directly comparable.

This proposed rule would also revise the buffer between the recreational ACL and ACT, which is currently 10.25 percent (*i.e.*, the recreational ACT is 89.75 percent of the recreational ACL). Under the proposed rule, the buffer between the recreational ACL and ACT would be approximately 20 percent (*i.e.*, the recreational ACT would be approximately 80 percent of the recreational ACL).

In addition, this proposed rule would also modify the buffer between the commercial ACL and quota, and set the quota equal to the ACT. The commercial quota is currently set at approximately 77 percent of the commercial ACL. The commercial ACT is not codified. This proposed rule would set the commercial ACT equal to approximately 95 percent of the commercial ACL and set commercial quota equal to the commercial ACT. Thus, the commercial quota would be approximately 95 percent of the commercial ACL.

Finally, this proposed rule would change the recreational season start date and modify the recreational AMs for gag. Specifically, the recreational season start date would change from June 1 to September 1 each year. The current AM requires NMFS to prohibit harvest when the recreational ACL is projected to be met, whereas this proposed rule would require NMFS to prohibit

harvest when the recreational ACT is projected to be met. The current AM also requires NMFS to maintain the recreational ACT for the following fishing year at the level of the prior year's ACT unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. This provision would be removed under the proposed rule. Given these individual actions, this proposed rule is expected to regulate commercial fishing businesses that possess gag shares in the GT-IFQ program and for-hire fishing businesses (charter vessels and headboats) that target gag.

The gag commercial quota is allocated annually based on the percentage of gag shares in each IFQ account. For example, if an account possesses 1 percent of the gag shares and the commercial quota is 1 million lb (0.45 million kg), then that account would receive 10,000 lb (4,536 kg) of commercial gag quota. Although it is common for a single IFQ account with gag shares to be held by a single business, some businesses have multiple IFQ accounts with gag shares. As of July 8, 2021, there were 536 IFQ accounts, of which 506 IFQ accounts held gag shares. These accounts and gag shares were owned by 455 businesses. Thus, it is assumed this proposed rule would regulate 455 commercial fishing businesses.

A valid charter vessel/headboat permit for Gulf reef fish is required to legally harvest gag on a recreational for-hire fishing trip. NMFS does not possess complete ownership data regarding businesses that hold a charter vessel/headboat permit for Gulf reef fish, and thus potentially harvest gag. Therefore, it is not currently feasible to accurately determine affiliations between vessels and the businesses that own them. As a result, for purposes of this analysis, it is assumed each for-hire vessel is independently owned by a single business, which is expected to result in an overestimate of the actual number of for-hire fishing businesses regulated by this proposed rule.

NMFS also does not have data indicating how many for-hire vessels actually harvest gag in a given year. However, in 2020, there were 1,289 vessels with valid charter vessel/headboat permits for Gulf reef fish. Further, gag is only targeted and almost entirely harvested in waters off the west coast of Florida. Of the 1,289 federally permitted vessels, 803 were homeported in Florida. Of these permitted vessels, 62 are primarily used for commercial fishing rather than for-hire fishing purposes, and thus are not considered for-hire fishing businesses (*i.e.*, 1,227 vessels are for-hire fishing businesses). In addition, 46 of these permitted vessels

are considered headboats, which are considered for-hire fishing businesses. However, headboats take a relatively large, diverse set of anglers to harvest a diverse range of species on a trip, and therefore do not typically target a particular species exclusively. Therefore, it is assumed that no headboat trips would be canceled, and thus no headboats would be directly affected as a result of this proposed rule. However, charter vessels often target gag. Of the 803 vessels with a valid charter vessel/headboat permit for Gulf reef fish that are homeported in Florida, 695 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with a valid charter vessel/headboat permit in the Gulf were active in 2017, *i.e.*, 24 percent were not fishing. A charter vessel would only be directly affected by this proposed rule if it used to go fishing. Given this information, NMFS' best estimate of the number of charter vessels that are likely to harvest gag in a given year is 528, and thus this proposed rule is estimated to regulate 528 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small

business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts (revenue) are not in excess of \$11 million for all of its affiliated operations worldwide. NMFS does not collect revenue data specific to commercial fishing businesses that have IFQ accounts; rather, revenue data are collected for commercial fishing vessels in general. It is not possible to assign revenues earned by commercial fishing vessels back to specific IFQ accounts and the businesses that possess them because quota is often transferred across many IFQ accounts before it is used by the business on a vessel for harvesting purposes, and specific units of quota cannot be tracked. However, from 2017 through 2021, the maximum annual gross revenue earned by a single commercial fishing vessel during this time was about \$3.25 million. Based on this information, all commercial fishing businesses regulated by this proposed rule are determined to be small entities for the purpose of this analysis.

For other industries, the Small Business Administration has established size standards for all major industry sectors in the U.S., including for-hire businesses (North American Industry Classification System code 487210). A business primarily involved in for-hire

fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$12.5 million for all its affiliated operations worldwide. The maximum annual gross revenue for a single headboat in the Gulf was about \$1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses that own headboats. Based on this information, all for-hire fishing businesses regulated by this proposed rule are determined to be small businesses for the purpose of this analysis.

If implemented, NMFS expects this proposed rule to regulate 455 of the 536 businesses with IFQ accounts, or approximately 85 percent of those commercial fishing businesses. Further, NMFS expects this proposed rule would regulate 528 of the 1,227 for-hire fishing businesses with valid charter vessel/headboat permits for Gulf reef fish, or approximately 43 percent of those for-hire fishing businesses. NMFS has determined that, for the purpose of this analysis, all regulated commercial and for-hire fishing businesses are small entities. Based

on this information, NMFS expects the proposed rule to affect a substantial number of small entities.

Because NMFS does not collect revenue and cost data for the commercial fishing businesses that are expected to be regulated by this proposed rule, direct estimates of their economic profits are not available. However, economic theory suggests that annual allocation (quota) prices should reflect expected annual economic profits, which allows economic profits to be estimated indirectly. Further, the 455 businesses with gag shares also own shares in the other IFQ share categories and thus are expected to earn profits from their ownership of these shares as well, *i.e.*, red snapper, red grouper, shallow-water grouper, deep-water grouper, and tilefish.

However, economic profits will only be realized if the allocated quota is used for harvesting purposes. For example, practically all of the commercial red snapper quota has been used for harvesting in recent years, and so it is assumed that all of that quota will be harvested in the foreseeable future. Important management changes have occurred for red grouper, which partly resulted in 96 percent of the commercial quota being harvested in 2021. Thus, this analysis also assumes that all of the red grouper quota will be harvested in the future as well. However, based on 2017-2021 data, only 82 percent

of the deep-water grouper quota, 38 percent of the shallow-water grouper quota, and 73 percent of the tilefish quota have been harvested, and that is expected to continue in the foreseeable future. For gag, the quota utilization rate from 2017 to 2021 was approximately 52 percent. Given these quota utilization rates in combination with average annual allocation prices from 2017 to 2021 and annual commercial quotas in 2021, NMFS estimates that the total expected economic profits for businesses with gag shares are at least \$29.4 million at the present time. This estimate does not account for any economic profits that may accrue to businesses with gag shares that also own commercial fishing vessels that harvest non-IFQ species. Such profits are likely to be small because harvest of IFQ species accounts for around 84 percent of commercial IFQ vessels' annual revenue and economic profits from the harvest of non-IFQ species tend to be smaller than those from IFQ species. Given that there are 455 businesses with gag shares, NMFS expects the average annual economic profit per commercial fishing business is at least \$64,620.

Most of these economic profits (84 percent) are the result of owning red snapper shares. Only approximately \$502,930 (or 1.7 percent) of the expected economic profits is due to the ownership of gag shares. This

proposed rule is only expected to affect economic profits from the ownership of gag shares. Specifically, the proposed action to change the sector allocation of the stock ACL and implement a rebuilding plan, which would change the stock ACL, would reduce the commercial ACL and commercial quota from their current values of 1.217 million lb and 939,000 lb, respectively. The average commercial ACL and commercial quota from 2024 through 2028 would be 275,000 lb and 212,000 lb, respectively, under the proposed action.

However, average annual commercial landings of gag from 2017 to 2021 were only 492,401 lb, noticeably below the commercial quota. Because average annual landings exceed the proposed commercial quotas through 2028, it is assumed all of the proposed commercial quota will be harvested in each year through 2028, and the expected average reduction in annual commercial landings will be 280,401 lb. Initially, NMFS expects the reduction in commercial landings to increase the average ex-vessel price of gag from \$6.10 per lb to \$7.78 per lb, or by \$1.68 per lb, in 2024. However, NMFS expects the increase in ex-vessel price to gradually decrease through 2028 as the quota and landings increase, with an ex-vessel price of \$6.96 in 2028. The increase in the ex-vessel price would partially offset the adverse effects of the

landings reduction. Based the above information, NMFS expects a reduction in annual ex-vessel revenue for gag on average of approximately \$1.57 million or about \$3,451 on average per commercial fishing business. Given an average annual allocation price of \$1.03 per lb for gag from 2017 to 2021, NMFS expects the reduction in commercial landings of gag to reduce economic profits to these commercial fishing businesses by about \$288,813, or by approximately \$635 per commercial fishing business. Thus, NMFS expects economic profits to be reduced by around 1 percent on average per commercial fishing business as a result of the proposed action to change the sector allocation and implement a rebuilding plan that reduces the stock ACL.

The proposed action that would set the commercial ACT equal to 95 percent of the commercial ACL and set commercial quota equal to the commercial ACT would cause the commercial quota to be equal to 95 percent of the commercial ACL as opposed to approximately 77 percent of the commercial ACL as is presently the case. As such, this action is expected to increase the commercial quota relative to what it would be otherwise. The increase would still yield commercial quotas below the recent average commercial landings and thus NMFS assumes all of the expected increase in the quota will be harvested.

Specifically, NMFS expects the average annual increase in the commercial quota and landings from 2024 through 2028 to be about 48,527 lb, which would increase average annual revenue by \$267,371, or by about \$588 per commercial fishing business. Again, assuming an average annual allocation price of \$1.03 per lb, NMFS expects average increase in economic profit to commercial fishing businesses per year is \$49,983, or about \$110 per commercial fishing business.

Combining these expected increases in revenue and profits with the decreases discussed earlier, NMFS expects this proposed rule to decrease average revenue for commercial fishing businesses by about \$1.31 million per year from 2024 through 2028, or by \$2,868 per commercial fishing business. The total reduction in economic profit for commercial fishing businesses is expected to be \$238,830, or \$525 per commercial fishing business, which represents a decrease of about 0.8 percent.

According to the most recent estimates of economic returns in the for-hire sector, average annual economic profits are \$27,948 per charter vessel. The proposed rule to change the sector allocation and implement a rebuilding plan, which would change the stock ACL, would change the gag recreational ACL from its current value of

1.903 million lb (863,186 kg). Specifically, the average recreational ACL for gag would be 510,000 lb from 2024 through 2028 under the proposed action. As explained previously, these ACLs are not directly comparable because they are based, in part, on recreational landings estimates derived from different surveys (MRIP-FES and SRFS). However, average recreational landings from 2017 to 2021 were approximately 1.265 million lb (573,884 kg). Given that average recreational landings have been considerably greater than the proposed recreational ACT, all of the proposed recreational ACT is expected to be harvested in the future. NMFS expects the reduction in the recreational ACT to reduce the recreational season length from 214 days to 25 days in 2024. However, the season length is expected to steadily increase to 120 days by 2028 and the average season length from 2024 to 2028 is expected to be 64 days. The reduction in the season length would reduce the number of angler trips targeting gag on charter vessels. From 2024 through 2028, the average reduction in angler trips targeting gag on charter vessels is expected to be 20,976 trips per year. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of profit per angler trip by charter vessels. According to a recent study (available from NMFS see **ADDRESSES**), CFpA on charter vessels is estimated to

be \$150 per angler trip. Thus, NMFS estimates a reduction in charter vessel profits from this action of \$3.146 million per year, which results in a reduction in charter vessels' profits per vessel to be \$5,960 per year, or about 21.3 percent on average per for-hire fishing business.

In combination with the proposed action to require NMFS to close the recreational season based on when the recreational ACT is projected to be met, rather than the recreational ACL, the proposed action to increase the buffer between the recreational ACL and recreational ACT from 10.25 to 20 percent would be expected to reduce the recreational season length further from the proposed action to change the sector allocation and implement a rebuilding plan. Specifically, the season length is expected to be further reduced by 2 days in 2024 (open for 23 days instead of 25), but this reduction is expected to gradually increase to 24 days by 2028 (open for 96 days instead of 120). The average additional reduction in the recreational season length is expected to be 12 days (open for 52 days instead of 64). Again, a reduction in the season length is expected to reduce the number of angler trips targeting gag on charter vessels. From 2024 through 2028, the average reduction in angler trips targeting gag on charter vessels is expected to be

2,125 trips per year. Based on an estimate of \$150 in economic profit per angler trip, NMFS estimates a reduction in charter vessel profits from this action of \$318,690 per year, and a reduction in the annual charter vessels' profits of \$604 per vessel, or about 2.2 percent on average per for-hire fishing business.

The proposed action that would change the recreational season start date from June 1 to September 1 is expected to increase the recreational season length from 23 days to 59 days in 2024, and from 52 to 81 days on average from 2024 to 2028. However, because there are many fewer charter trips targeting gag in the fall months (September through December) compared to the summer months (June through August), this proposed action is expected to further decrease the number of angler trips targeting gag on charter vessels. Although the reduction in trips from 2024 through 2028 varies slightly from year to year, the average reduction per year is 1,610 trips. Based on an estimate of \$150 in economic profit per angler trip, NMFS expects this proposed action to decrease economic profits for charter vessels by about \$241,500 per year, or by \$456 per charter vessel. This would result in a decrease economic profits by around 1.6 percent on average per for-hire fishing business.

Based on the above, NMFS expects the total reduction in target trips by charter vessels per year as a result of this proposed rule to be 24,711 trips. NMFS expects this reduction in trips to result in a total reduction in economic profits for charter vessels per year to be about \$3.707 million, or approximately \$7,020 per charter vessel. Thus, annual economic profits are expected to be reduced by approximately 25.1 percent on average per for-hire fishing business.

Six alternatives, including the status quo, were considered for the proposed actions to change the sector allocation of the stock ACL to 35 percent to the commercial sector and 65 percent to the recreational sector, establish a rebuilding plan of 18 years based on the amount of time the stock is expected to take to rebuild if fished at the yield from fishing at 75 percent of $F_{40\%SPR}$, and change the catch levels for 2024 through 2028 as specified in Table 1. The status quo alternative would have retained the current sector allocation of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector based on MRIP-CHTS recreational landings data. The status quo alternative would not have established a rebuilding plan or modified any of the catch limits based on MRIP-FES and SRFS landings estimates. This alternative was not selected

because the sector allocation would have been based in part on MRFSS recreational landings estimates, which is no longer consistent with the best scientific information available and would result in a de facto reallocation to the commercial sector of approximately 4 percent, which the Council did not consider to be equitable. This alternative also would not have rebuilt the gag stock or ended overfishing as required by the Magnuson-Stevens Act.

A second alternative would have also retained the current sector allocation of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector, but would have established a rebuilding plan of 11 years assuming a fishing mortality rate of zero. This alternative would have revised the OFL based on the projections from the SEDAR 72 SRFS Run and would have set all of the other catch levels through 2028 at zero. However, as with the status quo alternative, the sector allocation would have been based in part on MRFSS recreational landings data. Further, prohibiting harvest of gag would not be expected to eliminate all fishing mortality, as some gag would still be expected to be discarded and die as fishermen continue fishing for other species that live in similar habitats as gag. This alternative was not selected because, as discussed above,

MRFSS is not consistent with the best scientific information available, and would result in a de facto reallocation from the recreational to the commercial sector of approximately 4 percent, which the Council did not consider to be equitable. Further, because it is not feasible to eliminate dead discards of gag when fishermen are targeting other species, it is unlikely the stock would actually be rebuilt in 11 years. This alternative would have also resulted in significantly larger adverse economic effects on commercial and for-hire fishing businesses compared to the proposed action.

A third alternative would have also retained the current sector allocation of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector. But, like the proposed action, the third alternative would have established a rebuilding plan of 18 years and changed the catch levels based on the projections from the SEDAR 72 SRFs Run. This alternative would have ended overfishing and rebuilt the stock in 18 years. But, as with the status quo and the second alternative, the sector allocation of the stock ACL would be based on MRFSS recreational landings data. Thus, this alternative was not selected because MRFSS is not the best scientific information available, and would result in a de facto reallocation from the recreational

sector to the commercial sector of approximately 4 percent.

A fourth alternative would have also retained the current sector allocation of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector, but would have established a rebuilding plan of 22 years and changed the catch limits based on the projections from the SEDAR 72 SRFS Run. This alternative would have ended overfishing and rebuilt the stock while allowing greater harvest and resulting in smaller adverse economic effects on commercial and for-hire fishing businesses compared to the proposed action. However, it was not selected because the stock is expected to take 4 more years to rebuild compared to the proposed action, and the Magnuson-Stevens Act requires overfished stocks to be rebuilt in as short a time period as possible, taking into account various factors. This alternative was also not selected because the use of MRFSS recreational landings data is not consistent with the best scientific information available, and would result in a de facto reallocation to the commercial sector of approximately 4 percent.

Like the proposed action, a fifth alternative would have changed the sector allocation of the stock ACL to 35 percent to the commercial sector and 65 percent to the

recreational sector based in part on recreational landings estimates from MRIP-FES, SRHS, and SRFS for 1986-2005. As with the second alternative, the fifth alternative would have also established a rebuilding plan of 11 years assuming a fishing mortality rate of zero and used SEDAR 72 SRFS Run projections to change the OFL. The other catch limits would have been set at zero. As discussed earlier, prohibiting harvest of gag would not be expected to eliminate all fishing mortality, as some gag would still be expected to be discarded and die as fishermen continue fishing for other species that live in similar habitats as gag. This alternative was not selected because it is not feasible to eliminate dead discards of gag when fishermen are targeting other species, and therefore it is unlikely the stock would rebuild in 11 years. This alternative would have also resulted in significantly larger adverse economic effects on commercial and for-hire fishing businesses compared to the proposed action.

Like the proposed action, a sixth alternative would have changed the sector allocation of the stock ACL to 35 percent to the commercial sector and 65 percent to the recreational sector based in part on recreational landings estimates from MRIP-FES, SRHS, and SRFS data for 1986-2005. However, this alternative would have also

established a rebuilding plan of 22 years. This alternative would be based on the best scientific information available, end overfishing, and rebuild the stock. This alternative would have also resulted in higher catch limits and therefore resulted in small adverse economic effects on commercial and for-hire fishing businesses compared to the proposed action. However, this alternative was not selected because it is expected to take 4 more years to rebuild compared to the proposed action, and the Magnuson-Stevens Act requires overfished stocks to be rebuilt in as short a time as possible, taking into account various factors.

Two alternatives, including the status quo, were considered for the proposed action to increase the buffer between the recreational ACL and recreational ACT from 10.25 to 20 percent. The status quo alternative would have maintained the buffer between the recreational ACL and recreational ACT at 10.25 percent based the yield at 75 percent of F_{MAX} . However, as explained previously, use of F_{MAX} as a proxy for F_{MSY} is not consistent with the best scientific information available.

The second alternative would have revised the recreational ACT using the Council's ACL/ACT Control Rule based on recreational landings data from 2018 through 2021. This alternative would have resulted in a 10

percent buffer between the recreational ACL and ACT, which would have left the buffer essentially unchanged. This alternative was not selected because the Council concluded it was necessary to increase the buffer between the ACL and ACT to reduce the probability of the recreational sector exceeding its ACL, reduce the likelihood of overfishing, and reduce the level of discards associated with directed harvest, which together are expected to increase the probability of meeting the 18-year timeline for rebuilding the gag stock.

Two alternatives, including the status quo, were considered for the proposed action to set the commercial ACT equal to 95 percent of the commercial ACL and set commercial quota equal to the commercial ACT. The status quo alternative would have maintained commercial ACT, which is based on the yield at 75 percent of F_{MAX} , and a commercial quota set at 86 percent of the commercial ACT. This alternative was not selected because it is based on F_{MAX} , which is no longer consistent with the best scientific information available.

The second alternative would have set the commercial ACT equal to 86 percent of the commercial ACL and, like the proposed action, set the commercial quota equal to the commercial ACT. This alternative was not selected because the Council determined that a 14 percent buffer

between the commercial ACL and ACT is too high and unnecessarily limits commercial harvest due to reduced uncertainty in the estimates of commercial landings and discards.

Three alternatives, including the status quo, were considered for the proposed action to change the recreational season start date from June 1 to September 1 and require NMFS to close the recreational season based on when the recreational ACT is projected to be met rather than the recreational ACL. The status quo alternative would have maintained the recreational season start date of June 1 and required NMFS to close the recreational season based on when the recreational ACL is projected to be met. This alternative was not selected mainly because it would have resulted in a shorter average recreational season length (75 days) compared to the proposed action (81 days) for 2024 through 2028. In general, a longer fishing season would result in more fishing opportunities for both the private and for-hire components of the recreational sector. Further, shifting fishing effort to a historically low-effort month (September) may reduce the overall magnitude of recreational discards compared to starting the season in June. Shifting fishing pressure to the fall would also be expected to reduce directed effort for gag in deeper

waters, which may further reduce the probability of harvesting or discarding dead male gag.

The second alternative would have retained the June 1 start date for the recreational season. But, like the proposed action, this alternative would have required NMFS to close the recreational season based on when the recreational ACT is projected to be met. This alternative was not selected mainly because it would have resulted in a shorter average recreational season length (52 days) compared to the proposed action (81 days) for 2024 through 2028. In general, a longer fishing season would result in more fishing opportunities for both the private recreational and for-hire components of the fishery. Further, shifting fishing effort to a historically low-effort month (September) may reduce the overall magnitude of recreational discards compared to starting the season in June. Shifting fishing pressure to the fall would be expected to reduce directed effort for gag in deeper waters, which may further reduce the probability of harvesting or discarding dead male gag.

The third alternative would have changed the recreational season start date to October 1. But, like the proposed action, this alternative would have required NMFS to close the recreational season based on when the recreational ACT is projected to be met. This alternative

was not selected because it would have resulted in a shorter average recreational season length (63 days) compared to the proposed action (81 days) for 2024 through 2028 and would have also resulted in greater adverse effects to for-hire fishing businesses. In general, a longer fishing season would be expected to result in more fishing opportunities for both the private and for-hire components of the recreational sector.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gag, Gulf of Mexico.

Dated: November 1, 2023.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 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 § 622.8, revise paragraph (c) to read as follows:

§ 622.8 Quotas - general.

* * * * *

(c) *Reopening.* When a species, species group, sector, or sector component has been closed based on a projection of the applicable catch limit (ACL, ACT, or quota) specified in this part being reached and subsequent data indicate that the catch limit was not reached, the Assistant Administrator may file a notification with the Office of the Federal Register. Such notification may reopen the species, species group, sector, or sector component to provide an opportunity for the catch limit to be harvested.

3. In § 622.34, revise paragraph (e) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(e) *Seasonal closure of the recreational sector for gag.* The recreational harvest of gag in or from the Gulf EEZ is closed from January 1 through August 31. During the closure, the bag and possession limits for gag in or from the Gulf EEZ are zero.

* * * * *

4. In § 622.39, revise paragraph (a) (1) (iii) (B) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(B) *Gag.* See Table 1.

Table 1 to Paragraph (a) (1) (iii) (B)

| Year | Commercial quota in lb (kg) |
|------|-----------------------------|
| 2024 | 147,000 (66,678) |
| 2025 | 204,000 (92,533) |
| 2026 | 255,000 (115,666) |
| 2027 | 313,000 (141,974) |
| 2028 | 383,000 (173,726) |

* * * * *

5. In § 622.41, revise paragraph (d) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets

(ACTs), and accountability measures (AMs).

* * * * *

(d) *Gag*— (1) *Commercial sector*. See Table 1 for the commercial ACLs in gutted weight. The commercial ACT for gag is equal to the applicable commercial quota specified in § 622.39(a) (1) (iii) (B). The IFQ program for groupers and tilefishes in the Gulf of Mexico in § 622.22 serves as the accountability measure for the commercial harvest of gag.

Table 1 to Paragraph (d) (1)

| Year | Commercial ACL in lb (kg) |
|------|---------------------------|
| 2024 | 155,000 (70,307) |
| 2025 | 215,000 (97,522) |
| 2026 | 269,000 (122,016) |
| 2027 | 330,000 (149,685) |
| 2028 | 404,000 (183,251) |

(2) *Recreational sector*.

(i) See Table 1 for the recreational ACLs and ACTs in gutted weight.

Table 1 to Paragraph (d) (2) (i)

| Year | Recreational ACL in lb (kg) | Recreational ACT in lb (kg) |
|------|-----------------------------|-----------------------------|
| 2024 | 288,000 (130,635) | 230,000 (104,326) |
| 2025 | 399,000 (180,983) | 319,000 (144,696) |
| 2026 | 499,000 (226,343) | 399,000 (180,983) |
| 2027 | 613,000 (278,052) | 490,000 (222,260) |
| 2028 | 751,000 (340,648) | 600,000 (272,155) |

(ii) If the NMFS SRD estimates that gag recreational landings have reached or are projected to reach the

applicable recreational ACT specified in paragraph (d) (2) (i) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limits for gag in or from the Gulf EEZ are zero. These bag and possession limits apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(iii) In addition to the measures specified in paragraph (d) (2) (ii) of this section, if the NMFS SRD estimates that gag recreational landings have exceeded the applicable ACL specified in paragraph (d) (2) (i) of this section and gag is overfished based on the most recent Status of U.S. Fisheries Report to Congress, the following measure will apply. The AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

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