



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 240110-0003]**

**RIN 0648-BM56**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Data Calibrations and Gray Snapper Harvest Levels**

**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 a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management Council (Council). If implemented, this proposed rule would modify the ratios used to set the state-specific red snapper private angling component annual catch limits (ACLs) for Alabama, Florida, and Mississippi and would modify each of these state's private angling component ACLs based on the new ratios. In addition, this proposed rule would modify the stock ACL for gray snapper in the Gulf exclusive economic zone (EEZ). The purposes of this proposed rule are to update state specific private angling component calibration ratios and ACLs to provide a

more accurate estimate of state landings for red snapper management and to revise gray snapper catch limits with updated scientific information to continue to achieve optimum yield (OY) for the stock.

**DATES:** Written comments must be received on or before [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-2023-0120" by any 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-2023-0120", in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Dan Luers, 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 <https://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 the framework action, which include an environmental assessment, regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at

*<https://www.fisheries.noaa.gov/action/red-snapper-data-calibrations-and-catch-limit-modifications>*.

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

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery, which includes both red snapper and gray snapper, is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### **Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally

managed fish stocks 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.

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

### *Red Snapper*

Red snapper in the Gulf EEZ is harvested by both the commercial and recreational sectors. Each sector has its own ACL and associated management measures. The stock ACL is allocated 51 percent to the commercial sector and 49 percent to the recreational sector. The recreational ACL (quota) is further allocated between the Federal charter vessel/headboat (for-hire) component (42.3 percent), and the private angling component (57.7 percent).

In February 2020, NMFS implemented state management of red snapper for the private angling component through Amendments 50 A-F to the FMP (85 FR 6819, February 6, 2020). Through these amendments, each state was allocated a portion of the red snapper private angling component ACL and was delegated the authority to set the private angling fishing season, bag limit, and size limit. These amendments also established an accountability measure that required any overage of a state's ACL to be deducted in the following year (*i.e.*, a payback provision).

In 2023, NMFS implemented a framework action under the FMP to calibrate the red snapper ACLs for Alabama, Florida, Louisiana, and Mississippi so they could be directly compared to the landings estimates produced by each of those state's data collection program (Calibration Framework) (87 FR 74014, December 2, 2022). As explained in the Calibration Framework final rule, each of these states have relatively new programs for monitoring red snapper landed by the private-angling component (2014 for Alabama and Louisiana; 2015 for Florida and Mississippi), and these programs do not produce results that are comparable to each other or to Federal estimates generated by the Marine Recreational Information Program (MRIP). Prior to the development of these state programs, NMFS provided the only estimates of private angler red snapper landings, except for those in Texas (Texas anglers have never participated in the NMFS recreational data collection survey). The state specific red snapper ACLs were established using the results of a stock assessment that included recreational landings estimates produced by MRIP. The Calibration Framework final rule applied state-specific ratios to these MRIP-based ACLs (Federal equivalent ACLs) to adjust each state's private-angling ACL to account for the monitoring programs used by each Gulf state and allow a direct comparison between the ACL and state landings estimate. The ratios implemented by the Calibration Framework final rule

were: Alabama (0.4875), Florida (1.0602), Louisiana (1.06), Mississippi (0.3840), and Texas (1.00). The ratios for Alabama, Florida, Louisiana, and Mississippi were developed using available state landings data. More information on the data used to calculate the current ratios can be found in the Calibration Framework.

In June 2022, the Council asked its Scientific and Statistical Committee (SSC) to review more recent state data and provide recommendations on any appropriate changes to the calibration ratios. Alabama, Florida, and Mississippi submitted updated data for review and in January 2023, the SSC concluded that was appropriate to modify the ratios for Alabama, Florida, and Mississippi to 0.548, 1.34, and 0.503, respectively.

This proposed rule would modify the calibration ratios for Alabama, Florida, and Mississippi as recommended by the SSC and apply these ratios to the MRIP-based ACLs to update the state-survey-based ACLs. The framework action and this proposed rule would not change the MRIP-based (Federal equivalent) state ACLs or the total private-angling ACL. However, because the understanding of the relationship between the states' landings estimates and the Federal landings estimates have changed, NMFS expects each of the three states to increase the number of days that private anglers are permitted to harvest red snapper.

*Gray Snapper*

Gray snapper in the Gulf EEZ is managed as a single stock with a stock ACL and a stock annual catch target (ACT), although the ACT is not codified in the regulations or used for management. There is no allocation of the stock ACL between the commercial and recreational sectors. Gray snapper occur in estuaries and shelf waters of the Gulf and are particularly abundant off south and southwest Florida. The fishing season is open year-round, January 1 through December 31. Accountability measures (AMs) for gray snapper specify that if the combined commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year. However, since the implementation of catch limits in 2012, total landings have not exceeded the ACL.

Prior to 2018, the status of the gray snapper stock had not been evaluated in a stock assessment. In 2018, a gray snapper Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment was completed (SEDAR 51) and indicated that the stock was undergoing overfishing. SEDAR 51 included recreational landings estimates calibrated to the MRIP coastal household telephone survey (CHTS). In response to this assessment, the Council developed and NMFS implemented Amendment 51 to the FMP, which established

biological reference points, overfished status determination criteria, the current catch limits for the gray snapper stock. (85 FR 73238, November 17, 2020). These catch limits are an OFL of 2.57 million lb (1.17 million kg), ABC of 2.51 million lb (1.14 million kg), and stock ACL of 2.23 million lb (1.02 million kg).

In December 2022, the Southeast Fisheries Science Center finalized a new stock assessment report for gray snapper (SEDAR 75). SEDAR 75 resolved several concerns from SEDAR 51, and incorporated updated recreational landings data calibrated to the MRIP-Fishing Effort Survey (FES). MRIP-FES replaced MRIP-CHTS in 2018, and total recreational fishing effort estimates generated from MRIP-FES are generally higher than MRIP-CHTS estimates.

The Council's SSC reviewed the results of SEDAR 75 during its January 2023 meeting and determined that the assessment was consistent with the best scientific information available. Based on the results of SEDAR 75, the Council's SSC concluded the stock is not overfished or undergoing overfishing as of 2020 and also determined that the stock was not likely to be experiencing overfishing in 2015, as was concluded in SEDAR 51.

The SSC provided both a declining yield stream and constant catch recommendation for the gray snapper OFL and ABC. The Council is recommending a constant catch OFL and ABC of 7.547 million lb (3.423 million kg) and 6.226

million lb (2.824 million kg), respectively. The Council is also recommending an eight percent buffer between the ABC and stock ACL, which is based on the Council's ACL/ACT control rule. This would result in an ACL of 5.728 million lb (2.598 million kg). Because of the different recreational landings estimates used to determine the current and proposed catch limits (MRIP-CHTS versus MRIP-FES), these catch limits are not directly comparable. However, the proposed catch limits do represent an increase from the current catch limits.

#### **Management Measures Contained in this Proposed Rule**

##### *Red Snapper*

This proposed rule would modify the calibration ratios used by Alabama, Florida, and Mississippi to convert MRIP-based red snapper private angling component ACLs to state-survey-based red snapper private angling component ACLs and apply those ratios to update each state's ACL.

As described above, the current state private recreational date calibration ratios for Alabama, Florida, and Mississippi are 0.4875, 1.0602, and 0.3840, respectively. The framework action and proposed rule would revise the state private recreational calibration ratios for Alabama, Florida, and Mississippi to be 0.548, 1.34, and 0.503, respectively. NMFS notes that the calibration ratios are not codified in the regulations. Applying the new ratios to the MRIP-based, Federal equivalent ACLs

(which remain the same) would result in revised state-survey-based private angling component ACLs as follows: the Alabama private angling component ACL would be 664,552 lb (301,436 kg) with a Federal equivalent of 1,212,687 lb (550,066 kg); the Florida private angling component ACL would be 2,769,631 lb (1,256,283 kg) with a Federal equivalent of 2,066,889 lb (937,525 kg); and the Mississippi private angling component ACL would be 82,342 lb (37,350 kg) with a Federal equivalent of 163,702 lb (74,254 kg).

#### *Gray Snapper*

As a result of SEDAR 75 and using data through 2020, this proposed rule would revise the gray snapper stock ACL from 2.23 million lb (1.01 million kg) to 5.728 million lb (2.598 million kg). As explained previously, the current and proposed ACLs are not directly comparable. However, total harvest has never exceeded the current ACL, and the proposed ACL represents an increase in the allowable harvest.

#### **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 the framework action, 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.

Pursuant to section 605(b) of the RFA, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows.

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 this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

The objective of this proposed rule is to improve the management of red snapper and gray snapper based on the best scientific information available. All monetary estimates in the following analysis are in 2021 dollars.

This proposed rule has two actions. The first action concerns recreational fishing for red snapper in Federal waters of the Gulf and would apply to or regulate the states of Alabama, Florida and Mississippi. Specifically, this proposed action would update state private recreational data calibrations of red snapper for Alabama,

Florida and Mississippi. As such, this action would authorize those three states to allow for increased recreational landings of red snapper by anglers fishing from private vessels and for-hire fishing vessels that do not have a valid Federal for-hire reef fish permit any time during the fishing year. States are not small governmental jurisdictions or other entities as defined by the RFA and thus are not germane to this analysis. Therefore, it is concluded that this action would not regulate or have direct economic impacts on any small entities.

The second action would revise the catch limits for Gulf gray snapper. Specifically, the OFL, ABC, and stock ACL would be changed from 2.57 million lb (1.17 million kg), 2.51 million lb (1.14 million kg), and 2.23 million lb (1.02 million kg) respectively, using an 11 percent buffer between the ABC and stock ACL, to 7.547 million lb (3.423 million kg), 6.226 million lb (2.824 million kg), and 5.728 million lb (2.598 million kg) respectively, using an 8 percent buffer between the ABC and stock ACL. The current catch limits were derived, in part, using recreational landings estimates calibrated to MRIP-CHTS while the proposed catch limits were derived, in part, using recreational landings estimates calibrated to MRIP-FES. This action would apply to commercial fishing businesses, for-hire fishing businesses, and recreational anglers. Although the proposed changes would apply to recreational

anglers, the RFA does not consider recreational anglers to be small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Recreational anglers are not businesses, organizations, or governmental jurisdictions and so they are outside the scope of this analysis.

Any commercial fishing business that operates a fishing vessel that harvests gray snapper in the Gulf EEZ must have a valid commercial Gulf reef fish permit for that vessel. From 2017 through 2021, an annual average of 359 vessels with a valid commercial permit reported landings of gray snapper.

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 (North American Industrial Classification Code 11411) 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 are no more than \$11 million for all of its affiliated operations worldwide. The average commercial vessel that landed gray snapper from 2017 through 2021 had annual revenue from all landings of about \$133,300 and less than one percent of that revenue came from reported gray snapper landings.

Maximum annual revenue for any of the commercial vessels that harvested gray snapper was less than \$3.1 million. Assuming each of the 359 vessels represents a unique commercial fishing business, then the action to revise the catch limits for gray snapper would regulate 359 small commercial fishing businesses.

Charter fishing is contained within the broader industry of scenic and sightseeing transportation, water (NAICS code 487210) and the small business size standard for this industry is \$14.0 million. From 2017 through 2021, an annual average of 27,358 angler trips that targeted gray snapper were taken by charter fishing boats. It is unknown how many vessels made these trips. However, available data shows Gulf gray snapper is almost entirely targeted in waters off the west coast of Florida. In 2020, there were 1,289 vessels with valid charter-headboat Gulf reef fish vessel permits. Of these 1,289 vessels, 803 were homeported in Florida. Of these 803 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 permitted vessels are for-hire fishing businesses). In addition, 46 of the permitted vessels homeported in Florida are considered headboats, which are also 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 do not

typically target a particular species. Therefore, no headboats would be directly affected by the proposed action, which regulates gray snapper alone among the many species caught on headboat trips.

However, charter vessels often target gray snapper. From 2017 through 2021, an annual average of 27,358 charter trips targeted gray snapper. Thus, of the 803 vessels with valid charter-headboat Gulf reef fish vessel permits that are homeported in Florida, 62 are primarily commercial and 46 are headboats, while the remaining 695 vessels are charter vessels.

A recent study reported that 76 percent of charter vessels with valid charter-headboat permits in the Gulf were active in 2017 (*i.e.*, 24 percent were not fishing). A charter vessel would only be regulated or directly affected by this proposed action if it is fishing. Given this information, NMFS estimates that 528 charter vessels (76 percent of the 695 total) are likely to target Gulf gray snapper in a given year. NMFS assumes that each charter fishing vessel that makes trips targeting gray snapper represents a unique small business. Thus, NMFS estimates that the proposed action to revise the gray snapper catch limits would regulate 528 for-hire fishing businesses.

The same study estimated that maximum annual gross revenue for a single headboat in the Gulf was about \$1.45 million in 2017. The study also found that 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 action are determined to be small businesses for the purpose of this analysis.

As described above, the action to update red snapper private recreational catch limits for Mississippi, Alabama, and Florida based on calibration adjustments would not directly affect any small entities. The action to revise the Gulf gray snapper catch limits is expected to directly affect 359 small commercial fishing businesses. Those 359 businesses represent 69.4 percent of active commercial fishing businesses with Federal permits that harvest reef fish. Those 359 small businesses also represent about 42 percent of all commercial fishing businesses with a valid Federal permit to harvest reef fish. This action is also expected to directly affect 528 of the 1,227 for-hire fishing businesses with valid charter/headboat permits in the Gulf reef fish fishery, or approximately 43 percent of those for-hire fishing businesses. All regulated commercial and for-hire fishing businesses have been determined, for the purpose of this analysis, to be small entities. Based on this information, the proposed action to revise the Gulf

gray snapper catch limits is expected to directly affect a substantial number of small businesses.

With respect to the action to revise the catch limits for gray snapper, in order to determine the impacts on commercial and charter fishing businesses, NMFS estimated how the proposed stock ACL would most likely be distributed between the commercial and recreational sectors based on the distribution of landings between the sectors from 2017-2021. Commercial gray snapper landings averaged 111,563 lb (50,604 kg) between 2017 and 2021 and accounted for 2.4 percent of the total gray snapper landings. That percentage of the proposed stock ACL is estimated to be 137,472 lb (62,356 kg). The average ex-vessel price of gray snapper was \$3.64 per lb during this time. Therefore, the change in the stock ACL may result in annual increases of commercial gray snapper landings, revenues, and economic profit of 25,909 lb (11,752 kg), \$94,309, and \$30,179, respectively. Economic profit is estimated to be approximately 32 percent of revenues. Given that annual average revenue is about \$133,300 per commercial fishing business, economic profit per commercial fishing business is estimated to be about \$42,700. Thus, economic profit per commercial fishing business could increase by around \$84, or by about 0.2 percent. These estimates assume that the totality of the stock ACL increase estimated to accrue to the commercial sector is harvested. However, only about 77 percent of the

stock ACL was harvested on average per year from 2017-2021. Should the commercial sector harvest less than its estimated allotted portion, the increase in commercial landings, revenues, and economic profit would be less.

The proposed change to the stock ACL for Gulf gray snapper may also increase economic profits to charter fishing businesses if they increase the number of trips targeting gray snapper. Based on the most recent information available, average annual economic profit is approximately \$27,000 per charter vessel. Between 2017 and 2021, charter trips targeting gray snapper averaged 27,358 trips per year. The potential change in the number of charter trips targeting gray snapper was computed by applying the estimated percentage increase in recreational landings to the average annual number of gray snapper charter trips. This approach yielded a potential increase of 5,034 charter trips targeting gray snapper per year. Economic profit per angler trip is estimated at \$176. Therefore, economic profit for charter fishing businesses could increase by as much as \$886,000 per year, which would represent an increase of almost \$1,700, or about 6.3 percent, per charter fishing business. These estimates assume that the totality of the stock ACL increase estimated to accrue to the recreational sector is harvested. However, as previously noted, only about 77 percent of the stock ACL was harvested on average per year

from 2017-2021. Should the recreational sector harvest less than its estimated allotted portion, the increase in target trips by charter vessels and their economic profit would be less.

Based on the information above, although a substantial number of small entities would be directly affected by this proposed rule, it would have a slight positive economic impact and thus would not have a significant economic impact on those entities. Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

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

**List of Subjects in 50 CFR Part 622**

Annual catch limits, Fisheries, Fishing, Gulf, Recreational, Red snapper, Reef fish.

**Dated:** January 10, 2024.

**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 § 622.23, revise paragraphs (a)(1)(ii)(A), (B), and (D) to read as follows:

**§ 622.23 State management of the red snapper recreational sector private angling component in the Gulf EEZ.**

(a) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) *Alabama regional management area* - 664,552 lb (301,436 kg); Federal equivalent - 1,212,687 lb (550,066 kg).

(B) *Florida regional management area* - 2,769,631 lb (1,256,283 kg); Federal equivalent - 2,066,889 lb (937,525 kg).

\* \* \* \* \*

(D) *Mississippi regional management area* - 82,342 lb (37,350 kg); Federal equivalent - 163,702 lb (74,254 kg).

\* \* \* \* \*

3. In § 622.41, revise paragraph (1) to read as

follows:

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

\* \* \* \* \*

(1) *Gray snapper*. If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for gray snapper is 5.728 million lb (2.598 million kg), round weight.

\* \* \* \* \*