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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 240506-0129]

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: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 56 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. This final rule revises catch levels for gag, accountability measures for its recreational harvest, and the recreational fishing season. In addition, Amendment 56 establishes a rebuilding plan for the overfished stock, and revises the 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: This final rule is effective on June 1, 2024.

ADDRESSES: An electronic copy of Amendment 56 is available from the Southeast Regional Office website at

https://www.fisheries.noaa.gov/action/amendment-56-modifications-catch-limits-sector-allocation-and-recreational-fishing-seasons. Amendment 56 includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

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 Gulf of Mexico Fishery Management Council (Council), manages the reef fish fishery, which includes gag, in Federal waters of the Gulf of Mexico (Gulf), under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). 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).

On October 18, 2023, NMFS published a notice of availability for the review of Amendment 56 and requested public comment (88 FR 71812). On November 9, 2023, NMFS published a proposed rule for Amendment 56 and requested public comment (88 FR 77246). NMFS approved Amendment 56 on January 17, 2024.

Background

Gag in Gulf Federal waters are found primarily in the eastern Gulf. Juvenile gag are estuarine dependent and often inhabit shallow seagrass beds. As gag mature, they move to deeper offshore waters to live and spawn. Gag is managed as a single stock with a stock annual catch limit (ACL) that is further divided or allocated into commercial and recreational sector ACLs. Currently, that allocation of the stock ACL is 39 percent to the commercial sector and 61 percent to the recreational sector. All weights in this final rule are given in gutted weight.

Commercial fishing for gag is managed under the individual fishing quota (IFQ) program for groupers and tilefishes (GT-IFQ program), which began on January 1, 2010 (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 gag and red grouper ACLs and quotas. However, if gag is under a rebuilding plan, as will occur under Amendment 56

and this final 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 accountability measures (AMs) to prevent and mitigate overfishing, 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 and 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. 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 the MRIP Coastal Household Telephone Survey (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, and the Council subsequently developed a rebuilding plan for gag through Amendment 56.

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 higher

fishing effort, and therefore a larger harvest of gag, by private anglers and state charter vessels (in Florida) than MRIP-CHTS, but SRFS 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") used MRIP-FES data for the federally permitted charter vessel and shore modes, and data from the Southeast Region Headboat Survey (SRHS) for federally permitted headboats. The results of the SRFS Run were 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 peer-reviewed and approved 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.

At the time that NMFS and the Council developed Amendment 56, the Council recognized that NMFS could not likely implement a potential final rule until 2024. Further, the Council recognized that maintaining the previously implemented catch limits for gag in 2023 would continue to allow overfishing. Therefore, the Council sent a letter to NMFS, dated July 18, 2022 (Appendix A in Amendment 56), requesting that NMFS implement interim measures that would reduce overfishing by reducing the gag stock ACL from 3.120 million pounds (lb) or 1.415 million kilograms (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 allocation of the stock ACL between the sectors 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 were initially effective for 180 days, and then NMFS extended them for up to 186 additional days (through May 2, 2024; 88 FR 69553, October 6, 2023), so NMFS could solicit and review public comments on the proposed rule and Amendment 56, and prepare final regulations as appropriate. Because the SSC's review of the SEDAR 72 SRFS Run occurred after the Council's decision to request 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 final 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, optimum yield (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 of the spawning potential ratio (SPR; $F_{40\%SPR}$), where SPR is the ratio of the SSB to its unfished state. This revised MSY proxy of $F_{40\%SPR}$ was 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 affect 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 of gag are assumed to be less than commercial discard mortality rates but the total number of recreational discards is considerably greater than the number of 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.

After analyzing multiple alternatives for allocating the stock ACL between the fishing sectors, the Council determined and recommended to NMFS that using the allocation of 35 percent commercial and 65 percent recreational would best represent the historic landings for each sector while accounting for the change from data produced by the Marine Recreational Fisheries Statistics Survey (MRFSS) to SRFS data. Based on the results of the SEDAR 72 SRFS Run and the allocation ratio, the Council recommended OFLs and ABCs for gag during 2024-2028, and recommended the stock ACL be set equal to the ABC.

Management Measures Contained in This Final Rule

This final rule will modify the gag stock and sector ACLs, sector ACTs, commercial quota (which is equivalent to the commercial ACT), recreational AMs, and recreational fishing season as described further.

Annual Catch Limits and Annual Catch Targets

The 2023 temporary rule for gag implemented the current commercial ACL and commercial quota of 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg), respectively, and the recreational ACL and ACT of 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 final rule will set the stock ACL for gag at 444,000 lb (201,395 kg) in 2024, and will 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. As explained in the proposed rule and in this final rule, these catch limits are based on the results of the SEDAR 72 SRFS Run. Because of the different surveys used to estimate recreational landings that were then used to determine the current catch limits and the catch limits in this final rule, the catch limits are not directly comparable. However, the catch limits in this rule are a significant reduction compared to the catch limits that would go back into effect if the 2023 temporary rule expires with no further action. Catch levels will be set from 2024 through 2028, which increase during the time series. The 2028 catch

levels will continue after 2028 unless modified by subsequent rulemaking. All of the catch levels recommended by the Council in Amendment 56 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 final rule will set the commercial quota equal to the commercial ACT, and the commercial quota will 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 NMFS implemented the buffer in 2012. Further, the fraction of gag discarded compared to the total number of gag caught by the commercial sector has remained low. NMFS does not expect the actions in Amendment 56 and this final rule to significantly increase commercial discards of gag. Therefore, the commercial quota, the amount of gag allocation that NMFS distributes annually to IFQ shareholders, will 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 recommended a more conservative ACT than if they had applied the ACL and ACT control rule, which would have

resulted in a 10 percent buffer between the ACL and ACT. Instead, the Council recommended doubling 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. NMFS agrees, thus, this final rule will 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 regulatory text at the end of this rule.

Table 1 -- Stock ACL and Sector Catch Levels by Year for Gag

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. Catch levels for 2028 will continue after 2028 unless changed.

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 recreational landings reach its ACL. 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 final rule change the recreational 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 recreational 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 will also reduce the level of discards associated with directed harvest, increasing the probability of meeting the 18-year rebuilding time.

This final rule will also remove the recreational AM that requires the previous year's ACT to be maintained in the year following an overage of the recreational 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 recreational season for gag was open each year from June 1 through December 31 (79 FR 24038, April 25, 2016). 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 final rule will modify the recreational fishing season for gag so the season begins each year on September 1. Unlike the season implemented by the temporary rule, Amendment 56 and this final rule do not establish a predetermined season closure date. Consistent with the changes to the AMs, NMFS will close the gag recreational season when landings reach the recreational ACT. NMFS will use the best data available to project the duration of the 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 recreational

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 be available in time for NMFS to determine whether landings did reach the ACT and potentially reopen harvest.

Management Measures in Amendment 56 That Will not be Codified in Regulations by This Final Rule

In addition to the measures that will be codified in regulations through this final rule, Amendment 56 revises the MSY proxy, OY, and SDC for gag. Further, Amendment 56 revises the gag OFL, ABC, and sector allocations of the stock ACL.

Maximum Sustainable Yield, Optimum Yield, and Status Determination Criteria

Based on the results of SEDAR 72, Amendment 56 revises MSY proxy, OY, and the SDC used to determine whether overfishing is occurring or the stock is overfished. The proxy for MSY is 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) is equal to $F_{40\%SPR}$. The minimum stock size threshold (MSST) is defined as 50 percent of the biomass at the new MSY proxy. The OY is conditional on the rebuilding plan, such that if the stock is under a rebuilding plan, OY is equal to the stock ACL; and if the stock is not under a rebuilding plan, OY is 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 changes to the MSY, OY, and SDC represent a more conservative approach to management that will rebuild the gag stock to a more robust size, which should be more resilient to episodic mortality from environmental factors including red tide and other harmful algal blooms, and sustainable levels of fishing mortality.

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

Amendment 56 establishes a rebuilding plan and sets the rebuilding time for 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 revises the OFL and ABC, and sets the stock ACL equal to the ABC. In addition, Amendment 56 revises the sector allocation percentages of the stock ACL from 39 percent commercial and 61 percent recreational to 35 percent commercial and 65 percent recreational, and revises the sector ACLs consistent with the revised allocations as stated earlier in this final rule. The OFL and ABC values by year from 2023 through 2028 are shown in table 2. However, the OFL and ABC values in 2023 are not directly comparable to the OFLs and ABCs from 2024 through 2028, because they are based, in part, on recreational landings estimates produced by the different surveys discussed earlier. Values in 2028 will continue for subsequent fishing years unless modified through another action by the Council or NMFS.

Table 2 -- OFLs and ABCs Values by Year 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 stock ACL values for gag. Catch levels for 2028 will continue after 2028 unless changed.

Administrative Change to Codified Text not in Amendment 56

NMFS also clarifies the regulations at 50 CFR 622.8(c) with this final rule. 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 in regulation 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 is modifying the regulations in section 622.8(c) to provide a more general reference to allowable harvest levels. This will be consistent with the framework procedures in the relevant fishery management plans that allow NMFS to re-open harvest if additional data show that NMFS closed a season prematurely.

Comments and Responses

NMFS received 33 comments in response to the notice of availability for Amendment 56, and 10 comments were received on the proposed rule. Comments ranged widely in scope, with some supporting Amendment 56 without modification, while others urging disapproval. In general, recreational fishermen and groups supporting recreational fishing are in favor of the revised allocation percentages of the stock ACL for gag between the commercial and

recreational sectors in Amendment 56 and this final rule. Commercial fishermen, commercial fishing organizations, and environmental groups generally supported maintaining the current allocation percentages of the stock ACL for gag between the commercial and recreational sectors. Some comments that NMFS received were outside the scope of this action. These comments included suggestions that the for-hire component of the recreational sector be moved to the commercial sector; concern that predation and depredation by sharks and goliath grouper are responsible for much of the decline in abundance of gag and reef fish abundance in general; concern of interspecies competition with red snapper and triggerfish on the reefs due to perceived inadequate management of these species; concern that fertilizer runoff is a causal factor in the decline of gag; NMFS should provide an annual health check to ensure the rebuilding plan for gag is on track; and NMFS and the Council should be managing the reef ecosystem as a whole rather than just by individual fish species. Comments specific to Amendment 56 and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: Several commenters did not support the proposed recreational season. Suggested alternatives included a June 1 start date; seasons from November through February, and October to January; or shorter, intermittent

season openings (*e.g.*, a season open a few weeks at a time throughout the summer and fall).

Response: The Council recommended, and NMFS approved, the recreational season start date in Amendment 56 of September 1 to try to provide the longest season possible. The analysis in Amendment 56 indicated that beginning the season on September 1 would result in the longest recreational fishing season of the alternatives considered. For example, initial estimates are that a June 1 start date would result in a recreational season lasting only 16 days. Regarding the suggested October through January season and November through February season, NMFS estimated that the high fishing effort and catch rates during October through December would result in fewer fishing days than a September 1 starting date. Shorter seasons, including intermittent season openings, are more likely to result in derby-like (race to fish) fishing, where greater effort and greater numbers of fish are harvested in a shorter period, and fishermen may decide to go out in more dangerous weather and sea conditions. The September season start date promotes safety of human life at sea to the extent practicable, consistent with National Standard 10 (NS 10) of the Magnuson-Stevens Act.

Comment 2: The recreational season should be fixed, and NMFS should not prohibit harvest before the established closure date.

Response: NMFS disagrees that it is appropriate to allow fishing until a fixed annual closure date. The Magnuson-Stevens Act requires AMs, which the NS 1 guidelines explain are management controls to prevent ACLs, including sector ACLs from being exceeded [50 CFR 600.310(g)]. The recreational AMs for gag at 50 CFR 622.41(d)(2)(i) require NMFS to prohibit further harvest when NMFS estimates that recreational landings will reach or have reached the applicable catch limit. Allowing fishing to continue until a date certain after NMFS determines that landings would reach the catch limit would not be consistent with the AMs. In 2023, the Council recommended and NMFS implemented, a recreational fishing season for gag that opened on September 1 and was to close no later than November 10, for a maximum of 70 days. However, NMFS explained that if the best available data indicated that the catch limit would be harvested before the end of the 70-day period, NMFS would implement a recreational closure prohibiting harvest of gag for the remainder of the fishing year. When NMFS analyzed in-season data that became available during the 2023 open season, NMFS determined that the 2023 ACL for gag had been harvested and closed the recreational season on October 19, 2023. Amendment 56 and this final rule do not specify an end date to the recreational season, which has an opening date of September 1, 2024. Consistent with the AMs, NMFS

will use the best scientific information available to determine when recreational harvest will reach the applicable catch limit and close the season on that date.

Comment 3: Several commenters suggested closing commercial and recreational fishing for reef fish for a year or making gag catch and release only until the population rebuilds. Another commenter suggested further reductions to the gag catch limits for the commercial and recreational sectors.

Response: As described in Amendment 56, the NMFS Southeast Fisheries Science Center produced models to predict the effect of reducing gag catch to different levels and estimate how quickly those reduced catch levels would rebuild the gag stock. The models estimated that even if there were no fishing mortality, including no dead discards, the stock would take 11 years to rebuild. Thus, implementing a total fishing closure for 1 year, including no catch and release fishing (and thus no landed catch), or further reducing landed catch limits would not be expected to result in a substantial reduction in the time needed to rebuild the stock. In addition, a complete closure of gag fishing would result in the loss of important fishery-dependent and biological information that help monitor stock rebuilding and in determining appropriate management of gag and other reef fish species. In addition, prohibiting fishing for 1 year or further reducing the

catch limits would increase adverse social and economic effects on fishermen and communities that are reliant on gag. (See the response to *Comment 4* for more information on the expected economic effects of Amendment 56 and this rule.)

Comment 4: The low quotas are causing economic hardships for commercial fishermen who cannot pay their bills.

Response: NMFS agrees that the significant reduction in the commercial quota for gag is expected to have adverse economic effects on commercial fishing businesses, and some commercial vessels and fishing businesses may not be earning an economic profit. However, the most recent available data does not indicate that the average commercial fishing vessel that harvests gag or the average commercial fishing business that possesses quota shares for gag is not able to cover its costs or earn an economic profit. Available data suggests that vessels harvesting gag earn economic profits equal to about 32 percent of their annual gross revenue on average. Further, available data suggests that expected economic profits from the harvest of IFQ species (red snapper, groupers, and tilefishes) for all commercial fishing businesses that possess gag shares are at least $29.4 million. 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 commercial fishing businesses that possess gag quota shares, the average annual expected economic profit per commercial fishing business is at least $64,620.

Most of these expected economic profits (84 percent) are the result of owning IFQ quota shares for red snapper. Only approximately 1.7 percent of their expected economic profits is thought to be due to the ownership of gag quota shares, and NMFS expects this rule to affect economic profits only from the ownership of gag shares. More specifically, the action to change the sector allocation, implement a rebuilding plan, and change the stock ACL will reduce the commercial quota from 939,000 lb to 212,000 lb (425,923 kg to 96,162 kg) on average from 2024 through 2028. However, average annual commercial landings of gag from 2017 through 2021 were only 492,401 lb (223,349 kg), which is noticeably below the current commercial quota. Therefore, the expected average reduction in annual commercial landings is 280,401 lb (127,188 kg), far less than the reduction in the commercial quota. In addition, the expected reduction in commercial landings is expected to initially increase the average ex-vessel price of gag

from $6.10 per lb to $7.78 per lb in 2024, and then gradually decrease to $6.96 per lb in 2028. This increase in the ex-vessel price is expected to partially offset the adverse effects of the expected landings reduction. Thus, the expected reduction in ex-vessel revenue for gag on average is approximately $1.57 million per year. Given an average annual allocation price of $1.03 per lb for gag, the expected reduction in commercial landings of gag is expected to reduce economic profits to these commercial fishing businesses by about $288,813, or by approximately $635 per commercial fishing business. Thus, NMFS expects the reduction in economic profits to be around 1 percent on average per commercial fishing business as a result of the action to change the sector allocation, implement a rebuilding plan, and change the stock ACL. NMFS does not expect a 1 percent reduction in economic profits to cause an economic hardship for the average commercial fishing business that possesses quota shares for gag.

Comment 5: The gag population is healthy. The catch level reductions for gag are unnecessary.

Response: NMFS disagrees that the reduction in the gag catch limits are unnecessary. The most recent stock assessment for gag (SEDAR 72), completed in 2021, is the best scientific information available, indicates that the gag stock is overfished and undergoing overfishing, and that a reduction in the catch limits is necessary to

rebuild the stock. The assessment included a multi-day data review workshop and several webinars, was peer reviewed, and was reviewed by the Council's SSC. NMFS recognizes that the abundance of gag varies across locations. However, gag is managed as a single stock in the Gulf, and the stock assessment, which used Gulf-wide data, concluded that the overall abundance has declined since the previous gag stock assessment was completed in 2016. This conclusion is supported by the inability of both the commercial and recreation sectors to harvest their allotted catch limits of gag. In the last 5 years covered by SEDAR 72 (2015 through 2019), the combined commercial and recreational harvest exceeded 50 percent of the gag stock ACL only once (2016).

Comment 6: Recreational data used in making decisions for gag management, such as the assessment and catch-per-unit-effort calculations, have too much error and should not be used. NMFS should only use recreational data that have less than 25 percent standard error.

Response: The Magnuson-Stevens Act requires that fishery conservation and management decisions be based on best scientific information available. The percent standard error associated with an estimate reflects the uncertainty in that estimate. Although NMFS recognizes that reducing standard error in recreational catch estimates for gag would be beneficial, the estimates for recreational catch

that are used in Amendment 56 are based on best scientific information available, and are thus appropriate to be used in management. Sometimes the data determined to be the best scientific information available do not have a PSE of less than 25 percent, but the data are necessary and appropriate to be used for management. NMFS sets catch levels (such as ABC and ACL) to address both scientific and management uncertainties. As newer and better data become available, NMFS will update analyses and methodologies to reduce uncertainty in future management decisions. However, the management measures implemented through this final rule are based on best scientific information available at the time they were developed.

Comment 7: Gag shortages are caused by man-made red tide caused by pollution. Red tides are one of the primary drivers of mortality and the cause of overfishing. Red tide is not sufficiently addressed in the management actions within Amendment 56 as required by the Magnuson-Stevens Act and the NS 1 guidelines. In addition, the amendment should include management actions that address climate change impacts. The climate vulnerability analysis (CVA) indicates that gag has a high overall vulnerability to climate change impacts, yet no management considerations are suggested to alleviate the risks. An MSY proxy of 40 to 50 percent of the SPR is a more appropriate baseline for conservation of the stock but does not directly mitigate impacts from

environmental conditions and therefore is not a sufficient management action to address the environmental conditions that are contributing to overfishing.

Response: NMFS recognizes that red tide is one of the primary drivers of mortality for gag, and that gag are highly susceptible to negative impacts of climate change (as indicated by the CVA for gag). Red tide has occurred throughout the known history of the Gulf, and while not man-made, there is evidence suggesting that human induced factors, including pollution, may increase the intensity of red tide events. Still, despite extensive research on causes and factors exacerbating red tide events, much is unknown about these events and how to reduce the negative effects they have on the environment and, specifically, on gag. Further, the timing, location, and intensity of red tide is intermittent, not predictable, and highly variable, as are their effects on gag. For example, while red tide can be associated with large mortality events for gag, it is also often associated with higher than normal recruitment of gag in the following year (presumably due to density dependence mechanisms of gag ecology, such as less competition for food or ideal habitat).

Regarding climate change, the CVA for gag identified the sensitivities and exposures that contribute to the stock's high vulnerability. However, the analysis recognized that few studies have examined the effect of

climate factors on the population productivity and distribution of gag, and that it is unclear how any changes will impact abundance and distribution of the stock. Thus, although NMFS is concerned about the increasing negative impacts of climate change on gag as estimated by the CVA and how these factors, in addition to red tide, may negatively affect gag population dynamics in the future, NMFS has determined that Amendment 56 includes measures that sufficiently address the uncertainty related to these impacts.

The SEDAR 72 gag stock assessment directly considered the expected mortality associated with red tide but NMFS models do not account for the increased recruitment associated with these events due to the high level of uncertainty associated with this process. This is because while increased recruitment after a red tide event is predictable, the magnitude of the increase is not.

Despite the uncertainty, Amendment 56 contains management changes to take a more precautionary approach, such as using rebuilding catch projections that are based on the SSB for males and females combined as opposed to just female SSB, and modifying the MSY proxy to be $F_{40\%SPR}$. These changes are expected to help mitigate the adverse effects of both red tide events and climate change by directly accounting for male SSB, which has been recognized as a limitation on rebuilding, and rebuilding the stock to

a larger size stock size based on the revised MSY proxy. NMFS does not agree that the MSY proxy should be set at a more conservative level. As explained in Section 1.1 of Amendment 56, the SSC recommended an MSY proxy of $F_{40\%SPR}$ based on gag's susceptibility to episodic mortality from red tide and guidance from a 2019 study by Harford *et al*. The SSC concluded that an MSY proxy of $F_{40\%SPR}$ would allow the stock to rebuild to a more robust level of SSB making it more resilient to environmental influences like red tide and to changes in fishing mortality. NMFS agrees with the SSC that an MSY of $F_{40\%SPR}$ is sufficiently conservative to address current and foreseeable mortality due to fishing and environmental factors.

Comment 8: Amendment 56 and this final rule violate section 303(a)(15) of the Magnuson-Stevens Act, which requires hard catch limits and AMs that will ensure that ACLs will not be exceeded and overfishing will not occur in the fishery. There is no certainty that the measures included in Amendment 56 and the proposed rule will end overfishing. While Amendment 56 includes a 20 percent buffer between the recreational ACL and ACT, the ACT is not an effective recreational AM because it does little to address discards either in or out of season, and targeted recreational catch is not driving overfishing. Further, by admitting that an exact accounting of total gag mortality cannot be determined at this time, NMFS concedes that

Amendment 56 does not include legally sufficient ACLs and AMs.

Response: Amendment 56 and the FMP are consistent with the requirements of section 303(a)(15) of the Magnuson-Stevens Act, which requires the FMP to include ACLs, at a level such that overfishing does not occur, and AMs. With respect to discarded fish, there is no requirement in this provision to separately specify or monitor discard mortality. The NS 1 guidelines define catch as including both landed fish and dead discards [50 CFR 600.310(f)(1)(i)]. However, the NS 1 guidelines also state that the ABC, on which the ACLs are based, may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC [50 CFR 600.310(f)(3)(i)]. The OFL, ABC, and ACLs specified in Amendment 56 are derived from SEDAR 72 SRFS Run, which accounted for dead discards estimates that were derived from the best scientific information available. Thus, an exact accounting of total mortality is not necessary to apply the AMs to constrain harvest to the ACLs, which are expressed in terms of landed fish only. In addition, as explained in response to *Comment 10*, NMFS recognizes that a significant portion of past gag recreational catch occurred when the recreational season is closed, and is thus discarded, but NMFS expects the significant reduction in

the stock ACL as well as the larger buffer between the recreational ACL and ACT, to result in much lower overall gag mortality as required by the rebuilding plan.

Comment 9: The rebuilding plan is legally insufficient because there are no interim measures to monitor the total mortality from discards, as only landings are used for management in non-assessment years.

Response: NMFS disagrees that the rebuilding plan is not legally sufficient. It is unnecessary to monitor discards directly because the rebuilding catch limits are expressed as landed fish. Discard mortality is incorporated into the determination of these catch limits through the SEDAR 72 SRFS Run, which is consistent with the best scientific information available.

Comment 10: The management measures in Amendment 56 and the proposed rule are insufficient to provide at least a 50 percent probability of rebuilding the gag stock because they do not adequately address discard mortality resulting from recreational sector bycatch. The projections from the stock assessment assume that discards will be reduced proportionally to landed catch but this assumption has been proven false. The private recreational sector discards an estimated 90 percent of gag that are caught, suggesting that the majority of gag interactions occur as non-target interactions. The actions in the amendment do not reduce discards, and Amendment 56 suggests these

actions are likely to increase discards, because under the rebuilding plan, increased regulatory discarding of gag would occur during any open fishing season for co-occurring target species (*e.g.*, red grouper, red snapper). In order to reduce discards to appropriate levels, fishery managers must rely on the improbable scenario that individual anglers take action to intentionally avoid gag and therefore reduce their collective discard rates.

Response: NMFS disagrees that the measures being implemented do not provide at least a 50 percent probability of rebuilding the stock. While NMFS recognizes that a significant portion of past gag recreational catch occurred when the recreational season is closed and, therefore, was discarded, the basis for the commenter's assumption that the majority of gag interactions occur as non-target interactions is unclear. Further, NMFS does not agree that this means imposing new stricter catch limits will not rebuild the stock as projected.

With respect to the recreational sector, this rule will further reduce the allowable harvest by increasing the buffer between the recreational ACL and the ACT by 10 percent more than necessary to account for the uncertainty in constraining recreational harvest. This additional 10 percent reduction in recreational harvest will further reduce mortality and increase the probability of rebuilding.

NMFS also disagrees that the assumption that discards will be reduced proportionally to landed catch "has been proven false." NMFS does not have comparable catch or effort data to test this assumption because of the lower catch limits and changes in the dates of the recreational season. Thus, NMFS cannot precisely predict the effects of the management measures in this final rule until we have appropriate data, which will likely be after a few years of rebuilding (including the changes in recruitment, *etc.*) has been completed. Further, many factors affect angler behavior and discards, including changes in the number of fish recruiting (entering) the fishery, open and closed seasons for other reef fish species, and prevailing economic conditions which can affect the amount of angler fishing effort and catch and discard rates.

NMFS expects the change to a September 1 opening date for the recreational season to result in recreational fishermen targeting gag in shallower and colder waters than the previous season, which should further increase survivability of released fish and result in additional escapement contributing to rebuilding the stock. Consistent with section 304(e)(7) of the Magnuson-Stevens Act, NMFS will review rebuilding plan progress. If NMFS determines that adequate progress is not being made because fishing mortality (both landings and discards) exceeds the level necessary to rebuild the gag stock, NMFS will notify the

Council and recommend further conservation and management measures, including potential development and implementation of a new or revised rebuilding plan.

Comment 11: The rebuilding plan is legally insufficient because the rebuilding projections (and increases in the ACL) are dependent on the assumption that the sectors will operate as they have in recent years, which we know to be a false assumption.

Response: The stock assessment model requires assumptions about future fishing behavior to produce appropriate catch limit recommendations. The SEDAR 72 SRFS Run assessment projections assume that selectivity, discarding, and retention were the same as the most recent year, which was 2019. This is the best available scientific information at the time those projections were developed. NMFS does not have any data to determine the extent or magnitude of any potential changes to fishing practices. As new data become available on any changes in fishing practices, NMFS can revisit the assessment assumptions as appropriate. NMFS can also use any new data to improve in-season management. For example, NMFS recognizes that changing the start date of the recreational fishing season from June 1 to September 1 is likely to change how the recreational sector operates both during and outside of the open season. While the scope of the effects from the change are not well understood, NMFS is in the process of fully

analyzing 2023 data, during which the gag catch limits were reduced and the recreational season started on September 1. Since the 2023 interim regulations are more directly comparable to those being implemented in Amendment 56 and the final rule, NMFS will be more able to accurately predict and anticipate factors such as recreational fishing effort, harvest rates, in-season and out-of-season bycatch rates, and other variables that may result in differential effects to the gag population. Thus, as more appropriate and comparable data are collected, NMFS has the ability to mitigate negative impacts and can take steps to ensure the schedule to rebuild the gag stock is maintained.

Comment 12: Amendment 56 is insufficient to provide at least a 50 percent probability of rebuilding success because it would increase the ACLs each year after 2024. By 2027, the commercial ACL will be only approximately 50 percent of 2022 commercial landings but the recreational ACL will be greater than 2022 recreational landings as estimated by MRIP-CHTS. NMFS should implement a precautionary constant catch approach for gag that would maintain catch at baseline levels and would not proceed with increases until there are tangible signs of stock improvement. A constant catch approach paired with more frequent interim assessments and monitoring of discarding and red tide trends would add baseline protection to this

highly vulnerable stock and improve the likelihood of rebuilding success.

Response: NMFS disagrees that because the catch limits for gag increase over time, the probability of rebuilding success will be less than 50 percent and that a more precautionary constant catch approach is appropriate. First, the rebuilding plan is based on the stock assessment, which was informed by the more conservative MSY proxy of $F_{40\%SPR}$ and the recommendations from the Council and SSC that include the increases to the commercial and recreational ACLs adopted in this final rule. Second, NMFS will set the recreational season length based on when the recreational ACT is projected to be met as specified in the revised AMs. It is inappropriate to compare the MRIP-CHTS recreational landings estimate from 2022 to the 2027 recreational ACT, which is based in part on SRFS data. Using consistent recreational data from SRFS, the recreational ACT increases from 230,000 lb (104,326 kg) in 2024 to 600,000 lb (272,155 kg) in 2028, which is well below average recreational landings from 2017 through 2021, which were over 1.2 million lb (544,311 kg). Even if the ACL were the management target, the recreational ACL for 2028 is only 751,000 lb (340,648 kg), which is approximately 63 percent less than the 1.2 million-lb (544,311-kg) average. Finally, a constant catch approach that keeps the stock ACL at the 2024 baseline level would

increase the adverse economic and social effects on fishery participants and fishing communities, without significant benefits to stock. As explained in Amendment 56, a rebuilding plan that is based on no fishing mortality would be expected to rebuild the stock in 11 years, as opposed to the 18-year rebuilding plan implemented in this final rule. Thus, a constant catch rebuilding plan that keeps the 2024 stock ACL of 444,000 lb (201,395 kg) is unlikely to result in a significant reduction of the projected rebuilding time but would increase the negative social and economic impacts as discussed in Chapters 4, 5, and 6 of Amendment 56. This would not be consistent with section 304(e)(4) of the Magnuson-Stevens Act, which requires that the rebuilding period for an overfished stock be as short as time possible, taking into account both the biology of the stock and the needs of fishing communities or NS 8, which requires, in pertinent part, that conservation and management measures minimize adverse economic impacts on such fishing communities to the extent practicable.

Comment 13: Amendment 56 is insufficient to provide at least a 50 percent probability of rebuilding success because it fails to address the key biological vulnerabilities of the gag stock including reducing mortality of older, male fish and improving male recruitment (escapement of females and transitioning males)

from nearshore reefs so that a greater percentage can become older and transition to male.

Response: NMFS disagrees with the premise that male gag mortality and recruitment need to be addressed directly for the rebuilding plan to have a least a 50 percent chance of success. Amendment 56 includes several measures that address concerns related to male gag mortality and recruitment. A long history of harvesting large males and large fecund females is a large part of the issue with the current sex ratio of gag. Amendment 56 substantially reduces allowable harvest of gag for both the commercial and recreational sectors, which is expected to reduce overall mortality of gag, including that of older adult male fish, and increase male recruitment. In addition, the discard mortality rate is relatively low in the recreational sector due to the generally shallower depth of fishing when compared to the commercial sector, so there would be reduced mortality from reduced catch limits contributing to rebuilding the stock in the long run. Further, NMFS expects the commercial sector to be able to avoid large individuals specifically due to more selective fishing practices as they manage their limited individual fishing quota allocations, which should result in improvements in the stock by reducing pressure on these large gag. Reduced catch limits are also expected to result in greater recruitment of male gag because they will result

in more fish in the population, and thus more fish will be available to move to deeper offshore waters to transition to male.

In addition to the lower catch limits, the change in the recreational fishing season from a June 1 start date to a September 1 start date is expected to result in reduced harvest of male gag, which are found almost exclusively in deep water. Fishermen have often reported at Council meetings that gag feed more aggressively when water temperatures are cooler, and particularly when nearshore waters are cooler. Further, studies have shown that discard mortality is lower when fish are caught and released into cool surface water compared to warm surface water. Thus, capturing and releasing gag during summer months, especially from deeper water where barotrauma becomes an increasingly influential factor on discard mortality for gag, is likely to result in increased discard mortality compared to capturing and releasing gag during comparatively cooler fall and winter months. Because directed fishing effort for gag in summer months is typically conducted in greater average depths than in fall months, the probability of harvesting or discarding dead a male gag is higher by comparison in these summer months. Therefore, changing to a September opening of the recreational season is expected to contribute to a reduced mortality of adult male gag.

Comment 14: Amendment 56 violates Magnuson-Stevens Act NS 9 because it allocates fish to the recreational sector and away from the commercial sector. NMFS data estimates that the commercial sector was responsible for less than 1 percent of all gag discards between 1993 and 2019. Choosing an alternative that provides a lower catch limit to the recreational sector and consequently provides a higher gag stock ACL would allow for less waste, more landings, and minimize discards. In addition, the Bycatch Practicability Analyses (BPA) in Amendment 56 does not analyze whether the FMP contains measures to reduce bycatch to the extent practicable, and has no discussion of other measures that could reduce bycatch or bycatch mortality, for example, whether requiring larger circle hooks could reduce catch of smaller grouper; and time or area closures and the effects on bycatch. Other significant discard analyses, including projections, should have been considered and included in the rebuilding plan. Examples include projections at higher and lower discard rates than is assumed, higher uncertainty, *etc.*, to identify at what level of discarding may be occurring on an annual basis. A thorough discard analysis is critical to ensuring the proposed management measures will end overfishing and rebuild the stock. Additional analysis should also have been done to minimize out-of-season discarding through other measures, such as spatial closures or discarding rates during other species'

open seasons, and the ABC should reflect any uncertainty from these analyses.

Response: NS 9 requires that conservation and management measures, "to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Conservation and management measures must also be consistent with all of the other National Standards and maximization of net benefits to the Nation. As the National Standard guidelines explain, 10 factors should be considered when determining consistency with NS 9. Some of these factors include population effects for the bycatch species; changes in the economic, social, or cultural value of fishing activities, and non-consumptive uses of fishery resources; changes in the distribution of benefits and costs; and social effects [50 CFR 600.305(d)(3)]. Thus, NS 9 does not require that management measures result in the greatest stock size as the comment appears to suggest. Rather, NMFS must consider and account for the different economic, social, and cultural objectives of the commercial and recreational sectors when determining whether management measures minimize bycatch and bycatch mortality to the extent practicable. Participants in the commercial sector tend to seek to maximize harvest and efficiency while participants in the recreational sector tend to seek to maximize access and fishing opportunities. The sectors

operate differently to achieve those objectives, and these differences impact fishing behavior, which generally results in more discards by the recreational sector.

The BPA (Appendix H in Amendment 56) provides information about gag bycatch and bycatch mortality, and discusses the 10 factors in the NS 9 guidelines at 50 CFR 600.350(d)(3), which include summaries of the biological, economic, and social effects presented in Chapter 4 of Amendment 56. As noted in Section 4.2.2 of Amendment 56, the impacts to the gag stock are similar under both allocation alternatives because the overfishing limits are based on a fixed level of fishing mortality. The recreational sector is responsible for more discards and more dead discards than the commercial sector. Therefore, Preferred Alternative 3 (Preferred Option 2b) in Action 2, which changes the allocation percentages, allows for slightly less total harvest than Alternative 2 (Option 2b), which would retain the current allocation percentages, reducing the stock ACL by approximately 9,000 lb (4,082 kg) in 2024 (about 2 percent). However, NMFS expects both Alternative 2 and Alternative 3 in Action 2 to reduce discards when compared to Alternative 1 (no action) due to the substantial reduction in catch limits, and the numbers and rates of discards and discard mortality between Alternatives 2 and 3 are expected to be similar. NMFS also expects an additional reduction in recreational discards

associated with directed fishing as a result of the increase in the buffer between the recreational ACL and ACT from 10.25 to 20 percent, and the requirement that NMFS prohibit recreational harvest when the ACT is projected to be met.

With respect to the economic and social effects on both the commercial and recreational sectors, the expected negative impacts are a result of the need to implement a rebuilding plan that requires a significant reduction in the total allowable harvest of gag (see Amendment 56 BPA Criterion 6, 8, 9, and 10, and Sections 4.2.3 and 4.2.4). The new allocation percentages result in an increase in those negative effects for the commercial sector and a decrease in those effects for the recreational sector. However, the revised allocation represents the historical harvest of the two sectors during the same time period as the original allocation (1986 through 2005) updated only to reflect that there has been a change in the survey used to estimate recreational landings. Given the need to account for the different objectives of the commercial and recreational sectors, and provide for the greatest overall benefit to the Nation with respect to both food production and recreational opportunities NMFS has determined that gag bycatch and bycatch mortality are minimized to the extent practicable in both the FMP and Amendment 56.

While NMFS agrees that additional research and analyses could be conducted in the future to determine more precise impacts that bycatch may have on the catch projections or if there are other measures that could further reduce gag bycatch and bycatch mortality, NMFS is required to implement a rebuilding for gag within 2 years of notification to the Council that gag is overfished and, consistent with NS 2, NMFS used the best scientific information available to develop the rebuilding plan for gag and address the various requirements of the Magnus-Stevens Act, including NS 9. As discussed at the Council's January 2024 meeting, NMFS and the Council intend to review additional data and analyses to determine whether additional measures to reduce bycatch of gag (*e.g.*, time or area closures) are practicable. The Council initially considered including additional measures, such as increasing the number of area closures, to Amendment 56 but determined that it was not practicable to do so because before implementing new time or area closures, it was necessary to gather further data and analysis was needed on the impacts of the current closed areas (*i.e.*, Madison-Swanson and Steamboat-Lumps marine protected areas). In addition, after the rebuilding plan has been in effect for a few years, it may be possible to perform alternative stock assessment analyses that incorporate new information on discards in the recreational sector and use the results

from those additional analyses to inform the bycatch practicability analysis.

Comment 15: NMFS needs to clarify how dead discards are accounted for in setting the MSY and OY.

Response: Dead discards are accounted for in specifying both the MSY and OY for the gag stock through the stock assessment. The NS 1 guidelines define MSY as "the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.*, gear selectivity), and the distribution of catch among fleets." 50 CFR 600.310(e)(1)(i)(A). OY is the long-term average desired yield from a stock that provides "the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities," is reduced from the MSY to take into account economic, social, and ecological factors, and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. 16 U.S.C. 1802(33); see also 50 CFR 600.310(e)(3)(i). Amendment 56 defines MSY as the yield when fishing at $F_{40\%SPR}$ and defines OY based on rebuilding status, such that: if the stock is under a rebuilding plan, OY is equal to the stock ACL; if the stock is not under a rebuilding plan, OY is equal to 90 percent of MSY or its proxy. The catch projections produced from

the SEDAR 72 SRFS Run are based on the MSY proxy specified in Amendment 56 and account for discard mortality. As explained in Amendment 56, during the rebuilding plan OY is set equal to the stock ACL because this is the amount of fish that, over the rebuilding time, would allow the stock to rebuild to a level that is consistent with producing MSY. When rebuilding is complete the OY will be set at 90 percent of the MSY or proxy, which is consistent with the OY set for other reef fish species in Amendment 48 to the FMP (87 FR 34811 June 8, 2022). As explained in Amendment 48, an OY of 90 percent of the MSY or proxy is an intermediate level (between 85 and 95 percent of the MSY of proxy) that balances the need to protect the stock and allow for both food production and recreational opportunities. After the stock rebuilds and if new information indicates that that this OY may not be appropriate, NMFS and the Council can consider that new information and whether to revise the OY.

Comment 16: Amendment 56 will cause hardship to recreational fishermen but will not hurt commercial fishermen. Recreational fishing seasons are getting shorter, as demonstrated by both the recreational gag and red grouper seasons in 2023. However, commercial harvest goes on unabated. Commercial and recreational regulations should be the same.

Response: NMFS disagrees that it is appropriate to have the same regulations for commercial and recreational fishing, and that Amendment 56 only negatively affects recreational anglers. Amendment 56 and this final rule will reduce the commercial and recreational ACLs for gag for each sector to levels substantially lower than average landings from 2017 through 2021. In addition, although both the commercial and recreational sectors have failed to catch or even approach their respective catch limits in recent years, the percent reduction for each sector ACL in this rule compared to their respective recent landings is similar. Commercial fishing is managed differently than recreational fishing to address the economic, social, and cultural goals of each sector. Recreational fishing is managed primarily with bag limits, size limits, and seasons to allow the maximum number of participants the opportunity to fish. The commercial sector operates under an IFQ program, which allows commercial fishermen to harvest their share of the gag quota at any time during the year. So, unlike the recreational sector, there is no closed commercial season. Because the IFQ program gives individual commercial fishermen the flexibility to fish any time during the year, it prevents "derby-like" fishing that can create unsafe fishing conditions as fishermen race to catch as many fish as possible before a catch limit is reached. In addition, the IFQ program allows fishermen to supply

fish over the course of the season, which allows for consumers to be able to purchase the fish throughout the year. However, regardless of when they fish during the year, fishing by both sectors is constrained by their respective annual harvest limits.

Comment 17: Amendment 56 and this final rule violate NS 4 of the Magnuson-Stevens Act because they allocate fish away from the commercial sector to account for the discards in the recreational sector, which is not fair and equitable and does not promote conservation.

Response: NMFS has determined that Amendment 56 and the final rule are fair and equitable and reasonably calculated to promote conservation, consistent with NS 4. The Council initially reviewed allocation options based on six different times series of landings data, but removed some options from further consideration because they resulted in relatively minor differences. In Amendment 56, the Council evaluated retaining the existing allocation percentages and updating those percentages using the SRFS recreational landings estimates calibrated to the same time series (1986 through 2005) that was used in setting the original allocation percentages. The Council determined, and NMFS agrees, that updating the allocation percentages using the SRFS calibrated recreational landings results is fair and equitable because it accounts for the transition

to using SRFS data to estimate recreational catch while maintain the same referenced time series.

As explained in response to *Comment 14*, recreational fishing for gag (and many other reef fish species) typically involves higher numbers of discards than for the commercial sector, and the sector allocation percentages approved in Amendment 56 (*i.e.*, Alternative 3, Option 2b in Action 2) reduce the total ACL by approximately 9,000 lb (4,082 kg) when compared to the percentages proposed in Alternative 2b. However, the OY includes both recreational opportunities and food production, and the commercial and recreational sectors have different objectives, and operate differently to achieve those objectives. The Council and NMFS must consider and account for these differences when determining whether an allocation fairly and equitably allocates fishing privileges and provides the greatest overall benefit to the Nation with respect to both food production and recreational opportunities. Further, the large reduction in the total allowable harvest in Amendment 56 is not a result of the shift in sector allocation of the stock ACL but the result of SEDAR 72 and the determination that the stock is overfished and undergoing overfishing.

Comment 18: The Council failed to follow its allocation review policy by combining the allocation decision with decisions related to catch limits and rebuilding times. The Council's allocation policy requires

a comprehensive allocation review and an after-the-fact determination that Amendment 56 includes that review is not sufficient. Further, the Council and NMFS suggest that the "sector allocation ratio in Alternative 2 results in a de facto reallocation to the commercial sector of approximately 4 percent," but no allocation review was performed to evaluate this reallocation. If de facto reallocation arguments are to be used as justifications for management changes, then their use must be consistent with all NMFS and Gulf Council allocation policies and guidance.

Response: The process for evaluating and changing the commercial-recreational allocation percentages through Amendment 56 was consistent with NMFS and Gulf Council policies and guidance. The Council's Allocation Review Guidelines address the situation that resulted in Amendment 56, recognizing that, "[i]n some instances, *e.g.*, following a stock assessment, the Council may elect to skip a formal allocation review and directly proceed with the development of an FMP amendment. In these cases, these guidelines would not apply." The most recent stock assessment (SEDAR 72) indicated that the gag stock was overfished and undergoing overfishing, and incorporated the updated SRFS recreational catch estimates. Therefore, the Council and NMFS used Amendment 56 to develop a rebuilding plan and review the sector allocations to determine whether an adjustment was appropriate. The review incorporated into Amendment 56

included an evaluation of allocation options, and all of the relevant ecological, economic, social, and performance factors identified in the relevant Council and NMFS polices and guidance, including the Council's Allocation Policy and NMFS' Procedural Directive 01-119-01.

Comment 19: Automatic reallocation based on SRFS is arbitrary, and retrospectively adjusting historical landings estimates from 30 years ago is fraught with uncertainty. Allocation decisions should not be based on SRFS data until the accuracy of the data is resolved.

Response: NMFS disagrees that there was an automatic reallocation and that is not appropriate to use SRFS data to adjust the commercial-recreational allocation percentages in Amendment 56. Amendment 56 included an alternative to retain the current allocation percentages and an alternative to adjust those percentages using SRFS calibrated landings. As explained in response to *Comment 17*, the Council recommended, and NMFS agrees, that it is appropriate to adjust the allocation to 65 percent recreational: 35 percent commercial based on the same 1986 through 2005 time series with updated SRFS landings estimates. Although there is uncertainty related to the SRFS calibration, as explained previously, this was reviewed and approved by peer-review through the NMFS Office of Science and Technology in May 2022. NMFS has determined that SRFS landings estimates are best scientific

information available, and thus that it was appropriate to use these estimates to inform the allocation decision recommended by the Council in Amendment 56 and being implemented in this final rule.

Comment 20: Revised estimates of recreational landings based on SRFS do not provide all of the necessary information for allocation decisions. Had SRFS been used initially in the stock assessment, it would have generated higher OFLs, ABCs, and ACLs for both sectors, allowing the commercial sector to increase its harvest.

Response: NMFS disagrees that it is appropriate to speculate on possible changes to commercial landings and the commercial-recreational allocation had SRFS data been available to use in prior stock assessments. NS 2 requires that management measures be based on the best scientific data available and calibrated SRFS recreational catch estimates were not available to use prior to the SEDAR 72 SRFS Update. Even if it were appropriate and correct to assume that the stock ACL would have been higher had this new data been available previously, it does not automatically follow that commercial harvest would have been larger. As noted in the Regulatory Flexibility Act Analysis in Chapter 6 of Amendment 56, the average commercial landings of gag from 2017 through 2021 were only 492,401 lb (223,349 kg), well below the commercial quota of 939,000 lb (425,923 kg).

Comment 21: The Council passed a motion to delay implementing new use of FES until the pilot study examining issues with the design of FES has been completed and deemed consistent with best scientific information available. If this analysis was done for SRFS, it is reasonable to assume the same result, so proceeding with reallocation in Amendment 56 is premature and inconsistent with recent Council actions.

Response: At its January 2024 meeting, the Council passed a motion to delay decisions about whether to change allocations of ACLs between the commercial and recreational sectors that were based on MRIP-FES data. SEDAR 72 and Amendment 56 both use recreational landings data based on SRFS to recommend catch levels for the recreational harvest of gag. NMFS disagrees that approving and implementing Amendment 56 is inconsistent with the Council's decision to delay potential actions that involve commercial-recreational allocations and use data generated from MRIP-FES or that it is reasonable to assume that the results of the pilot studies are applicable to SRFS. The MRIP-FES collects recreational trip information for specified 2-month periods, and over the course of the previous year. The Council's motion was in response to the results of one pilot study conducted by the NMFS Office of Science and Technology that evaluated a potential source of bias in MRIP-FES effort questions; specifically, the order in which

two questions were presented. This pilot study found that estimates for private angler effort were generally 30 to 40 percent lower for shore and private boat modes than produced from the current design. However, the study was conducted over a relatively short period (6 months) using a smaller sample size than the full FES sample. NMFS is currently conducting a larger scale follow-up study. It is unknown whether this larger scale study will produce the same results as the initial pilot study. Information about the study, next steps, and the anticipated timeline can be found at *https://www.fisheries.noaa.gov/recreational-fishing-data/fishing-effort-survey-research-and-improvements*.

The Council's motion reflects the Council's intention to defer recommendations related to any changes to commercial-recreational allocations that incorporate MRIP-FES data until the ongoing research to determine the impacts of these changes to the survey is complete. The motion is not relevant to NMFS' review and implementation of the updated allocation percentages in Amendment 56, which are based in part on the calibrated time series of SRFS estimates of private recreational effort as incorporated into the SEDAR 72 SRFS Run and are separate from MRIP-FES. SRFS creates a universe of reef fish anglers by requiring anyone who harvests certain reef fish from a private vessel in Florida to obtain the State Reef Fish

Angler designation, which, makes an angler eligible to receive a questionnaire in the mail that asks about their fishing activity in the previous month. More information on the SRFS questionnaire can be found at *https://myfwc.com/research/saltwater/fishstats/srfs/program/*. The SRFS questionnaire is more narrowly focused than the MRIP-FES questionnaire. Therefore, NMFS does not believe it is reasonable to assume that the potential bias identified with the MRIP-FES questionnaire would be indicative of similar bias with SRFS.

Comment 22: Action 3 in Amendment 56, which reallocates gag away from commercial fishermen to the recreational sector, is not consistent with the purpose and need of Amendment 56 and violates the Magnuson-Stevens Act. Providing greater allocation to the recreational sector, which accounts for the vast majority of discards and discard mortality, will not allow the stock to rebuild as projected in this rebuilding plan.

Response: The allocation percentages recommended by the Council in Amendment 56 do not reduce the probability of rebuilding the gag stock. The OFLs and ABCs recommended by the SSC were derived from SEDAR 72, which accounts for dead discards by both sectors, and the risk of overfishing the stock is the same for both of the allocation alternatives considered by the Council. As explained in response to *Comment 10*, NMFS expects the combined

management measures in Amendment 56 (*i.e.*, reduction in catch limits, increased buffer between the recreational ACL and ACT, and change in recreational season start date) to rebuild the stock as projected. Therefore, NMFS has determined that the allocation percentages recommended in Amendment 56 are consistent with the purpose and need statement.

Comment 23: The rule does not clarify how any overage of the recreational ACL in 2023 will be addressed in 2024 given that the 2023 ACL is derived in part from MRIP-FES data and the 2024 ACL is derived in part from SRFS data. The amendment should include clarity surrounding the calibration and consistency of the catch limits [of data used from the different recreational surveys].

Response: Regulations at 50 CFR 622.41(d)(2)(iii) require that if gag are overfished and gag recreational landings exceed the applicable ACL, NMFS will reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT 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. NMFS has determined that recreational landings in 2023 exceeded the recreational ACL as specified in the interim regulations and that adjustments to the 2024 recreational ACL and ACT are appropriate. To reconcile the

different data used to specify the 2023 and 2024 ACLs, NMFS has determined what the 2023 recreational ACL would have been after calibrating from MRIP-FES to SRFS data, and intends to use 2023 SRFS estimates to determine the overage of that recreational ACL. That overage will then be deducted from the 2024 recreational ACL and ACT as specified in Amendment 56 and this final rule. The 2024 commercial ACL and ACT will not be effected, and the rebuilding projections as specified in Amendment 56 will also remain unchanged. More information will be made available when NMFS publishes the temporary rule specifying the 2024 recreational catch limits.

Reference

Harford, W.J., S.R. Sagarese, and M. Karnauskas. 2019. Coping with information gaps in stock productivity for rebuilding and achieving maximum sustainable yield for grouper–snapper fisheries. Fish and Fisheries 20(2):303-321.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 56, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to establish an effective date for this final rule of less

than 30 days after the date of publication. On November 28, 2023, NMFS published a temporary rule to withhold a portion of the commercial allocation of gag for the 2024 fishing year in anticipation of the reduction in the commercial quota in this final rule (88 FR 83040). If this final rule is not effective on June 1, 2024, the regulations at 50 CFR 622.22(a)(4) require NMFS to distribute the previously withheld commercial allocation to shareholders. NMFS was unable to publish this final rule 30 days in advance of June 1, 2024, because NMFS received several significant comments on the proposed rule, which required more time than anticipated to consider and provide responses. If allocation is distributed on or after June 1, NMFS would be unable to withdraw that allocation from the shareholder accounts and commercial harvest would not be constrained to the reduced catch limits for gag in his final rule. Allowing this additional commercial harvest would be contrary to the public interest because it could result in overfishing of gag and would be inconsistent with the approved rebuilding plan in Amendment 56 that was developed as required by section 304(e)(4) of the Magnuson-Stevens Act. Further, a 30-day delay in the effective date of this final rule would also cause confusion by allowing the recreational season for gag to open for a brief period beginning on June 1, 2024. And if this rule became effective after a 30-day delay, the recreational season

would close again and not reopen until September 1, 2024. Having this final rule effective on June 1, 2024, avoids any confusion about when recreational fishing is allowed.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS' response to one public comment regarding the Executive Order 12866 analysis is in the **SUPPLEMENTARY INFORMATION** section of the preamble (see *Comment 4* in the **Comments and Responses** section). A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The objective of this final 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 revises 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 changes from F_{MAX} to the yield when fishing at $F_{40\%SPR}$. The definition of MFMT changes from being equal to F_{MAX} to being equal to the fishing mortality at the MSY proxy (*i.e.*, $F_{40\%SPR}$). The definition of MSST changes from 50 percent of the biomass at F_{MAX} to 50 percent of the biomass at the new MSY proxy. OY is currently defined as 75 percent of the yield at F_{MAX}. The new definition of OY is conditional on whether a rebuilding plan is in place. Specifically, if the stock is under a rebuilding plan, OY will be equal to the stock ACL. However, if the stock is not under a rebuilding plan, OY will be equal to 90 percent of MSY or its proxy.

Amendment 56 also revises 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 also establishes 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 rebuilding plan in combination with the new sector allocation changes 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,

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 was taken. The recreational portion of the OFL, ABC, stock ACL, the recreational ACL, and the recreational ACT would be based on MRIP-CHTS data. Under the new sector allocation and rebuilding plan, the OFL, ABC, stock ACL, recreational ACL, commercial ACL, recreational ACT, and commercial quota are reduced in 2024 but subsequently increase through 2028 as indicated in tables 1 and 2 earlier in this rule. 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 are not directly comparable.

This final rule also revises 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 this final rule, the buffer between the recreational ACL and ACT is approximately 20 percent (*i.e.*, the recreational ACT is approximately 80 percent of the recreational ACL).

In addition, this final rule also modifies the buffer between the commercial ACL and quota, and sets 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 in regulations. This final rule sets the commercial ACT equal to approximately 95 percent of the commercial ACL and sets commercial quota equal to the commercial ACT. Thus, the commercial quota is approximately 95 percent of the commercial ACL.

Lastly, this final rule changes the recreational season start date and modifies the recreational AMs for gag. Specifically, the recreational season start date is changed 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 final rule requires 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 is removed under this final rule. Given these individual actions, this final rule is expected to regulate commercial fishing businesses that possess gag shares in the GT-IFQ program and for-hire fishing businesses 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 quota for gag. 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, NMFS assumes this final 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, NMFS assumes 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 final 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 803 federally 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, NMFS assumes that no headboat trips would be canceled, and thus no headboats would be directly affected by this final 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 final rule if it is 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 NMFS estimates this final rule would regulate 528 charter 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 was about $3.25 million. Based on this information,

all commercial fishing businesses regulated by this final 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 United States, 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 charter fishing businesses regulated by this final rule are determined to be small businesses for the purpose of this analysis.

NMFS expects this final rule to regulate 455 of the 536 businesses with IFQ accounts, or approximately 85 percent of those commercial fishing businesses. Further, NMFS expects this final 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 final 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 final 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 quota of red snapper 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, only 82 percent of the deep-water grouper quota, 38 percent of the shallow-water grouper quota, and 73 percent of the tilefish quota was harvested from 2017 through 2021, and that is expected to continue in the foreseeable future. For gag, the quota utilization rate from 2017 through 2021 was approximately 52 percent. Given these quota utilization rates in combination with average annual allocation prices from 2017 through 2021 and annual commercial quotas in 2021, NMFS estimates that the total expected economic profits for commercial fishing businesses with gag shares are at least $29.4 million per year 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 final rule is only expected to affect economic profits from the ownership of gag shares.

Specifically, the action that changes the sector allocation of the stock ACL and implements a rebuilding plan, which changes the stock ACL, reduces the commercial ACL and commercial quota from 1.217 million lb (552,022 kg) and 939,000 lb (425,923 kg) to 275,000 lb (124,738 kg) and 212,000 lb (96,162 kg) on average from 2024 through 2028. However, average annual commercial landings of gag from 2017 through 2021 were only 492,401 lb (223,349 kg), noticeably below the commercial quota. Because average annual landings exceed the commercial quotas for 2024 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 (127,188 kg). 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, resulting in 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 on the above information, NMFS expects a reduction in annual ex-vessel revenue for gag of approximately $1.57 million on average, 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 through 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 action to change the sector allocation and implement a rebuilding plan that reduces the stock ACL.

The action that sets the commercial ACT equal to 95 percent of the commercial ACL and sets the commercial quota equal to the commercial ACT causes the commercial quota to be equal to 95 percent of the commercial ACL as opposed to approximately 77 percent of the commercial ACL. As such, this action is expected to increase the commercial quota relative to what it would be otherwise. The increase still yields 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 (22,011 kg), 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 economic profit to commercial fishing businesses to increase by $49,983 per year, or about $110 per commercial fishing business, as a result of this action.

Combining these expected increases in revenue and profits with the decreases discussed earlier, NMFS expects this final 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 profits 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 for charter vessels, average annual economic profit per charter vessel is $27,948. The action 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) to 510,000 lb (231,332 kg) on average from 2024 through 2028. As explained previously, the current and new recreational ACLs are not directly comparable because they are based, in part, on recreational landings estimates

derived from different surveys. However, average recreational landings from 2017 through 2021 were approximately 1.265 million lb (573,794 kg). Given that average recreational landings have been considerably greater than the recreational ACT in this final rule, all of the 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 through 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 the total reduction in charter vessel profits from this action to be $3.146 million per year. The average reduction in economic profit per charter fishing business would therefore be about $5,960, or approximately 21.3 percent of their current economic profit, per year.

In combination with the action to require NMFS to close the recreational season based on when the recreational ACT, rather than the recreational ACL, is projected to be met, the action to increase the buffer between the recreational ACL and recreational ACT from 10.25 percent to 20 percent is expected to reduce the recreational season length further from the 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), though this reduction is expected to gradually increase to 24 days by 2028 (open for 96 days instead of 120 days). The average additional reduction in the recreational season length per year 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 the reduction in charter vessel profits from this action to be $318,690 per year. The average reduction in economic profit per charter vessel $604 per year, or about 2.2 percent on average per charter fishing business.

The action that changes 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 days to 81 days on average from 2024 through 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 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 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 of economic profits by around 1.6 percent on average per charter fishing business.

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

Six alternatives, including the status quo, were considered for the 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 effectively result in a reallocation to the commercial sector of approximately four 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 four percent, which the Council did not considerable 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 charter fishing businesses compared to the action in this final rule.

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 action in this final rule, 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 effectively result in a reallocation from the recreational sector to the commercial sector of approximately four 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 charter fishing businesses compared to the action in this final rule. However, it was not selected because the stock is expected to take 4 more

years to rebuild compared to the action in this final rule, 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 effectively result in a reallocation to the commercial sector of approximately four percent.

Like the action in this final rule, 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 through 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 action in this final rule, 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 through 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 action in this final rule, 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 action to increase the buffer between the recreational ACL and recreational ACT from 10.25 percent 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 and 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 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 action in this final rule, 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 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 action in this final rule (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 action in this final rule, 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 action in this final rule (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 action in this final rule, 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 action in this final rule (81 days) for 2024 through 2028 and would have also resulted in greater adverse effects to charter 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.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. Copies of this final rule are available from the Southeast Regional Office, and the guide, *i.e.*, fishery bulletin, will be sent to all known

industry contacts in the Gulf reef fish fishery and be posted at: *https://www.fisheries.noaa.gov/tags/small-entity-compliance-guide?title=&field_species_vocab_target_id=&field_region_vocab_target_id%5B1000001121%5D=1000001121&sort_by=created*. The guide and this final rule will be available upon request.

This final 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: May 6, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.8, 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 2 for the recreational ACLs and ACTs in gutted weight.

Table 2 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 recreational 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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