

If you have Internet access, you can download the Addendum by going to <http://www.blm.gov/grazing> and follow the directions found at that site.

During the nine years since implementation of the 1995 grazing reforms, a number of discrete concerns have been raised regarding the administration of grazing management. Among other things, the rulemaking addresses a variety of these discrete, administrative issues related to the current regulatory scheme without altering the fundamental structure of the grazing regulations.

The BLM published the proposed rule on December 8, 2003 (68 FR 68452), inviting public comments until February 6, 2004. On January 2, 2004, the BLM issued the Draft EIS for a 60-day public comment period which was extended on January 16, 2004 to March 2, 2004 (69 FR 2559). The Final Environmental Impact Statement was issued December 2004.

**Authority:** 40 CFR 1506(b).

**Julie Jacobson,**

*Deputy Assistant Secretary of the Interior.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 060322083-6083-01; I.D. 032006C]

RIN 0648-AU04

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Recreational Grouper Fishery Management Measures

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a recreational bag limit for Gulf red grouper of one fish per person per day; prohibit the captain and crew of a vessel operating as a charter vessel or headboat from retaining any Gulf grouper, i.e., establish a zero bag

limit for captain and crew; and establish a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone (EEZ). The intended effect of this proposed rule is to maintain recreational landings at levels consistent with the red grouper rebuilding plan while minimizing potential shift of fishing effort to associated grouper species.

**DATES:** Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on May 1, 2006.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-AU04.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AU04.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Andy Strelcheck, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Andy Strelcheck.

Copies of the regulatory amendment, which includes a Regulatory Impact Review (RIR), an Initial Regulatory Flexibility Analysis (IRFA), and an Environmental Assessment (EA) may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813-348-1630; fax: 813-348-1711; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org). Copies of the regulatory amendment may also be downloaded from the Council's website at <http://www.gulfcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** Andy Strelcheck, telephone: 727-824-5374, fax: 727-824-5308, e-mail: [andy.strelcheck@noaa.gov](mailto:andy.strelcheck@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

#### Background

On July 15, 2004, NMFS implemented Secretarial Amendment 1 to the FMP to establish a red grouper rebuilding plan, including a 5.31 million-lb (2.42 million-kg), gutted weight, commercial quota and a 1.25 million-lb (0.57 million-kg), gutted weight, recreational target catch level for red grouper (69 FR 33315). In 2004, recreational red

grouper landings totaled 3.18 million lb (1.44 million kg), gutted weight -significantly exceeding the target catch level. In March 2005, the Council requested NMFS implement interim regulations for the recreational red grouper fishery to return landings to levels specified in Secretarial Amendment 1. NMFS implemented interim regulations in August 2005, to reduce recreational red grouper landings (70 FR 42510, July 25, 2005). Those regulations were amended and extended in January 2006, for an additional 180 days (71 FR 3018, January 19, 2006).

#### Provisions of This Proposed Rule

The purpose of this proposed rule is to establish more permanent management measures for the recreational grouper fishery consistent with the regulatory amendment prepared by the Council. These measures are needed to restrict recreational red grouper landings to levels specified in the rebuilding plan and to prevent or minimize increases in fishing mortality on gag and black grouper resulting from any shift in fishing effort from red grouper to these species because of the more restrictive recreational red grouper regulations. Gag are not overfished or undergoing overfishing, but landings have been above recommended catch levels since 2000; therefore, gag should not be subjected to increased fishing mortality. Black grouper are included in the seasonal closure because they are similar in appearance to gag and are difficult for many recreational fishermen to distinguish from gag. If black grouper were not included in the seasonal closure, compliance with the closure would be compromised because of the species identification problem.

This proposed rule would establish a red grouper recreational bag limit of one fish per person per day; prohibit the captain and crew of a vessel operating as a charter vessel or headboat from retaining any Gulf grouper, i.e., establish a zero bag limit for captain and crew; and establish a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone (EEZ) from February 15 to March 15 each year. Cumulatively, these measures are expected to reduce recreational red grouper landings by approximately 34 percent and recreational landings of gag and black grouper by 7 percent. The proposed restriction on possession of any grouper by captain and crew while under charter is intended to restrict allowable bag limits on board for-hire vessels to paying clients who are fishing recreationally, excluding captain and

crew, thereby, contributing to a reduction in fishing mortality. With a reduction in the red grouper bag limit to one fish per person per day, there is a greater incentive for captain and crew on for-hire vessels to retain fish and supplement the landings of their clients, thereby negating some of the effect of the lower red grouper bag limit. The Council considered this restriction on captain and crew necessary to make the red grouper bag limit effective. The proposed February 15 to March 15 closure is consistent with the existing seasonal closure of the commercial fishery for gag, red grouper, and black grouper and would make the closure more equitable for both user groups and should help improve compliance and enforceability. The closure occurs during important spawning seasons for all three species. Because red grouper are part of a multispecies fishery, prohibiting the landings of the three species that represent about 97 percent of recreationally caught grouper should reduce red grouper discard mortality during the closure and compensate for any additional gag and black grouper fishing mortality during the open season that would otherwise occur because of more restrictive red grouper regulations.

#### **Additional Consideration of the Seasonal Closure**

The proposed February 15 to March 15 closure of the recreational fishery for gag, red grouper, and black grouper is based on the best scientific information currently available. However, NMFS expects a new stock assessment for gag to be completed in July 2006 that might contain new information pertinent to evaluating the need for the seasonal closure. In addition, the Florida Fish and Wildlife Conservation Commission has expressed concerns about implementation of the seasonal closure and has requested an extension of the time period for its review of the proposed action under the Coastal Zone Management Act. Therefore, at the final rule stage, NMFS may through appropriate procedural steps separate the management measures into two separate final rules -one addressing the bag limit provisions, and one addressing the seasonal closure. That approach would allow the bag limit provisions to be implemented in a timely manner, assuming approval, and would allow NMFS to defer implementation of the seasonal closure until the new gag assessment has been completed. Any implications regarding the seasonal closure will have been thoroughly analyzed, and NMFS and the state of Florida can resolve any remaining coastal zone management issues. NMFS

and the Council would carefully evaluate the conclusions of the new assessment to determine whether the closure remains justified based on the best scientific information available.

#### **Classification**

At this time, NMFS has not determined that the regulatory amendment, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on the regulatory amendment and the comment period on this proposed rule.

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

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows.

This proposed rule would reduce the daily recreational red grouper bag limit, establish a closed recreational season for gag, black grouper, and red grouper, and eliminate the captain and crew daily grouper bag limit. The purpose for this regulatory amendment is to implement management measures for the Gulf of Mexico grouper fishery which will restrict recreational red grouper landings to levels specified in the red grouper-rebuilding plan and minimize impacts on other grouper species resulting from more restrictive recreational red grouper regulations. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

A moratorium on the issuance of new charter vessel/headboat (for-hire) permits for reef fish has been in effect since June 16, 2003, and, currently, approximately 1,625 unique vessels are permitted to operate in this fishery. The for-hire fishery is comprised of charter vessels, which charge fees on a vessel basis, and headboats, which charge fees on an individual angler basis. The average charter vessel is estimated to generate \$76,960 in annual revenue and \$36,758 in annual "profit" (computed as gross revenue minus costs; costs exclude depreciation, fixed costs, and

returns to owner/operators). The comparable figures for an average headboat are \$404,172 in annual gross revenue and \$338,209 in annual profits. Some vessels in the for-hire fleet also participate in the commercial grouper fishery. However, information on the average revenues generated from operation as a commercial vessel and the impacts of these revenues on the overall economic performance of the business operation are unknown.

Although the proposed actions would not directly affect support industries, potential reductions in fishing effort and associated expenditures may have indirect impacts on hotels, restaurants, gear and bait shops, and other associated businesses. It is not possible to enumerate or characterize these businesses.

The proposed rule would not change current reporting, record-keeping and other compliance requirements under the FMP. These requirements include permit qualification criteria and participation in data collection programs if selected by NMFS. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills, and, therefore, are deemed not to be onerous.

The Small Business Administration defines a small business in the for-hire fishery sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$6.5 million. Given the economic profile of the for-hire fleet presented above, NMFS determined that all for-hire fishing entities that would be affected by the proposed action are small business entities. Since all of these entities could be affected, NMFS determined that the proposed action would affect a substantial number of small entities.

The outcome of "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is whether the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. All for-hire entities affected by the proposed rule are considered small entities so the issue of disproportionality does not arise in the present case. The profitability question is whether the regulations significantly reduce profit for a substantial number of small entities. For-hire operations will bear the primary burden of the proposed

actions, though spill-over impacts would be expected in associated industries, such as hotels, marinas, and bait and tackle shops. For-hire operations may experience a reduction in bookings, resulting in reduced receipts from for-hire fees, tips, gear rental, food or beverages, and fish-cleaning. The proposed rule is projected to result in a reduction of for-hire fees of up to \$2.52 million. Potential reduced receipts from other sources cannot be determined. Although the incidence of cancellation is not expected to be uniform across the Gulf, since the importance of grouper as a target species varies geographically and by business entity, the expected reduction in reduced for-hire fees equates to approximately \$1,400 per vessel, or approximately 2 percent of average gross revenues and 4 percent of net revenues. The potential impact of the proposed actions on associated industries cannot be determined.

Six alternatives, including the status quo, were considered in addition to the preferred red grouper bag limit and seasonal closure. The status quo would have allowed continued landing overages in the recreational sector and would, therefore, not meet the Council's objectives.

The second alternative would have reduced the red grouper daily bag limit to one fish per angler or three fish per vessel, whichever is less. This alternative contained no protection for associated grouper species and increased the possibility of excessive redirected effort to these other species and red grouper bycatch mortality. This alternative did not, therefore, meet the Council's objectives.

The third alternative would have increased the red grouper recreational minimum size limit to 22 inches. An increase in the minimum size limit, however, would be expected to increase bycatch and discard mortality, which is inconsistent with the Council's objective of minimizing bycatch and discard mortality. Thus, this alternative would not meet the Council's objectives.

The fourth alternative would have reduced the red grouper recreational bag limit within the aggregate grouper limit to one per person per day and closed the season for all grouper during August. This alternative would have resulted in greater reductions in consumer surplus and potential foregone expenditures than the proposed action, therefore increasing the adverse economic impacts relative to the proposed action.

The fifth alternative would have reduced the red grouper recreational bag limit within the aggregate limit to one per person per day and closed the

season for all grouper during April through May. This alternative would also have resulted in greater reductions in consumer surplus and potential foregone expenditures than the proposed action.

The sixth alternative would have reduced the red grouper bag limit within the aggregate limit to one per person per day and increased the minimum recreational size limit to 21 inches. Similar to an increase of the minimum size limit to 22 inches, excessive bycatch mortality was expected to accrue to this alternative.

The final alternative to the proposed red grouper bag limit and seasonal closure would have reduced the red grouper bag limit within the aggregate grouper limit to one fish per angler or three fish per vessel per day, whichever is less, except for reef fish-permitted for-hire vessels with a U.S. Coast Guard Certificate of Inspection. For these vessels, the resultant vessel limit would be one red grouper per two paying passengers. While this alternative is projected to result in reduced short-term reductions in consumer surplus relative to the proposed action, this alternative contained no protection for associated species and, therefore, would not address the Council's concerns for redirection of effort to other grouper species and increased bycatch of red grouper.

One alternative, the status quo, was considered for the proposed 0-fish captain and crew grouper bag limit. The status quo, which would allow captain and crew a bag limit equal to that of the recreational angler, in combination with the other proposed actions, would not achieve the necessary red grouper harvest reductions and would not, therefore, meet the Council's objectives. The 0-fish captain and crew bag limit constrains the potential harvest capacity aboard for-hire vessels, limits allowable bag limits to paying clients who are fishing recreationally, and contributes to some additional reduction in fishing mortality.

Three alternatives to the preferred alternative, the status quo, were considered for the aggregate grouper daily bag limit. The status quo for this action would not impose additional restrictions on the harvest of other grouper species and would not, therefore, result in any direct adverse economic impacts on small entities. Three alternatives would reduce the aggregate grouper daily bag limit to 4, 3, or 2 fish, respectively. The Council has determined that the 1-month closure for red, gag, and black grouper would provide the necessary protection for these other grouper species to

compensate for potential redirection of effort in response to the proposed red grouper restrictions. Reducing the aggregate bag limit was determined to be excessive and would increase the adverse economic impacts relative to the proposed action.

Copies of the IRFA are available (see **ADDRESSES**).

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

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 28, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF, 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 § 622.34, paragraph (u) is added to read as follows:

#### **§ 622.34 Gulf EEZ seasonal and/or area closures.**

\* \* \* \* \*

(u) *Seasonal closure of the recreational fishery for gag, red grouper, and black grouper.* The recreational fishery for gag, red grouper, and black grouper in or from the Gulf EEZ is closed from February 15 to March 15, each year. During the closure, the bag and possession limit for gag, red grouper, and black grouper in or from the Gulf EEZ is zero.

3. In § 622.39, the suspensions of paragraphs (b)(1)(ii) and (b)(1)(v) are lifted; paragraphs (b)(1)(viii) and (b)(1)(ix) are removed; and paragraph (b)(1)(ii) is revised to read as follows:

#### **§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper -5 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day or 1 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat -their bag limit is zero.

\* \* \* \* \*

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