

On November 18, 2005, a CE determination was completed for NMFS' issuance of temporary rules authorizing the use of § 223.206(d)(3)(ii). The proposed extension would also be encompassed by the November 18 CE.

Dated: December 23, 2005.

**John Oliver,**

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 051114298-5338-02; I.D. 110105C]

RIN 0648-AT12

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Commercial Grouper Fishery; Trip Limit

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final 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 final rule establishes a 6,000-lb (2,722-kg) commercial trip limit for shallow-water and deep-water grouper, combined, in the exclusive economic zone of the Gulf of Mexico. The intended effect of this final rule is to minimize the effects of derby fishing and prolong the fishing season.

**DATES:** This final rule is effective January 1, 2006.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) are available from Andy Strelcheck, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305; fax: 727-824-5308; e-mail: [andy.strelcheck@noaa.gov](mailto:andy.strelcheck@noaa.gov).

**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.

In accordance with the FMP's framework procedure, the Council recommended, and NMFS published, a proposed rule (70 FR 70575, November 22, 2005) to establish a 6,000-lb (2,722-kg) commercial trip limit for shallow-water and deep-water grouper, combined, in the exclusive economic zone of the Gulf of Mexico. Public comments on the proposed rule were requested through December 7, 2005. A summary of the comments and NMFS' responses are provided below. The rationale for this trip limit is provided in the regulatory amendment and in the preamble to the proposed rule and is not repeated here.

#### Comments and Responses

Following is a summary of the comments received on the proposed rule and NMFS' responses.

*Comment 1:* One commenter supported the 6,000-lb (2,722-kg) commercial trip limit, but recommended reducing the trip limit once 50 and 75 percent of the quota was reached.

*Response:* Six trip limit alternatives were considered, including no action and the preferred 6,000-lb (2,722-kg) gutted weight grouper trip limit. Several other stepped trip limit alternatives were also considered, which would have reduced the trip limit during the fishing year when a certain percentage of either the shallow-water grouper or red grouper quota was reached. These stepped trip limit alternatives were not selected because the lower trip limits were estimated to generate excessive negative economic impacts, particularly for longline vessels and vessels operating off the west-central coast of Florida.

*Comment 2:* One commenter supported the trip limit, but recommended longer closures or a 10-day open season at the beginning of each month.

*Response:* The intent of the 6,000-lb (2,722-kg) gutted weight commercial grouper trip limit is to prolong the fishing season and reduce the effects of derby fishing. Longer closures or 10-day open seasons are contrary to the action's objective of reducing the effects of derby fishing and extending the commercial grouper fishing season.

*Comment 3:* One commenter opposed the trip limit and believed the trip limit was too large and should be less.

*Response:* Several alternatives with lower trip limits than the preferred 6,000-lb (2,722-kg) gutted weight trip limit were considered. These more restrictive trip limit alternatives were not selected because the lower trip limits were estimated to generate excessive negative economic impacts, particularly for longline vessels and vessels operating off the west-central coast of Florida.

*Comment 4:* One commenter supported the trip limit, but questioned the effectiveness of the trip limit if it resulted in additional fishing trips.

*Response:* An environmental assessment (EA) was conducted for this action, which evaluated the effects of the trip limit on the physical, biological, social, and economic environment. As part of the EA, an economic simulation analysis was conducted, which allowed for extra fishing trips to be taken in response to lower trip limits. Extra trips were only allowed to occur if revenues were sufficient to cover trip costs. Based on the results of this simulation analysis, the shallow-water grouper fishery was projected to close 2-14 days earlier than if extra trips were not allowed to be taken.

*Comment 5:* One commenter suggested longline fishing gear should be eliminated.

*Response:* The regulatory amendment only proposed trip limits for reducing the effects of derby fishing and moderating the rate of commercial grouper harvest. The regulatory amendment did not provide notice or seek comment on elimination of any type of gear from the fishery. Therefore, this comment is beyond the scope of the regulatory amendment and this rule.

*Comment 6:* The Southern Offshore Fishing Association (SOFA) indicated they were in favor of trip limits, but believed the 6,000-lb (2,722-kg) trip limit would have adverse economic effects on larger vessels. They suggested two alternative trip limit proposals be considered. The first proposal is to implement a tiered trip limit with a 7,500-lb (3,402-kg) limit for longline vessels and 2,500-lb (1,134-kg) trip limit for vertical-line vessels. The second proposal is to implement a 7,500-lb (3,402-kg) trip limit for vessels with a documented length over 45 ft (13.7 m), a 5,500-lb (2,495-kg) trip limit for vessels with a documented length under 45 ft (13.7 m), and a 1-month closure of the shallow-water grouper fishery from May 20 to June 20.

*Response:* At its October 3-6, 2005 meeting, the Council reviewed a proposal by SOFA for a 7,500-lb (3,402-kg) trip limit and additional closed season. In response to this proposal,

which is outlined in the regulatory amendment, the initial trip limit was increased from 5,500-lb (2,495-kg) to 6,000 lb (2,722-kg) to help defray increasing costs occurring in the fishery and larger vessels' higher operating costs. The Council also considered seasonal closures in conjunction with trip limits. SOFA suggested a 1-month closure (May 15–June 15) at the Council's October meeting, and this proposal was analyzed as a variant of Alternative 3 in the regulatory amendment. However, Alternative 3 was rejected in favor of the preferred alternative in seeking a compromise between limiting net revenue losses while allowing for a longer season.

The concept of setting grouper trip limits by fishing gear was not examined in the regulatory amendment, but was considered in Secretarial Amendment 1 to the Reef Fish FMP. The Council concluded gear-based trip limits would increase the complexity of the regulations and, thus, decrease compliance and enforceability. Further, gear-based trip limits could encourage fishermen to convert their vessels to the gear with the highest trip limit and ultimately increase rather than decrease harvest rates. Finally, SOFA's gear-based proposal does not address other gear types used in the fishery such as fish traps and spearguns.

#### Classification

The Administrator, Southeast Region, NMFS, determined the regulatory amendment, which this proposed rule would implement, is necessary for the conservation and management of the commercial grouper fishery in the Gulf of Mexico and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause under 5 U.S.C. 553(d)(3) to waive the required 30-day delay in effective date. After evaluating nearly a full year of the fishery's performance under the existing trip limit structure, NMFS has determined that those trip limits were not sufficiently restrictive to achieve the regulatory objectives of minimizing the adverse socioeconomic effects of derby fishing and extending the length of the fishing season, i.e., avoiding rapid harvest of the quota and an early closure of the fishery. The more restrictive trip limit in this final rule is required to meet these objectives. Delaying the implementation of this final rule beyond January 1, 2006, would result in excessive harvests while the ineffective emergency trip limits are in place. Given the substantial harvesting capacity of the commercial

grouper fishery, any delay in implementing the limits specified by this final rule would result in depressed ex-vessel prices while the higher trip limit is in place and a reduction in the length of the fishing season relative to that expected to be achieved by implementation of the final rule effective January 1, 2006. Numerous vessels in the fishery have the capacity to harvest up to and in excess of 10,000 pounds. Forty-nine trips in excess of 6,000 pounds were reported in January 2005. Further, the fishery has been closed since October 10, 2005, and participants are poised to fish upon opening of the fishery. Given the extended closure of the fishery, if allowed to harvest the higher limit, participants have the capacity and incentive to do so. Any reduction in ex-vessel prices and shortening of the season will result in failure to meet the goals of this action. There are no fishing gear changes or other significant compliance issues that would necessitate a delay in effectiveness of this rule. NMFS will provide timely notification of the more restrictive trip limit in this final rule directly to participants in the fishery via a fishery bulletin mailed to each permittee and via broadcast on NOAA weather radio. The Council intended to take final action on the proposed rule at their September 2005 meeting in New Orleans, Louisiana, which would have accommodated the 30-day delay in the effective date. However, as a consequence of Hurricane Katrina, the Council was prevented from taking final action until their October meeting, delaying submission for Secretarial review until October 12. The 30-day delay would have required publication of the final rule on or before December 1. However, the available time between Council submission and December 1 was insufficient to allow the required and necessary review and approval of the final rule.

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

NMFS prepared an FRFA. 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.

This final rule establishes a 6000-lb (2,722-kg) trip limit for the commercial grouper fishery in the Gulf of Mexico. The purpose of this final rule is to reduce the adverse socioeconomic effects of derby fishing in the

commercial sector expected to result if management action is not taken. The Magnuson-Stevens Act provides the statutory basis for the rule.

Six comments that proposed alternative trip limits, longer closures or 10-day seasons, the elimination of one gear sector, or questioned the effectiveness of the action were raised by public comments in response to the proposed rule. A detailed summary of these comments and NMFS' responses is provided in the Comments and Responses section of this final rule. These alternatives were either previously considered or determined to be outside the scope of the objectives for this rule. Where considered, it was determined that either the adverse impacts of these alternatives were greater than those of the rule, or the rule was determined to be a reasonable compromise between limiting net revenue losses while allowing for a longer season. No changes were made to the final rule in response to these comments.

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

An estimated 1,129 vessels were permitted to engage in commercial fishing for Gulf reef fish (which include grouper) in early 2004, down from 1,718 vessels in 1993. Although a permit moratorium has limited access in this fishery since 1992, transfer of permits is not restricted. Those seeking to enter the fishery can purchase a permit from those seeking to exit the fishery, provided income and other requirements are met for participation in the fishery. Total participation, however, in terms of both the number of permits and the number of vessels landing Gulf reef fish has consistently declined since 1993.

An estimated 1,157 vessels had permits to fish commercially for Gulf reef fish from 2002–2004, and 1,021 vessels had historical, logbook-reported landings of Gulf reef fish. This total includes 928 vessels with landings of Gulf grouper, for which the median estimated gross revenue for all reported landings of fish was approximately \$20,000 per vessel per year. Maximum revenue ranged from \$478,000–\$543,000. The bottom longline and vertical line sectors are the dominant fleets in the fishery. For the bottom longline fleet (162 vessels per year, on average), the median annual gross revenue ranged from \$96,000–\$102,000 (84–90 percent from grouper). The vertical line fleet (765 vessels per year, on average) had median annual gross revenue of under \$17,000 (44–48 percent from grouper). Some vessels use

both gears so the numbers of vessels cannot be added across gear types.

For the 928 vessels with reported landings of Gulf grouper, historical fishery performance resulted in estimated annual average gross revenue of \$46 million for all logbook-reported fish in 2002–2004. This includes gross revenue of \$39 million for all fish on trips with grouper landings (\$25 million from red grouper). The net revenue for these trips was approximately \$29 million (annual averages per vessel for 928 vessels are \$41,000 for gross revenue, and \$31,000 for net revenue). Net revenue for the commercial fishing sector (computed as trip revenue minus trip costs) includes returns to all labor and capital.

Simulation of fishery performance under status quo conditions produced estimates which are slightly lower than historical fishery performance: Gross revenue of approximately \$37 million for all fish on trips with grouper landings, and \$27 million for net revenue (annual averages per vessel for 922 vessels are \$40,000 for gross revenue, and \$29,000 for net revenue). Projected net revenue is approximately \$10.7 million for the bottom longline fleet (average, \$66,000 per vessel per year for 161 vessels), and \$14.5 million for the vertical line fleet (average, \$19,000 per vessel per year for 748 vessels).

Between 1997 and 2000, there were an average of 123 reef fish dealers actively buying and selling in the grouper market. Of these dealers, 101 dealers (82 percent) sold more than \$30,000 per year of domestic grouper on a regular basis. These dealers may hold multiple types of permits. Because the extent of business operation for these dealers is unknown, it is not possible to determine what percentage of their business comes from grouper. Average employment information per reef fish dealer is not known, but total employment in 1997 for reef fish processors in the entire Southeast was estimated at approximately 700 individuals, both part and full time. It is assumed that all processors must be dealers, yet a dealer need not be a processor. Therefore, total dealer employment is expected to be slightly more than 700 individuals.

This final rule will not change current reporting, recordkeeping and other compliance requirements under the FMP. These requirements include qualification criteria for the commercial permits, landing reporting requirements for vessels with commercial permits, and participation in additional data collection programs if selected by NMFS. All of the information elements

required for these requirements 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 commercial 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 \$3.5 million per year. For support industries, the appropriate thresholds are a firm with fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Since none of the reef fish processors meet the SBA employment threshold, it is unlikely that any of the dealers will meet that threshold. Given the profiles presented above, it is determined that all commercial fishing entities and dealers that will be affected by this rule are small business entities. Since all said entities will be potentially affected, it is determined that this rule will 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 do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the commercial fishing, or dealer entities affected by this final rule are considered small entities so the issue of disproportionality does not arise in the present case. The profitability question is do the regulations significantly reduce profit for a substantial number of small entities? This final rule is projected to reduce net revenues by \$760,000 to \$1.09 million for the bottom longline sector. Compared with projected annual net revenue of \$10.7 million for this sector under the status quo (\$66,000 per vessel per year for 161 vessels), the projected net revenue reduction equates to approximately \$4,700–\$6,700, or approximately 7–10 percent, per vessel per year, on average if 2001–2003 costs prevail. If recent cost hikes stimulated by 2005 gas price conditions continue, the projected net revenue reduction is \$729,000 to \$1.02 million, relative to total annual net revenues of \$6.4 million (\$39,800 per vessel). This equates to a reduction of approximately \$4,500–\$6,300, or approximately 11–16 percent, per vessel per year on average.

For the vertical line sector, this final rule is projected to increase net revenues by \$81,000–\$112,000 per year. Compared with projected annual net revenue of \$14.5 million for this sector under the status quo (\$19,000 per vessel per year for 748 vessels), the projected increase in net revenue equates to approximately \$100–\$150 per vessel, or less than a 1-percent increase if 2001–2003 costs prevail. If 2005 cost conditions continue, the vertical line sector is projected to experience a \$30,000–\$36,000 increase in net revenues per year, or still less than 1 percent per vessel.

The trip limit is expected to reduce the adverse, but unquantifiable, economic effects of derby fishing that are expected to develop under the status quo. Although the direct impacts of derby fishing cannot be quantified using current data and models, they are expected to be substantial and are expected to mitigate any losses in fishery net revenue attributed to the rule.

Five alternatives, including the status quo, were considered relative to the rule. The status quo alternative would eliminate the short-term adverse impacts of the rule, but would not address the potential development of a derby fishery and would not, therefore, achieve the Council’s objectives.

The second alternative would establish a step-down trip limit consisting of trip limits of 10,000, 7,500 and 5,500-lb (4,536, 3,402, and 2,495 kg) gutted weight based on target dates and accumulated landing totals. This alternative, while resulting in lower short-term reductions in net revenues than the rule, does not appear to sufficiently constrain commercial landings, as evidenced by 2005 fishery performance and, hence, is not sufficient to lessen derby conditions and reduce the length of the quota closure.

The third alternative would start the commercial trip limit at 7,500-lb (3,402-kg) with step-down to 5,000-lb (2,268-kg). This alternative would potentially reduce the short-term reduction in net revenues of the rule. However, based on preliminary 2005 fishery performance, the starting limit is higher than necessary to counter derby pressure.

The fourth alternative would also start with an initial trip limit of 7,500-lb (3,402-kg) with a step-down to 3,500-lb (1,588-kg). The short-term adverse impacts of this alternative, however, exceed those of the rule.

The fifth alternative would begin the fishery with a 4,000-lb (1,814-kg) trip limit and allow the trip limit to either be increased, decreased, or remain the same depending upon fishery

performance. Although this scenario cannot be fully analyzed due to the absence of a clearly specified variable step decision rule, the initial limit is so low that it is expected to generate excessive negative impacts, particularly on the bottom longline sector.

Copies of the FRFA are available (see ADDRESSES).

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 an 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." As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf reef fish fishery.

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

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

Dated: December 22, 2005.

**James W. Balsiger,**

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

■ For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.44, introductory text and paragraph (g) are revised to read as follows (**Note:** This revision to § 622.44(g) supersedes the amendment to § 622.44(g) published in the temporary rule at 70 FR 48323, August 17, 2005):

#### § 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be

transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

\* \* \* \* \*

(g) *Gulf deep-water and shallow-water grouper, combined.* For vessels operating under the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for Gulf deep-water and shallow-water grouper combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero. (See § 622.42(a)(1)(ii) and (a)(1)(iii) for the species included in the deep-water and shallow-water grouper categories, respectively.)

[FR Doc. 05-24603 Filed 12-23-05; 12:48 pm]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 051104293-5344-02; I.D. 102705B]

**RIN 0648-AT27**

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2006 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2006 Quota Adjustments; 2006 Summer Flounder Quota for Delaware

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2006 summer flounder, scup, and black sea bass fisheries, and makes preliminary adjustments to the 2006 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2006. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for

landing summer flounder in Delaware in 2006. This action also defines the total length measurement for black sea bass and makes changes to the regulations regarding the commercial black sea bass pot/trap fishery. The intent of this action is to establish harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), to reduce bycatch, and to improve the efficiency of the commercial black sea bass fishery.

**DATES:** The 2006 final specifications are effective from January 1, 2006, through December 31, 2006. The amendment to the definition of "Total Length" in § 648.2 is effective January 1, 2006. The amendment to the definition of "Total Length" in § 648.2 is effective January 1, 2006. The amendments to the black sea bass gear restrictions at § 648.144(b)(2) are effective January 1, 2007.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279.

#### SUPPLEMENTARY INFORMATION:

#### Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer