

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 110321211-1234-01]

RIN 0648-BA94

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Grouper Management Measures**

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

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

**SUMMARY:** This proposed temporary rule would replace a temporary rule made effective January 1, 2011, and implement interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This rule would reduce the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), and establish a 2-month recreational season for gag. This rule would also suspend red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as recommended by the Gulf of Mexico Fishery Management Council (Council). The intended effect of this proposed rule is to reduce overfishing of the gag resource in the Gulf.

**DATES:** Written comments must be received on or before May 6, 2011.

**ADDRESSES:** You may submit comments on the proposed rule identified by NOAA-NMFS-2011-0072 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of documents supporting this proposed rule, which include a draft environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 or on the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sf/pdfs/draft\\_EA\\_2011\\_gag\\_interim\\_rule.pdf](http://sero.nmfs.noaa.gov/sf/pdfs/draft_EA_2011_gag_interim_rule.pdf).

**FOR FURTHER INFORMATION CONTACT:**

Peter Hood, telephone: 727-824-5305 or e-mail: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

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

**Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Through Amendment 30B to the FMP and its implementing regulations, which became effective on May 18, 2009 (74 FR 17603, April 16, 2009), the Council and NMFS set the commercial quota for gag at 1.49 million lb (0.68 million kg), and the SWG quota at 7.65 million lb (4.47 million kg). That rule also established annual catch limits and accountability measures for commercial and recreational gag, red grouper and SWG; increased the commercial quota for red grouper; removed the commercial closed season for SWG; established an incidental bycatch allowance trip limit for gag and red grouper; reduced the commercial minimum size limit for red grouper; reduced the gag bag limit and aggregate grouper bag limit; increased the red grouper bag limit; extended the closed season for recreational SWG; eliminated

the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and required that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters.

In 2009, the Southeast Data, Assessment, and Review (SEDAR) process updated the stock assessment for gag. Based on that update assessment, NMFS informed the Council, in a letter dated August 11, 2009, that gag are overfished and undergoing overfishing. In response to the update assessment, the Council began developing Amendment 32 to the FMP, which includes measures to end overfishing of gag and establish a rebuilding plan for the gag stock.

In the course of developing management measures for Amendment 32, the Council and NMFS discovered potential inconsistencies in the commercial and recreational estimates of gag discards, and how these data were used in the update assessment. Therefore, the Council requested NMFS implement interim measures for gag while it reassessed the gag update. Accordingly, NMFS published a temporary rule on December 1, 2010 (75 FR 74650), which became effective January 1, 2011. That temporary rule, effective through May 31, 2011, reduced the commercial quota for gag to 100,000 lb (45,359 kg), reduced the commercial SWG quota to 4.83 million lb (2.19 million kg), suspended red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, and prohibited the recreational harvest of gag.

This proposed temporary rule would replace the existing temporary rule, and is based on the results of the rerun of the update assessment. This rule would (based on the original quotas implemented through Amendment 30B to the FMP) reduce the commercial quota for gag from 1.49 million lb (0.68 million kg) to 430,000 lb (195,045 kg), reduce the commercial SWG quota from 7.65 million lb (3.47 million kg) to 5.16 million lb (2.34 million kg), suspend red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program, and implement a recreational fishing season for gag from September 16 through November 15, with a 2-fish daily bag limit. If implemented, these measures would remain in effect for 180 days, with the possibility of extending them for another 186 days, unless amended by subsequent rulemaking.

In relation to the temporary rule currently in effect, this proposed temporary rule would increase the commercial quota for gag by 330,000 lb (149,685 kg), increase the commercial

SWG quota by 330,000 lb (149,685 kg), continue the suspension of red grouper multi-use shares in the Gulf grouper and tilefish IFQ program, and implement a 2-month recreational fishing season for gag.

#### *Status of Stock*

The rerun of the update assessment for gag was completed by the SEDAR update assessment review panel in December 2010. This rerun assessment addressed the problems the previous assessment had with gag discards, and was reviewed by the Council's Scientific and Statistical Committee (SSC) in January 2011. The rerun of the update assessment indicated the gag stock is still undergoing overfishing.

Based on the results of the rerun assessment, the SSC recommended an acceptable biological catch (ABC) for 2011 of 1.58 million lb (0.72 million kg), which is greater than the ABC recommended by the SSC after the 2009 update assessment. OY for 2011 would be the yield associated with  $F_{OY}$  (the fishing mortality at OY), or 1.28 million lb (0.58 million kg). Given the allocation for gag is 39 percent for the commercial sector and 61 percent for the recreational sector, the commercial and recreational annual catch targets (ACTs) would be reduced to 500,000 lb (226,796 kg) and 780,000 lb (353,802 kg), respectively, from their values implemented through the last Amendment, Amendment 30B to the FMP (74 FR 17603, April 16, 2009).

#### *Grouper and Tilefish IFQ Program*

The commercial sector is currently managed under an IFQ program implemented in January 2010. Under this program, each qualifying fisherman is allocated IFQ shares based on historical participation in the grouper and tilefish component of the Gulf reef fish fishery. To allow for flexibility and to reduce bycatch, at the beginning of each fishing year, a percentage of each fisherman's gag and red grouper allocations are designated as multi-use allocations. The IFQ program designates 4 percent of red grouper allocation and 8 percent of gag allocation to multi-use allocation. Red grouper multi-use allocation may be used to harvest red grouper after all of an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been used or transferred, and to harvest gag after both gag and gag multi-use allocation has been used or transferred. However, the use of all the current red grouper multi-use allocations to harvest gag would account for approximately 40 percent of the proposed gag quota and would likely lead to overfishing of gag.

Accordingly, NMFS proposes to suspend red grouper multi-use allocation in the IFQ program.

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

At its April 2011 meeting, the Council requested that NMFS propose a new temporary rule to replace the existing temporary rule. This request was made after the State of Florida's Fish and Wildlife Conservation Commission (FWC) voted at its April 2011 meeting to adopt compatible regulations with NMFS. This is because the management measures contained in this proposed temporary rule would only meet the reductions needed to reduce overfishing of gag if the State of Florida's FWC adopts compatible regulations in state waters on June 1, 2011.

To account for discard mortality, this temporary rule would reduce the commercial quota for gag to 430,000 lb (195,045 kg), which provides a 14-percent buffer from the 500,000-lb (226,796-kg) ACT. The additional quota of 330,000 lb (149,685 kg) from what fishermen were allocated at the beginning of the fishing year through the temporary rule currently in effect 100,000 lb (45,359 kg), would be released to IFQ participants on the effective date of the temporary rule. IFQ participants would have the opportunity to fish their additional allocation through the rest of the fishing year.

In order to harmonize the commercial quota for SWG with the commercial quota for gag, this proposed rule would set the commercial SWG quota at 5.16 million lb (2.34 million kg).

This temporary rule would also suspend red grouper multi-use allocations to ensure the gag commercial quota is not exceeded. This action does not reduce the overall red grouper allocation, but will prohibit the conversion of red grouper multi-use allocation that could lead to additional gag landings. Red grouper multi-use allocation will be addressed further in Amendment 32 to the FMP.

This temporary rule would establish a recreational gag fishing season from September 16 through November 15, 2011. The needed reductions in gag are between 48 and 62 percent to end overfishing, and between 58 to 69 percent to reduce the harvest consistent with  $F_{OY}$ . The Southeast Regional Office developed a decision model to evaluate different management scenarios. This model allowed the Council to vary season length and evaluate the effects of trip type, effort shifting, size limits, bag limits, release mortality rates, and Florida state regulation compatibility. To end overfishing of gag, the Council

recommended a 2-month fall recreational fishing season, with no change to the bag limit (2 fish daily) or size limit (22 inches (56 cm)). The Council considered other seasons; however, these seasons were either shorter in length, would result in additional dead discards, or did not meet the needed reductions in gag mortality.

#### *Future Action*

NMFS has determined that this proposed temporary rule is necessary to reduce overfishing of gag in the Gulf of Mexico. NMFS will consider all public comments received on this proposed rule in determining whether to proceed with a final rule and, if so, whether any revisions would be appropriate in the final rule. If NMFS issues a final rule, it would be effective for not more than 180 days after publication, as authorized by section 305(c) of the Magnuson-Stevens Act. The final rule could be extended for an additional 186 days, provided that the public has had an opportunity to comment on the rule.

NMFS acknowledges the need to continue monitoring all sources of gag mortality to determine the appropriate level of future actions necessary to ensure progress consistent with the stock rebuilding plan over the long term.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed temporary rule is consistent with the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed temporary 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, for this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and 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 copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

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

of the need for and objectives of this rule, and it is not repeated here.

This proposed temporary rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting 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 combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

This proposed temporary rule is expected to directly affect commercial fishing vessels whose owners possess gag fishing quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper and tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 875 entities specifically received gag shares and an initial allocation of the commercial sector's gag quota in 2010. These 875 entities are expected to be directly affected by the actions to reduce the commercial quota for gag and prohibit the conversion of red grouper allocation to multi-use allocation.

Of the 875 entities that initially received gag shares, 215 were not commercially fishing in 2008 or 2009, and thus had no commercial fishing revenue during these years. On average, these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of gag in 2010, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel with commercial gag fishing quota shares was approximately \$606,000 (2008 dollars).

The average charterboat is estimated to earn approximately \$88,000 (2008 dollars) in annual revenue, while the average headboat is estimated to earn approximately \$461,000 (2008 dollars).

Based on these values, all commercial and for-hire fishing vessels expected to be directly affected by this proposed temporary rule are determined for the purpose of this analysis to be small business entities.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately \$50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of snapper, mackerel, dolphin, and wahoo landings. On average, in 2010, these vessels received an initial allocation of 540 lb (245 kg) of gag quota.

The remaining 521 commercially active fishing vessels did have landings of gag in 2008 or 2009. Over that 2-year period, these vessels averaged approximately \$71,000 (2008 dollars) in annual gross revenue from commercial fishing. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009, respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat, though not significantly, dependent on revenue from gag landings. These vessels' average initial gag allocation in 2010 was 2,121 lb (964 kg). Therefore, on average, their 2008 gag landings were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately \$156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings decreased from approximately \$15,900 to \$8,400 in 2009, and thus they became relatively less dependent on gag landings. These vessels, however, are highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009, respectively. Revenue from deep-water grouper (DWG) landings decreased only slightly, from approximately \$36,000 in 2008 to \$31,000 in 2009, and thus these vessels became relatively more dependent on revenue from DWG landings. Their average initial 2010 allocation of gag was approximately 5,507 lb (2,503 kg), while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009, respectively. Thus, vessels that now have a bottom longline endorsement have been

harvesting well below that allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the exclusive economic zone (EEZ) by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to 1 year after expiration. Because of the extended permit renewal period, numerous permits may be expired but still renewable at any given time of the year during the renewal period after the permit's expiration. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that state; however, vessels would be subject to any applicable state permitting requirements. Although the permit does not distinguish between headboats and charter vessels, it is estimated that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Given that nearly 99 percent of target effort for gag and 97 percent of the economic impacts from the recreational sector for gag in the Gulf reef fish fishery are in west Florida, it is assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) in Florida are expected to be directly affected by the proposed action to establish a recreational gag fishing season of September 16, 2011 through November 15, 2011.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn profit from commercial fishing in those 2 years. The action to decrease the commercial quota for gag from 1.49 million lb (0.68 million kg) to 0.43 million lb (0.20 million kg) would reduce these vessels' average allocation of gag in 2011 from 952 lb (433 kg) to 275 lb (125 kg), or by approximately 677 lb (308 kg). Using the average 2008 price of \$3.52 per pound, this loss in allocation could potentially represent a loss of nearly \$2,400 (2008 dollars) in gross revenue per entity. Using the 2010 average price of \$1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of \$670 (2008 dollars) in net revenue per entity.

For eight of these 215 entities that also possess longline endorsements, their average allocation of gag in 2011 would be reduced from 3,418 lb (1,554 kg) to 987 lb (449 kg), or by 2,431 lb (1,105 kg). Thus, their potential loss in gross revenue and net revenue, estimated to be nearly \$8,600 and \$2,500 (2008 dollars), respectively, are expected to be somewhat higher.

However, in general, these potential losses in gross revenue and net revenue would only be realized if these 215 entities not only become active in commercial fishing, but also specifically intend to harvest gag in 2011 at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings, and thus gross revenue, if these entities intend to harvest at levels above their reduced allocation. Alternatively, these losses in gross and net revenue could be due to these entities' inability to sell the allocations they are losing under the proposed action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of these potential losses in gross and net revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue, net revenue, and profits from commercial fishing in general and specifically for gag.

Similarly, the 139 entities with gag shares that participated in commercial fisheries other than gag earned approximately \$50,800 in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, because they did not have any gag landings, none of their gross revenue and thus none of their potential profits were the result of gag harvests. Under the proposed action, their average allocation of gag in 2011 would be reduced from 588 lb (267 kg) to 170 lb (77 kg), or by 418 lb (190 kg). Using the average 2008 price of \$3.52 per pound, this loss in allocation could potentially represent a loss of nearly \$1,500 (2008 dollars) in gross revenue per entity. Using the 2010 average price of \$1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of approximately \$410 (2008 dollars) in net revenue per entity.

However, these potential losses in gross and net revenue could only lead to a loss in profits if these 139 entities intend to commercially harvest gag in 2011 at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings if these entities intend to harvest at levels above their reduced allocation. Thus, for example, if these

vessels intended to harvest gag in 2011 at a level equivalent to their 2011 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately 3 percent in gross revenue, which could in turn reduce net revenue and profits. Alternatively, losses in gross and net revenue could be due to these entities' inability to sell the allocations being lost under the proposed action, though this possibility presumes that a demand for these allocations exists.

The 521 entities with gag shares that commercially harvested gag in 2008 or 2009 earned approximately \$71,000 (2008 dollars) in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat but not significantly dependent on revenue from gag landings. Under the proposed action, these vessels' gag allocations would be reduced from 2,310 lb (1,050 kg) to 667 lb (303 kg), or 1,643 lb (747 kg) on average. As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of \$3.52 per pound, it is estimated that these vessels could lose nearly \$5,800 (2008 dollars), or approximately 8 percent, in annual gross revenue on average. Using the 2010 average price of \$1.00 per pound of gag allocation, under the proposed temporary rule these vessels would lose approximately \$1,600 (2008 dollars) in net revenue per entity. Since net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

However, 52 of these 521 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual gross revenue was approximately \$156,000 (2008 dollars) in 2008 and 2009, with gag landings accounting for approximately 8 percent of that gross revenue. These vessels are highly dependent on revenue from red grouper rather than gag landings. Under the proposed action, their allocation of gag in 2011 would decrease from 6,215 lb (2,825 kg) to 1,953 lb (888 kg), or by 4,262 lb (1,937 kg). As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent

reduction in gag landings and therefore gross revenue. Using the average 2008 price of \$3.52 per pound, it is estimated that these vessels could lose \$15,000 (2008 dollars), or nearly 10 percent, in annual gross revenue on average. Using the 2010 average price of \$1.00 per pound of gag allocation, these vessels would lose approximately \$4,200 (2008 dollars) in net revenue per entity. Since net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

No additional economic effects would be expected to result from the revised SWG quota because the updated SWG quota simply reflects the reduction in the commercial gag quota, the effects of which have already been discussed.

Under the action to suspend the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag, minimal adverse economic effects are expected as a result of commercial fishing entities not being allowed to convert 4 percent of their red grouper allocation into multi-use allocation. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. As a result of the proposed reduction in the commercial gag quota, it is likely these entities will exhaust their gag and gag multi-use allocations relatively quickly. Gross revenue from gag landings is greater than gross revenue from an equivalent amount of red grouper landings, since gag commands a relatively higher market price. Thus, gross revenue from commercial fishing revenue and, therefore, profit per vessel could be slightly less than if the multi-use conversion were allowed to continue.

Net operating revenues (NOR) are assumed to be representative of profit for for-hire vessels. It is assumed that 823 for-hire vessels, 780 charter vessels, and 43 headboats, participate in the recreational gag component of the Gulf reef fish fishery. Estimates of NOR from recreational fisheries other than gag, and thus across all fisheries in which these charter vessels and headboats participate, are not currently available. However, on average, NOR for charter vessels from trips targeting gag are estimated to be approximately \$1.56 million per year, while NOR for headboats from trips targeting gag are estimated to be \$91,300 per year. NOR for all trips targeting gag are estimated to be approximately \$1.65 million per year. The average annual NOR from trips targeting gag are estimated to be

\$2,000 per charter vessel and \$2,124 per headboat.

When the length of the recreational gag season is reduced and the daily bag limit for gag set at zero, some trips that formerly targeted gag will instead target other species, while other trips that formerly targeted gag will be cancelled. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from trips cancelled as a result of the shortened season length. Information regarding the number of trips cancelled as a result of the shortened season is not currently available. Thus, this analysis assumes all of the current for-hire trips targeting gag will be cancelled when the recreational sector is closed. Because some of these trips would probably not be cancelled, this assumption is expected to overestimate the actual reduction in NOR associated with a shorter season. Thus, the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

Under the proposed action to establish a recreational gag fishing season of September 16, 2011–November 15, 2011, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately \$435,000 and \$28,000, respectively, and thus NOR for all trips targeting gag is estimated to be approximately \$463,000 if this proposed temporary rule is not extended for up to 186 days as allowed under the Magnuson-Stevens Act for interim measures. The losses in NOR from trips targeting gag are estimated to be \$560 and \$660 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 28 percent and 31 percent per charter vessel and headboat, respectively. However, if this proposed temporary rule is extended, the losses in NOR for charter vessels and headboats are estimated to be approximately \$1.41 million and \$81,800, respectively. Thus, the losses in NOR are estimated to be \$1,808 and \$1,902 per charter vessel and headboat, respectively. These losses in NOR represent a loss in profit from trips targeting gag of approximately 75 percent and 65 percent per charter vessel and headboat, respectively.

This proposed action is not expected to affect profit from trips not targeting gag for charter vessels and headboats. For-hire vessel dependence on fishing for individual species cannot be determined with available data. Although some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels,

overall, about three percent of for-hire anglers are estimated to target gag. As a result, while the action would be expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips nor would they, by extension, be expected to account for a substantial portion of total for-hire NOR.

Two alternatives, including the status quo, were considered for the action to set the gag commercial quota at 430,000 lb (0.20 million kg). The first alternative, the status quo, would have maintained the gag commercial quota at 1.49 million lb (0.68 million kg). This alternative is not consistent with the goals and objectives of the Council's plan to manage gag to achieve the mandates of the Magnuson-Stevens Act. Specifically, selection of this alternative would be inconsistent with current National Standard 1 guidance because the commercial quota would be above the commercial ACT of 500,000 lb (226,796 kg), which is based on the Council's defined F<sub>OY</sub> yield of 1.28 million lb (0.58 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would have set the gag commercial quota at 100,000 lbs (45,539 kg). This alternative is based on the request made by the Council in August 2010 for the interim rule that published December 1, 2010, and reflects the uncertainty in the stock status at that time due to questions regarding how commercial and recreational discards were treated in the assessment update. When this commercial quota was recommended, it was unknown how revisions to the treatment of discards might influence the rerun of the updated stock assessment. If the rerun of the updated assessment yielded a more pessimistic condition of the stock, then setting the harvest based on the F<sub>OY</sub> yield, estimated then at 390,000 lb (177,273 kg), would not reduce overfishing sufficiently to allow the stock to begin to recover within the maximum time frame allowed under the Magnuson-Stevens Act. The 100,000 lb (45,539 kg) commercial quota was recommended because some gag are expected to be incidentally caught by the commercial sector while fishing for other species. Further, most discarded gag die after being released due to the high discard mortality rate associated with fishing at deeper depths. Rather than waste all of these fish, the Council set the quota at a level that would allow some fish to be retained and thus would also be counted towards the commercial quota.

As of March 2, 2011, over 65 percent of the gag IFQ shareholders have less than 50 lb (23 kg) in allocation still available to them. Thus, if the commercial quota is not set at a level above 100,000 lb (45,539 kg), commercially caught gag would likely be lost through dead discards rather than kept and counted towards the commercial quota as fishermen run out of allocation. However, the rerun of the updated assessment showed a slight increase in the projected yields under the F<sub>OY</sub> if the State of Florida adopted compatible regulations for the recreational sector. Because the State of Florida has adopted compatible regulations for the recreational sector, a higher commercial quota is allowable.

One alternative was considered for the action to suspend the ability of allocation holders to convert red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. This alternative would continue to allow 4 percent of the red grouper allocation to be converted into multi-use allocation. This alternative is expected to result in gag harvests that would exceed specified annual catch limits, promote overfishing, and therefore, slow recovery of the stock, contrary to the Council's objectives. Further, this alternative is also expected to result in greater adverse economic effects stemming from the corrective measures that would be implemented to address the over-harvesting of gag.

Three alternatives, including the status quo, were considered for the action to establish a recreational fishing season for gag of September 16, 2011, through November 15, 2011. The first alternative, the status quo, would maintain the recreational ACT at 2.20 million lb (1 million kg) and anglers would be able to harvest the 2-fish daily bag limit for gag starting June 1, 2011. Depending on whether 2006–08 or 2009 is used as the baseline, the estimated reduction in removals under this alternative would be between 15 percent and 20 percent, which is insufficient to allow the stock to rebuild, and would be inconsistent with the stock rebuilding plan being developed by the Council. In addition, this alternative is inconsistent with the Magnuson-Stevens Act and current National Standard 1 guidance because the expected level of harvest would be above the recreational annual catch target of 780,000 lb (353,802 kg), which is based on the Council's defined F<sub>OY</sub> yield of 1.28 million lb (0.58 million kg) for 2011. Further, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero and thereby prohibit the recreational harvest of gag. When the Council requested the current temporary rule, it intended to allow some recreational harvest of gag in 2011 and establish that level of harvest under the long-term management measures being developed in Amendment 32. However, because the rerun of the updated assessment was not completed and reviewed until January 2011, there is insufficient time to implement measures from Amendment 32 early enough in 2011 to meet the Council's intent.

The second alternative is the most conservative alternative. This alternative would reduce fishing mortality the most out of all the considered alternatives and therefore generate the greatest biological benefits to the gag stock. Although this alternative would not allow the recreational harvest of gag while the proposed interim rule is in effect, the number of dead discards would be reduced because no recreational fishing trips would be expected to target or be directed at gag. Because Florida adopted compatible regulations, this alternative would reduce the harvest sufficiently in 2011 to be consistent with the Council's rebuilding plan in Amendment 30B, as it would reduce removals between 58 percent and 67 percent and, as such, end overfishing. If Florida had not adopted compatible regulations, the estimated reduction in removals would be between 43 percent and 61 percent, which would reduce but might not be sufficient to end overfishing.

The third alternative would establish a recreational fishing season for gag of July 1, 2011, through August 15, 2011, and thus would allow for some recreational harvest of gag in 2011 as the Council intended when it requested the current interim rule. This alternative would establish a 46-day recreational fishing season, which is less than the 61-day season under the proposed action. This alternative also minimally overlaps with the red snapper season, which begins on June 1. This alternative would provide for-hire vessels with a greater number of options when marketing summer trips. The expected reduction in removals under this alternative is between 49 percent and 60 percent, and therefore might be sufficient to end overfishing.

The Council heard public testimony regarding potential recreational seasons for gag at its February 2011 meeting. Participants in the recreational sector asked for either a summer or winter season depending on their geographic location. In general, recreational

participants from Texas, southwest Florida, and central Florida favored a winter season, while recreational participants from other areas of the Gulf favored a summer season. In looking for a compromise, the Council recommended the proposed recreational season with no changes to the bag limit or size limit. The proposed recreational season would cover the end of the summer recreational fishing season and run through the beginning of the winter recreational fishing season. In addition, the estimated reductions in removals under the proposed recreational season are between 50 percent and 54 percent, which might be sufficient to end overfishing.

This proposed temporary rule does not establish any new reporting, record-keeping, or other compliance requirements.

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

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

Dated: April 18, 2011.  
**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for Regulatory Programs, 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.*

**§ 622.20 [Amended]**

2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.

3. In § 622.34, paragraph (v) is removed and reserved and paragraph (w) is added to read as follows:

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

\* \* \* \* \*

(w) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through September 15 and November 16 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

4. In § 622.42, paragraphs (a)(1)(iii)(A)(3) and (a)(1)(iii)(B)(3) are suspended and paragraphs (a)(1)(iii)(A)(4) and (a)(1)(iii)(B)(4) are added to read as follows:

**§ 622.42 Quotas.**

- (a) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*
- (A) \* \* \*

(4) For fishing year 2011 and subsequent fishing years—5.16 million lb (2.34 million kg).

- (B) \* \* \*

(4) For fishing year 2011 and subsequent fishing years—430,000 lb (195,045 kg).

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 110222150-1152-02]

**RIN 0648-BA92**

**Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Scup Specifications; Fishing Year 2011**

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

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

**SUMMARY:** NMFS proposes two actions in this rulemaking: An increase to the previously implemented scup commercial and recreational landing allowances for 2011 (specifications) and management measures for the 2011 summer flounder, scup, and black sea bass recreational fisheries. Inclusion of the proposed scup specification increase in this rulemaking is necessary to provide an opportunity for the public to comment on the revised recommendation from the Mid-Atlantic Fishery Management Council (Council) to increase the commercial and recreational scup landing allowances for 2011. The recreational management measures are necessary to comply with the implementing regulations for these fisheries which require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of the scup increase is to permit greater commercial and recreational harvest opportunity while preventing overfishing on the scup stock. Recreational management measures are