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List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: February 4, 2004.

Thomas V. Skinner,

Regional Administrator, Region V.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043-4043-01; I.D. 122303G]

RIN 0648-AP95

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Rebuilding Plan

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 Secretarial Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Secretarial Amendment 1), which was prepared by the Secretary of Commerce and the Gulf of Mexico Fishery Management Council (Council)

pursuant to the rebuilding requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would establish a quota for red grouper, provide for closure of the entire shallow-water grouper fishery when either the shallow-water grouper quota or the red grouper quota is reached, establish a bag limit of two red grouper per person per day, reduce the shallow-water grouper quota, reduce the deep-water grouper quota, and establish a quota for tilefishes. In addition, for red grouper in the Gulf of Mexico, Secretarial Amendment 1 would establish a 10-year stock rebuilding plan, biological reference points, and stock status determination criteria consistent with the requirements of the Magnuson-Stevens Act. The intended effect of this proposed rule is to end overfishing and rebuild the red grouper resource.

DATES: Comments must be received no later than 5 p.m., eastern time, on April 20, 2004.

ADDRESSES: Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-570-5583. Comments on this rule may be submitted by e-mail. The mailbox address for providing e-mail comments is 0648-AP95.Proposed@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: 0648-AP95.

Copies of documents supporting this proposed rule, which include an environmental assessment, a fishery impact statement, a social impact statement, a regulatory impact review (RIR), and an initial regulatory flexibility act analysis (IRFA) are available from the NMFS address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Phil.Steele@noaa.gov.

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

Background

In October 2000, NMFS declared the Gulf of Mexico stock of red grouper to be overfished and undergoing overfishing. This determination was based on the results of a 1999 red

grouper stock assessment and subsequent analysis by the NMFS Southeast Fisheries Science Center and the Council's Reef Fish Stock Assessment Panel. Subsequently, a 2002 stock assessment found that the stock, although still undergoing overfishing, is in an improved condition and is no longer overfished. However, the stock has not yet reached the biomass level that is capable of producing MSY on a continuing basis (B_{MSY}). Therefore, measures to end overfishing and a rebuilding plan to restore the stock to the B_{MSY} level in 10 years or less are still necessary.

Secretarial Amendment 1 and this proposed rule contain measures for red grouper that are designed to end overfishing, establish biological reference points and stock status determination criteria, and initiate implementation of the rebuilding plan in a manner that allocates the necessary restrictions fairly and equitably between the recreational and commercial sectors of the fishery, consistent with the requirements of the Magnuson-Stevens Act. Because the reef fish fishery is a multi-species fishery in which fishers can easily redirect fishing effort to other reef fish species, additional measures, applicable to other closely associated shallow-water and deep-water groupers and tilefishes, are provided to minimize any potential negative impacts on those stocks as a result of a possible shift of fishing effort from red grouper to those species.

Biological Reference Points and Stock Status Determination Criteria

Consistent with the requirements of the Magnuson-Stevens Act, Secretarial Amendment 1 would establish the following biological reference points and stock status determination criteria for Gulf of Mexico red grouper maximum sustainable yield (MSY); optimum yield (OY); maximum fishing mortality threshold (MFMT) (the fishing mortality rate which, if exceeded, constitutes overfishing); and minimum stock size threshold (MSST) (the stock size below which the stock would be considered overfished).

$MSY = 7.560$ million lb (3.429 million kg).

OY = The yield obtained from a fishing mortality rate equal to 75 percent of F_{MSY} . OY is currently estimated to be 7.385 million lb (3.350 million kg) gutted weight, based on an F_{MSY} of 0.306.

MFMT = F_{MSY} (currently estimated at 0.306), or the fishing mortality consistent with recovery to MSY in no more than 10 years.

MSST = 80 percent of B_{MSY} ; currently estimated to be 672 metric tons of mature female gonad weight, based upon a B_{MSY} of 840 metric tons of mature female gonad weight.

Stock Rebuilding Plan

Secretarial Amendment 1 would establish a 10-year red grouper rebuilding plan, structured in 3-year intervals, that would end overfishing and rebuild the stock to MSY. Measures to implement the plan are designed to allocate the required reductions equitably between the commercial and recreational sectors. The 3-year intervals are intended to provide short-term stability for the management and operation of the fishery, correlate more closely with the timing of future stock assessments, and provide a more reasonable time period for assessing the impacts of prior management actions. The appropriate parameters for subsequent 3-year intervals, consistent with the overall objectives of the rebuilding plan, would be determined based upon the most recent stock assessments.

Initial (2004–2006) Implementation of the Rebuilding Plan

Based on the results of the latest (2002) red grouper stock assessment, a reduction of approximately 9.4 percent in overall red grouper harvest is necessary to end overfishing and initiate stock rebuilding during the first 3-year interval of the 10-year rebuilding plan. The following measures are designed to achieve that reduction fairly and equitably within both the commercial and recreational sectors.

Measures Applicable to the Commercial Red Grouper Fishery

This proposed rule would establish a commercial red grouper quota of 5.31 million lb (2.41 million kg) gutted weight. This would achieve a 9.4-percent reduction from the average commercial harvest during the baseline period, 1999–2001.

In addition, the provisions for closure of the shallow-water grouper fishery would be modified. Red grouper are included in the existing shallow-water grouper quota but under this proposed rule would also be subject to a separate red grouper quota. If the red grouper quota was reached and that fishery closed, it is likely that incidental catch and mortality of red grouper would continue until the shallow-water grouper quota was reached and that fishery was closed. To avoid that potential adverse impact, this proposed rule would require closure of the entire shallow-water grouper fishery when

either the red grouper or shallow-water grouper quotas are reached.

Measures Applicable to the Recreational Red Grouper Fishery

This proposed rule would establish a 2-fish recreational red grouper bag limit within the existing 5-fish aggregate grouper bag limit (which applies to all grouper combined, excluding goliath grouper and Nassau grouper). Therefore, a recreational angler would be restricted to the bag limit of five grouper, no more than two of which could be red grouper. The 2-fish red grouper bag limit would achieve approximately a 9-percent reduction relative to average recreational harvest during the baseline period, 1999–2001. Although this is slightly less than the target 9.4-percent reduction, it is the closest approximation that could be achieved via the preferred bag limit approach. This minor variation is not expected to have a significant biological impact given that the recreational sector accounts for only about 19 percent of red grouper harvest.

Measures to Address Potential Effort Shift in the Reef Fish Fishery

There are management measures currently in place to control fishing mortality on most of the major reef fish species, e.g., shallow-water and deep-water grouper quotas. Because fishing effort within the reef fish fishery is readily transferable to most reef fish species and because this proposed rule would reduce the allowable harvest of red grouper, additional measures are necessary to ensure that potential effort shift does not adversely affect other reef fish species.

This proposed rule would reduce the shallow-water grouper quota from 9.35 million lb (4.24 million kg) gutted weight, which is equivalent to 9.8 million lb (4.45 million kg) whole weight, to 8.80 million lb (3.99 million kg) gutted weight. This would reduce the shallow-water grouper quota consistent with the reduction in the allowable red grouper harvest, i.e., a reduction of about 0.55 million lb (0.25 million kg). Although red grouper would have a separate quota under this proposed rule, red grouper is also a component of the shallow-water grouper quota. Reducing the shallow-water grouper quota to reflect the reduction in the allowable harvest of red grouper should minimize the potential for any shift of fishing mortality to other shallow-water grouper species. The shallow-water grouper quota includes all groupers other than deep-water groupers, goliath grouper, and Nassau grouper.

Similarly, to guard against effort shift into the deep-water grouper fishery, this proposed rule would reduce the deep-water grouper quota from 1.35 million lb (0.61 million kg), equivalent to 1.60 million lb (0.73 million kg) whole weight, to 1.02 million lb (0.46 million kg) gutted weight. This reduction is intended primarily to address concern that effort shift from the proposed reductions in allowable red grouper and shallow-water grouper harvest could adversely impact yellowedge grouper, the primary component of the deep-water fishery. The reduction is intended to ensure that harvest of yellowedge grouper does not exceed the level recommended by the Reef Fish Stock Assessment Panel, 840,000 lb (381,018 kg), the average harvest level during 1986–2001. Deep-water groupers include speckled hind; yellowedge, misty, Warsaw, and snowy groupers; and scamp after the shallow-water grouper quota is reached.

Finally, this proposed rule would also establish a quota of 0.44 million lb (0.20 million kg), gutted weight, for all tilefishes in the reef fish management unit, combined (tilefish, goldface tilefish, blackline tilefish, anchor tilefish, and blueline tilefish). This quota is equal to the average annual harvest during 1996–2000 and would prevent increases in fishing mortality until additional information is available to improve the evaluation of the status of those stocks.

These actions represent a precautionary approach designed to reduce the probability that a shift in effort from red grouper to other reef fish species would result in an unintended and inappropriate increase in fishing mortality on other reef fish species, some of which are at or near maximum desirable fishing mortality levels.

Classification

At this time, NMFS has not determined whether Secretarial Amendment 1, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Secretarial Amendment 1.

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

NMFS prepared an IRFA that 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.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would establish red grouper biological reference points and stock status criteria; adopt a 10-year red grouper rebuilding plan based on a 3-year interval rebuilding strategy that would include a 9.4 percent reduction in total red grouper harvests for the first 3-year interval; adjust the shallow-water grouper quota by an amount equal to the reduction in the red grouper quota; set the recreational bag limit at two red grouper out of the five aggregate grouper bag limit per person; close the commercial shallow-water grouper fishery when the commercial red grouper quota or the shallow-water grouper quota is reached, whichever comes first; and establish deep-water grouper and tilefish quotas.

The primary objective of the proposed rule is to optimize the net benefits to the Nation of the shallow-water grouper stocks by rebuilding the red grouper component to a stock level capable of supporting optimum yield.

The proposed rule contains no changes in record-keeping or compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule would impact both the commercial and recreational participants that traditionally harvest shallow-water grouper species and dealers who receive these species from commercial harvesters.

There are currently approximately 1,204 active commercial reef fish permits and an unknown number of other permits in the process of being renewed. Examination of 2000 logbook data showed that of vessels with commercial reef fish permits, 782 vessels in Florida and 207 in other Gulf states landed reef fish with vertical line gear in 2000. An additional 155 vessels in Florida and 33 in other Gulf states were identified as having landed reef fish using longline gear in 2000. Furthermore, 55 vessels, all in Florida, reported landing reef fish using fish traps. For all vessels landing reef fish, a total of 546 vessels participate in the shallow-water grouper fishery on a consistent basis. Of these vessels, 138 used longline gear, 353 used vertical line gear, and 55 used fish traps. Within the commercial red grouper fishery, longline gear accounted for 59 percent of landings, handline gear accounted for 24 percent, and fish traps accounted for 16 percent. The corresponding percentages for the commercial gag are:

25 percent for longline gear, 73 percent for handline gear, and 2 percent for fish traps. Other gear types account for a minuscule portion of the commercial landings of these species. These are the two most significant species in the shallow-water grouper fishery. The measures proposed in this rule would directly or indirectly affect all these vessels.

Although the proposed rule would directly or indirectly affect all commercial vessels that participate in the fishery, the impacts would affect vessels that operate in the eastern Gulf (Florida) more significantly because the bulk of the grouper fishery is in this area. Among the Florida vessels, the longline vessels would bear most of the cost of the proposed measures, particularly with respect to red grouper. High-volume vertical line and fish trap vessels would also bear a disproportionate share of the burden. Estimates of gross annual receipts per vessel for vessels in the reef fish fishery are as follows: \$67,979 for high-volume vessels using vertical line gear in the eastern Gulf; \$24,588 for low-volume vessels using vertical line gear in the eastern Gulf; \$116,989 for high-volume vessels using bottom longline gear gulfwide; \$87,635 for low-volume vessels using bottom longline gear gulfwide; \$93,426 for high-volume vessels using fish traps (Florida only); and \$86,039 for low-volume vessels using fish traps (Florida only). Estimates of net annual income per vessel (defined as gross receipts less routine trip costs) for vessels in the reef fish fishery are as follows: \$23,822 for high-volume vessels using vertical line gear in the eastern Gulf; \$4,479 for low-volume vessels using vertical line gear in the eastern Gulf; \$25,452 for high-volume vessels using bottom longline gear gulfwide; \$14,978 for low-volume vessels using bottom longline gear gulfwide; \$19,409 for high-volume vessels using fish traps (Florida only); and \$21,025 for low-volume vessels using fish traps (Florida only).

The proposed rule would also affect fish dealers that receive groupers by way of purchase, barter, or trade. About 431 dealers located in the five Gulf states receive groupers. Of this total, approximately 87 dealers located in Florida would be most directly affected by the proposed rule. Of these 87 dealers, approximately 54 dealers generally receive less than 10,000 lb (4,536 kg) of grouper per year while 11 dealers generally receive more than 80,000 lb (36,287 kg) of grouper per year. Among the longline vessels operating in the fishery, more vessels reported sales to dealers in Madiera

Beach (54 vessels) and St. Petersburg (34 vessels) than any other locations. Information on the average number of employees per reef fish dealer is not known. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast has been 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. Further, processing is a much more labor intensive exercise than dealing, therefore requiring greater employment. Therefore, it is assumed that total dealer employment is less than 700 individuals.

The proposed measures for the recreational sector would also affect all for-hire vessels that operate in the reef fish fishery. As of July 2003, a total of 1,377 reef fish permits had been issued to the recreational for-hire sector, which includes both charter boats and headboats. Similar to the situation with the commercial sector, most of the effects would be borne by those for-hire vessels that operate in Florida. This number, however, cannot be determined with certainty since the registration address does not necessarily indicate the area of operation. Further, identifying the number of vessels dependent upon shallow-water grouper species is not possible given available data. Based on fees, number of passengers, and number of trips, average annual receipts are estimated at \$68,000 for charter vessels and \$324,000 for headboats. Major activity centers for charter boats in Florida are Naples, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, Pensacola, and the Florida Keys. The major activity centers for headboats are Clearwater, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, and the Florida Keys. Keys vessels, however, depend more on king mackerel, billfish, and dolphin than grouper species. Additional impacts from the alternatives proposed in this amendment would be borne by the extended communities at the activity centers and the businesses therein. However, these entities cannot be quantified due to lack of sufficient data.

The Small Business Administration (SBA) considers a commercial fishing business to be a small business entity if the business is independently owned and operated, is not dominant in its field of operation, and has receipts of up to \$3.5 million annually. The benchmark for a small business in the for-hire fishery is a firm with receipts of up to \$6 million per year. The SBA benchmark for a fish dealer or

processing facility is a business with fewer than 500 employees. Given the revenue and employment information provided above, all the business entities potentially affected by the proposed rule are considered small entities.

The proposed biological reference points and stock status criteria would not directly affect fishery behavior and, thus, would not produce any direct economic impacts. The proposed quota reductions and associated quota closure for the commercial shallow-water grouper fishery are expected to take effect by mid-November of the first year of implementation. This quota closure is estimated to reduce annual net revenues by 11 percent for longline vessels, 4 percent for vertical line vessels, and 5 percent for fish trap vessels. If vessels can successfully increase their landings and revenues more than their costs by increasing their number of trips, net income losses due to the quota closure provision can be partially offset. However, this would cause the quota to be reached faster every year, inducing a derby that may eventually result in decreases in ex-vessel prices and further erode vessel profits. The proposed quotas for tilefish and deep-water groupers match the historical commercial harvests for the species so that these particular measures are not expected to reduce the profits of commercial vessels.

The proposed red grouper bag limit is not expected to substantially affect the revenues of for-hire vessels, although trip cancellations by recreational anglers may occur as a result of the change. However, only 5 percent of charter vessels operating off the Florida Gulf coast have reported targeting one species, while 36 percent reported targeting three or fewer species, and 90 percent reported targeting eight or fewer species. About 29 percent of charter vessels have reported not targeting specific species. None of the headboats in the Florida Gulf target only one species, 60 percent target four or less species, and 41 percent do not target specific species. Since the proposed bag limit change is specific to red groupers and, therefore, other species may still be targeted or caught, trip cancellations as a result of the red grouper bag limit reduction are expected to be relatively few. Fishing trip costs of for-hire vessels are also not likely to increase, since these vessels are expected to continue to fish in the same areas they traditionally fish. Total effects of the proposed rule on the net revenue or profit for the for-hire vessels in Florida, however, cannot be determined with certainty.

The profit profile for dealers is not known. The projected reduction in ex-

vessel sales (\$2.248 million) as a result of the proposed rule equals approximately 11.5 percent of total shallow-water grouper revenues. It is unlikely, however, that any dealer with substantial business operations would be wholly dependent upon harvests of shallow-water grouper. Thus, dealer business failure as a result of quota reductions is not expected to be substantial.

Three alternatives, including the no action alternative, were considered relative to the proposed specification of red grouper maximum sustainable yield. The proposed alternative would establish red grouper maximum sustainable yield as a range whereas each of the two additional action alternatives specify the reference points alternately as the lower and upper bounds of the proposed range. Since specification of the maximum sustainable yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation and would not directly affect fishery behavior, the proposed alternative was selected as best accounting for the uncertainty associated with the spawner-recruit relationship for this species.

Three alternatives, including the no action alternative, were considered relative to the proposed specification of red grouper minimum stock size threshold. Since specification of the minimum stock size threshold is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the minimum stock size threshold than the proposed threshold, while another would establish a less conservative threshold. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation and would not directly affect fishery behavior, the proposed alternative was selected because it follows the recommendations of the NMFS Technical Guidance.

Four alternatives, including the status quo alternative, were considered relative to the proposed specification of red grouper maximum fishing mortality rate. One alternative would establish a more conservative specification of the maximum fishing mortality rate, while the other three alternatives would

establish a less conservative threshold. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation, the proposed alternative was selected because it follows the recommendations of the NMFS Technical Guidance.

Three alternatives, including the no action alternative, were considered relative to the proposed specification of red grouper optimum yield. Since specification of the optimum yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the threshold, while another would establish a less conservative threshold. Although no economic impacts are expected to accrue to either the proposed or alternative specifications, since they merely serve as reference points for stock and fishery evaluation, the proposed alternative was selected because it follows the recommendations of the NMFS Technical Guidance.

Five alternatives, including the no action alternative, were considered relative to the proposed red grouper rebuilding plan. Since specification of a rebuilding plan is a required component of a fishery management plan for a resource that has been identified as overfished, the no-action alternative is not a viable alternative. Three alternatives would establish the same recovery period, 10 years, but specify different annual allowable biological catches. One of these alternatives would allow a higher initial catch than the proposed alternative, thereby inducing lower short-term adverse impacts than the proposed alternative. This alternative would not, however, require mandatory evaluations of the allowable biological catch every 3 years, as the proposed alternative would, and may not allow harvests to increase during the recovery period, as the proposed alternative would. Thus, this alternative may result in increased costs over the recovery period relative to the proposed alternative. The two alternatives that would establish lower catches than the proposed alternative would result in increased adverse impacts relative to the proposed alternative. An additional alternative would establish a shorter recovery period than the proposed alternative, requiring lower harvest levels, thereby accelerating the recovery schedule but at greater short-term adverse economic impacts. The proposed alternative, therefore, best accomplishes NMFS' objectives while minimizing adverse economic impacts.

Three alternatives, including the no action alternative, were considered relative to the proposed reduction in the shallow-water grouper quota by an amount equal to the reduction in the red grouper total allowable catch. Two alternatives would reduce the shallow-water grouper quota by amounts greater than the proposed alternative and would not, therefore, decrease the adverse impacts of the proposed rule. The no action alternative could lead to greater mortality of red grouper as a result of catch and release mortality, therefore jeopardizing the recovery of the species.

Five alternatives, including the proposed alternative and the no-action alternative, were considered relative to commercial quota closure. The no-action alternative would close the commercial fishery for shallow-water grouper when the aggregate quota is reached. This would result in less adverse economic impacts than the proposed alternative but would result in excessive red grouper mortality if the red grouper quota is reached before the shallow-water grouper quota is met. One alternative would close the commercial red grouper fishery when this quota is reached, but allow the fishery for other shallow-water grouper species to continue until the aggregate quota is reached. While this alternative would result in less short-term adverse economic impacts than the proposed alternative, red grouper would continue to be caught as a bycatch species, thereby resulting in total red grouper mortality exceeding the quota. In addition to closing the commercial red grouper fishery, another alternative would close fishing for all shallow-water grouper species in certain areas of the Gulf when the red grouper quota is met. Multiple area closure options were considered, up to and including closure of the entire Gulf, which would match the proposed alternative. For those options that are not Gulf-wide, the resultant short-term adverse impacts would be less than those of the proposed alternative. These options would potentially allow, however, excessive mortality of red grouper since red grouper would continue to be caught as bycatch. The final alternative would allow continued red grouper harvest if the red grouper allocation has not been met when the shallow-water grouper aggregate quota has been achieved. This alternative, however, would result in the shallow-water grouper aggregate quota being exceeded. Since these other alternatives would result in either excessive red grouper or excessive total shallow-water grouper

mortality, only the proposed alternative is consistent with the NMFS' objectives.

Four alternatives, including the proposed alternative, were considered relative to fixed shallow-water grouper closed seasons. The proposed alternative is the status quo February 15 through March 15 closed season on red grouper, gag, and black grouper. One alternative would replace this closure with a March 1 through May 31 closure, and would apply the closure to either the same three species or all shallow-water grouper species. This alternative, regardless of the species options, would be more stringent than necessary to reduce red grouper harvests and protect gag spawning aggregations and would result in greater economic losses than the proposed alternative. A second alternative incorporates the same species options as the first rejected alternative, but does not identify a specific closure period. Depending upon the period chosen, the resultant impacts could be less than or greater than those of the proposed alternative. However, the proposed alternative was selected since the period encompassed best meets the dual purpose of reducing red grouper harvest and protecting gag spawning aggregations. A final alternative would eliminate the fixed closure. While this alternative would also eliminate the short-term adverse impacts of the proposed alternative, the desired reduction in red grouper harvests and protection of gag would not be accomplished.

Five alternatives, including the proposed alternative, were considered for commercial grouper trip limits. The proposed alternative is the status quo no commercial grouper trip limits. The remaining alternatives would either impose trip limits that applied throughout the year, or would be triggered upon shallow-water grouper harvests reaching 75 percent of the aggregate quota. Each of these alternatives would result in greater adverse economic impacts than the proposed alternative and are, therefore, not consistent with NMFS' intent.

Approaches for constraining the recreational grouper harvest to its allocation included closures, bag limits, and minimum size limits. In addition to the proposed alternative, which would maintain the status quo of no fixed closed season for the recreational grouper fishery, four alternatives were considered relative to recreational closures. In addition to options for applying the closure to selected species in the shallow-water grouper complex or the entire complex, each of these alternatives specified fixed closed seasons. One alternative additionally

limited the closure to a specific region of the Gulf as opposed to the entire Gulf. Allowing the recreational fishery to remain open year-round, as would be accomplished by the proposed alternative in combination with appropriate bag and size limits, was determined to produce the least adverse economic impacts on the fishery. Thus, the proposed alternative was determined to best achieve NMFS' objectives.

Four alternatives were considered for the recreational grouper bag limit. While the proposed alternative would establish a limit of two red grouper out of the aggregate five-fish shallow-water grouper bag limit, one alternative would establish a similar limit on gag in addition to the red grouper limit. This alternative would, thus, be more restrictive than the proposed alternative and increase adverse impacts. Additionally, this alternative would exceed the protection currently believed necessary for gag. Another alternative would not change the red grouper limit but would instead reduce the total aggregate bag limit. Available options, however, would result in either or both reductions in red grouper harvests that are greater than necessary or reductions in the harvest of other grouper species that are not currently justified. Thus, this alternative would increase the negative impacts on the fishery. The final alternative, the status quo, would not achieve the required red grouper harvest reductions. The proposed alternative, therefore, best achieves the necessary harvest reductions at the least adverse impact.

Four alternatives were considered to each of the proposed alternatives to retain the commercial and recreational red grouper minimum size limits at their current specification of 20 inches (50.8 cm) total length. The larger minimum size limits, however, lead to harvest reductions that exceed the required reductions, generate increased discard mortality, and increase expected losses relative to the proposed alternatives. Thus, the proposed alternatives best achieve NMFS' objectives at the least adverse impact.

With regards to the proposed alternative for specifying the fishing year, the status quo provides that the fishing year for all reef fish begins January 1 each year. Alternatives to the status quo provide for a fishing year to start after a fixed commercial season for any reef fish or for the grouper fishery only. These alternatives have no immediate impacts on fishing participants. Maintaining the status quo, however, provides stability and helps eliminate future uncertainty associated

with changes in the start of the open season for various species within the grouper fishery in particular and reef fish fishery in general.

The proposed rule specifies a quota for tilefish and reduces the deep-water grouper quota from its current level, which has never been met, to the average annual harvest from 1996–2000, with the intent to minimize the potential adverse impacts of participants in the shallow-water grouper fishery shifting effort to the deep-water species. In addition to options encompassing different quota levels and the status quo alternative, significant alternatives to the proposed rule come in two forms. One form sets different quota levels for deepwater groupers and tilefish independently, while the other form combines deep-water groupers and tilefish and provides for different quota levels for the aggregate. The proposed independent quotas for each group fall between the extremes of the alternative options and, thus, would be expected to result in less adverse impacts than the lower options, and more adverse impacts than the higher options. However, the proposed quotas are equal to the average commercial harvest for these species, so actual adverse impacts on fishing participants are expected to be minimal.

Copies of the IRFA and RIR are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: February 13, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, 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 § 622.39, paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding jewfish and Nassau grouper--5 per person per day, but not to exceed 2 red grouper per person per day or 1 speckled hind or 1 Warsaw grouper per vessel per day.

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3. In § 622.42, paragraphs (a)(1)(ii) and (iii) are revised and paragraph (a)(1)(iv) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, Warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined--1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined -8.80 million lb (3.99 million kg), gutted weight, that is, eviscerated but otherwise whole. Within the shallow-water grouper quota there is a separate quota for red grouper--5.31 million lb (2.41 million kg), gutted weight. When either the shallow-water grouper quota or the red grouper quota is reached, the entire shallow-water grouper fishery will be closed and the closure provisions of § 622.43(a) introductory text and § 622.43(a)(1)(i) apply to the entire shallow-water grouper fishery.

(iv) Tilefishes (i.e., tilefish and goldface, blackline, anchor, and blueline tilefish) combined--0.44 million lb (0.20 million kg), gutted weight, that is, eviscerated but otherwise whole.

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