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The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Montana, is amended by adding DTV channel 5 and removing DTV channel 10 at Glendive.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 070719384-81468-03]

RIN 0648-AV80

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

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

**ACTION:** Temporary rule; interim measures; request for comments.

**SUMMARY:** This final rule implements temporary measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This final rule reduces the commercial quota for gag, establishes a gag bag limit within the grouper aggregate bag limit, and extends the recreational closed season for gag. In addition, if Federal regulations applicable to gag, red snapper, gray triggerfish, or greater amberjack are more restrictive than state regulations, this rule requires vessels with Federal reef fish permits to comply with Federal regulations regardless of where such fish are harvested. The intended effect is to reduce overfishing of gag and increase compliance with Federal regulations designed to end overfishing or rebuild overfished reef fish stocks in the Gulf.

**DATES:** This rule is effective January 1, 2009 through May 31, 2009. Comments must be received no later than 5 p.m., eastern time, on January 2, 2009.

**ADDRESSES:** You may submit comments on this temporary rule, identified by "0648-AV80, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Peter Hood.

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.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0291" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of documents supporting this rule may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701.

#### FOR FURTHER INFORMATION CONTACT:

Peter Hood, telephone: 727-551-5784, fax: 727-824-5308, e-mail: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

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

#### Background

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. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable. This temporary rule addresses these requirements for gag, red snapper, gray triggerfish, and greater

amberjack on an interim basis while the Council develops more permanent measures in Amendment 30B to the FMP.

The most recent gag stock assessment completed in 2006 concluded that the stock is not overfished, but is undergoing overfishing. Following a re-analysis in 2007, overfishing was still determined to be occurring. The Council's Reef Fish Scientific and Statistical Committee (SSC) concurred with the overfishing determination at its May 2008 meeting. This temporary rule is necessary to reduce overfishing of gag by implementing temporary management measures while the Council develops more permanent measures to rebuild the gag stock to more sustainable levels. Although the gag stock was not considered to be overfished under any of the definitions of the minimum stock size threshold considered by the Council in Amendment 30B, the stock size was recognized to be below the stock size associated with harvesting the stock at OY ( $B_{OY}$ ). Therefore, these temporary management measures are designed to reduce overfishing and facilitate stock rebuilding toward  $B_{OY}$ .

In Amendment 30B, the Council, based on advice from the SSC, is proposing to set the 2009 total allowable catch (TAC) for gag at 3.38 million lb (1.53 million kg). This value is based on the fishing mortality rate associated with harvesting OY. Under the Council's plan, TAC will increase to 3.62 million lb (1.64 million kg) in 2010, and again to 3.82 million lb (1.73 million kg) in 2011. TAC would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking. The Council also has proposed in Amendment 30B an interim allocation of gag between the recreational and commercial fisheries based on the average share during the years 1986 through 2005. For gag, the allocation would be 61 percent recreational and 39 percent commercial.

NMFS and the Council analyzed these proposed interim measures and the measures contained in Amendment 30B in a single environmental impact statement. On August 8, 2008, a notice of availability of the draft environmental impact statement (DEIS) for this action and Amendment 30B was published (73 FR 46269). The Council took final action on the measures contained in Amendment 30B at their August 2008 meeting and submitted it for Secretarial review in September 2008. The notice of availability of the final environmental impact statement (FEIS) published on October 24, 2008 (73 FR 63470), and the wait period ended on November 24,

2008. The rationale for these temporary measures is provided in the DEIS, FEIS, and the preamble to this temporary rule.

### **Management Measures Established by This Temporary Rule**

#### *Commercial Quota for Gag*

Consistent with the Council's proposed 2009 TAC in Amendment 30B and the proposed allocation between the recreational and commercial fisheries, this temporary rule sets the commercial quota for gag at 1.32 million lb (598,742 kg), which is equal to the 2009 quota proposed in Amendment 30B. This quota is consistent with the annual catch target (ACT) and annual catch limit (ACL) guidance provided in NMFS' proposed rule on Magnuson-Stevens Act provisions, ACLs, and national standard guidelines (73 FR 32526, June 9, 2008).

#### *Recreational Measures for Gag*

For the recreational fishery, this temporary rule establishes a new gag bag limit of 2 fish within the 5-fish aggregate grouper bag limit and an extended recreational closed season for gag from February 1–March 31. These recreational measures are estimated to reduce gag landings by 26 percent and are consistent with ACTs and ACLs proposed in Amendment 30B which are consistent with guidance provided in NMFS' proposed rule on Magnuson-Stevens Act provisions, ACLs, and national standard guidelines (73 FR 32526, June 9, 2008).

### **Provision to Enhance Regulatory Effectiveness of Measures**

#### *Addressing Species Undergoing Overfishing*

NMFS and state fishery management agencies usually work cooperatively to implement consistent regulations in Federal and state waters, thus enhancing the effectiveness of enforcement and management of the fisheries. However, there are some situations in which Federal and state regulations differ. When there are less restrictive regulations in state waters, the effectiveness of Federal regulations diminishes. Therefore, if Federal regulations applicable to gag, red snapper, gray triggerfish, or greater amberjack are more restrictive than state regulations, this temporary rule requires any vessel with a Federal commercial permit for Gulf reef fish or a Federal charter vessel/headboat permit for Gulf reef fish, as a condition of their permit, to comply with such Federal regulations, regardless of where such fish are harvested, i.e., in state or Federal waters. These species are

undergoing overfishing. This measure will reduce overfishing and improve the effectiveness of Federal management measures and enforcement. The Council is proposing this requirement for all reef fish species in Amendment 30B.

#### *Future Action*

NMFS finds that this temporary rule is necessary to reduce overfishing of gag and increase compliance with Federal regulations designed to end overfishing of red snapper, greater amberjack, and gray triggerfish. NMFS issues this temporary rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This temporary rule may be extended for an additional 186 days, as authorized by section 305(c) of the Magnuson-Stevens Act, provided the public has had an opportunity to comment on the rule and provided that the Council is actively preparing proposed regulations to address these overfishing issues on a permanent basis. The Council is preparing an amendment to address, on a permanent basis, gag overfishing issues and increased compliance with Federal regulations designed to end overfishing of red snapper, greater amberjack, gray triggerfish and other reef fish species in the Gulf.

### **Classification**

The Administrator, Southeast Region, NMFS, (RA) has determined that this temporary rule is necessary to reduce overfishing of gag and other reef fish species in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment would be contrary to the public interest. This temporary rule addresses overfishing of public fishery resources. In order to obtain the target reductions in harvest, adequately address overfishing, and protect public fishery resources, these measures need to be effective by the start of the fishing year in 2009. Delaying action to reduce overfishing of gag, red snapper, greater amberjack, and gray triggerfish in the Gulf of Mexico to provide further notice and opportunity for public prior to implementation would allow continued adverse impacts on the associated fishery resources, and increase the

likelihood of a loss in long-term productivity from the component of the reef fish fishery these species represent. Additionally, this would increase the likelihood of more severe restrictions on these species in the future, which would result in additional adverse social and economic impacts on the associated fishery participants.

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and public comment.

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

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

Dated: November 26, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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 § 622.4, paragraph (a)(2)(v) is suspended, and paragraphs (a)(1)(iv) and (a)(2)(xiv) are added to read as follows:

**§ 622.4 Permits and fees.**

- (a) \* \* \*
- (1) \* \* \*

(iv) If Federal regulations in subparts A, B, or C of this part that are applicable to gag, red snapper, greater amberjack, or gray triggerfish in the Gulf of Mexico are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such

Federal regulations regardless of where the fish are harvested.

(2) \* \* \*

(xiv) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations in subparts A, B, or C of this part that are applicable to gag, red snapper, greater amberjack, or gray triggerfish in the Gulf of Mexico are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where such fish are harvested. See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

\* \* \* \* \*

■ 3. In § 622.34, paragraph (u) is suspended and paragraphs (v) and (w) are added to read as follows:

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

\* \* \* \* \*

(v) *Seasonal closure of the recreational fishery for red grouper and black grouper.* The recreational fishery for red grouper and black grouper in or from the Gulf EEZ is closed from February 15 to March 15, each year.

During the closure, the bag and possession limit for red grouper and black grouper in or from the Gulf EEZ is zero.

(w) *Seasonal closure of the recreational fishery for gag.* The recreational fishery for gag in or from the Gulf EEZ is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

■ 4. In § 622.39, paragraphs (b)(1)(ii) and (b)(1)(v) are suspended and paragraphs (b)(1)(viii) and (b)(1)(ix) are added to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(viii) Groupers, combined, excluding goliath grouper and Nassau grouper -5 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, 1 red grouper per person per day, or 2 gag per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(ix) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i), (iii), (iv), (vi), (vii), and (viii) of this section and excluding dwarf sand perch and sand perch--20.

\* \* \* \* \*

■ 5. In § 622.42, add paragraph (a)(1)(vii) to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(vii) Gag -1.32 million lb (0.60 million kg), gutted weight, that is, eviscerated but otherwise whole.

\* \* \* \* \*

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