

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

[Docket No. 100806332-0491-01]

RIN 0648-BA02

**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:** NMFS issues this proposed temporary rule that would implement interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This proposed rule would reduce the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), prohibit recreational harvest of gag, and suspend red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as requested 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 November 2, 2010.

**ADDRESSES:** You may submit comments on the proposed rule identified by NOAA-NMFS-2010-0168 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:* No comments will be posted for public viewing until after the comment period has closed. 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 an 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.

**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 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. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks while achieving, on a continuing basis, the OY from each fishery, and to minimize bycatch and bycatch mortality to the extent practicable.

In a letter dated August 11, 2009, NMFS informed the Council that gag are overfished and undergoing overfishing. Under section 304(e) of the Magnuson-Stevens Act, after a Council has been notified of a stock's overfishing status, a fishery management plan or plan amendment must be developed and implemented within two years of notification, to end overfishing and rebuild the stock. The Council is currently developing Amendment 32 to the FMP which includes measures to end overfishing of gag and establish a rebuilding plan for the gag stock. However, because Amendment 32, if approved, would not likely be implemented until late 2011 or the beginning of 2012, this temporary rule contains management measures

intended to address overfishing of gag on an interim basis. NMFS proposes a reduced commercial quota for gag of 100,000 lb (45,359 kg), a reduced commercial SWG quota of 4.83 million lb (2.19 million kg), a suspension of red grouper multi-use shares in the Gulf grouper and tilefish IFQ program, and a prohibition on the recreational harvest of gag. These measures will remain in effect for 180 days, with the possibility of extending for another 186 days, unless amended by subsequent rulemaking.

*Status of Stock*

The Southeast Data, Assessment, and Review (SEDAR) update assessment for gag was conducted in April 2009, with the objective of updating the 2006 SEDAR 10 gag benchmark assessment. Data sources for the update assessment included both fishery-dependent and fishery-independent data through 2008. The Council's Scientific and Statistical Committee (SSC) recommended a model that allows the natural mortality rate from 2005, a year when there was an extensive red tide event along the West Florida Shelf, to adjust above the base natural mortality rate. This corresponds to an 18-percent mortality rate. The SSC recommended an acceptable biological catch (ABC) of 1.17 million lb (0.53 million kg) which is the 2011 yield estimated by the fishing mortality rate (F) needed to rebuild the stock in 10 years.

In the course of developing management alternatives for gag, potential inconsistencies in commercial and recreational estimates of discards were discovered. Preliminary estimates of commercial gag discards provided by NOAA's Southeast Fisheries Science Center (SEFSC) indicated commercial discards were two orders of magnitude greater when estimated using reef fish observer data compared with methods used in the SEDAR update assessment for the stock. Additionally, size and age distributions computed for recreational discards in the update assessment indicated most discards were close to the minimum size limit in more recent years. However, Mote Marine Laboratory tagging data and headboat and Florida Fish and Wildlife Conservation Commission observer data indicated a broader size range for discarded fish. The Council discussed these discrepancies at their August 2010 meeting and agreed that another review of the gag assessment would be conducted in the fall or winter of 2010 to address these discrepancies. Therefore, NMFS anticipates a subsequent rulemaking after the review

has been completed based on revised assessment information.

A red grouper update assessment was conducted at same time as the gag update assessment. Because of the difference in how recreational discard size distributions were estimated between the assessments, the discrepancies in discard information did not trigger the same concerns for red grouper. Therefore, the Council did not make a similar request for the red grouper assessment to be reviewed. However, the Council did recognize the effects discard estimation could have on the assessment and, therefore, requested the SEFSC to review observer discard information to determine the magnitude of these effects for red grouper.

#### *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 was allocated IFQ shares based on historical participation in the grouper and tilefish component of the Gulf reef fish fishery. Each year, fishermen receive allocation based on the current quota and the amount of shares each holds. 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 is allocation that 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 red grouper multi-use allocation has been used or transferred. Gag multi-use allocation is allocation that may be used to harvest gag after all of an IFQ account holder's (shareholder or allocation holder's) gag allocation has been used or transferred; and to harvest red grouper after both red grouper and red grouper multi-use allocation has been used or transferred. However, using all of the current red grouper multi-use allocations to harvest gag, alone could result in gag commercial landings exceeding the quota. 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.

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

This interim rule would reduce the commercial quota for gag to 100,000 lb

(45,359 kg). This quota would be released at the beginning of the 2011 fishing year so IFQ participants would have the opportunity to fish their allocation throughout the year.

The SSC had previously recommended a commercial gag quota of 390,000 lb (176,901 kg). However, because of the method by which dead discards were calculated in the gag update assessment, the review of the update assessment could result in a lower allowable harvest. This lower harvest would be implemented through Amendment 32 to the FMP. If NMFS were to prohibit commercial harvest completely through this interim rule, then any gag incidentally caught when fisherman target other reef fish would result in discards. Therefore, the Council requested, and NMFS proposes a quota of 100,000 lb (45,359 kg), which would allow a minimum level of incidentally caught gag to be retained and counted against the commercial quota.

Because of the proposed reduction in the gag commercial quota, the commercial quota for SWG is proposed to be reduced to 4.83 million lb (2.19 million kg). Within the SWG quota are separate quotas for gag and red grouper. The other SWG species included in this combined quota include black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. Additionally, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20(b)(2)(v), speckled hind and warsaw grouper are considered SWG species under certain circumstances. After all of an IFQ account holder's deep-water grouper (DWG) allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then other SWG allocation may be used to land and sell speckled hind and warsaw grouper. In this interim rule, the reduction of the SWG quota directly corresponds to the amount of the reduction in the commercial quota for gag.

This interim rule would also suspend red grouper multi-use allocation to ensure the gag commercial quota is not exceeded. Red grouper multi-use allocation will be addressed further in Amendment 32 to the FMP.

This interim rule would prohibit the recreational harvest of gag by setting the recreational bag limit for gag to zero. However, it is the intent of the Council to allow a 2011 recreational harvest of gag, likely in a limited gag fishing season, through management measures to be implemented through Amendment 32. Although gag landings may be reduced through more restrictive bag

limits, proportional reductions in gag discards and associated discard mortality are not likely based on high levels of gag bycatch and bycatch mortality within other components of the Gulf reef fish fishery.

At its August 2010 Council meeting, the Council indicated a preference for a summer recreational fishing season for gag based on projections from the 2009 gag stock assessment, and expressed its intent to implement such a recreational season in Amendment 32.

The rationale for prohibiting gag recreational harvest is based on the high rate of gag regulatory discards. Most of the recreational effort occurs in the coastal and nearshore waters where juvenile gag typically reside. Although the average estimated recreational discard mortality rates are lower than the commercial discard mortality rates (32 percent for the recreational sector and 67 percent for the commercial sector), the total number of dead discards within the recreational sector may still be comparatively high given the high encounter rate in the recreational sector. Therefore, to meet the Council's intent to allow a recreational gag season later in 2011, it is important to reduce the number of recreational dead discards through this temporary rule to allow for the longest season length possible through Amendment 32.

For the commercial sector, the encounter rate of regulatory discards is lower than that for the recreational sector because commercial fishing effort primarily occurs in offshore waters where adult gag typically reside. However, with a higher discard rate, the likelihood of a gag surviving after capture in the commercial sector is much lower because of the effects of barotrauma that occur during commercial harvest of gag in deeper waters.

Therefore, the Council requested a minimal commercial gag quota to account for gag that are caught incidentally during the targeting of other reef fish species and allow those incidental gag to be counted against the commercial quota rather than be discarded dead.

#### *Future Action*

NMFS has determined that this proposed 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 rule is consistent with the regulatory amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, 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 the Council (*see ADDRESSES*). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed temporary rule would reduce the commercial quota for gag, reduce the combined commercial SWG quota, prohibit recreational harvest of gag, and suspend red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program. The purpose of this proposed temporary rule is to reduce overfishing of the gag resource in the Gulf.

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

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 proposed actions to reduce the commercial quota for gag and disallow 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. Their average annual gross revenue from commercial fishing was approximately \$71,000 (2008 dollars) between the two years. 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 fell from approximately \$15,900 to \$8,400 in 2009 and thus they became relatively less dependent on gag landings. These vessels 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 within 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 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 renewal period, numerous permits may be expired but 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 reduce the recreational bag limit for gag to zero.

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. Under the proposed action to decrease the commercial quota for gag, their allocation of gag in 2011 would be reduced, on average, from 874 lb (397 kg) to 61 lb (28 kg), or by approximately 813 lb (370 kg). Using the 2008 average price of \$3.52 per lb, this loss in allocation could potentially represent an annual loss of nearly \$2,900 in gross revenue per entity. For the eight entities with gag shares that also possess longline endorsements, their average annual allocation of gag would be reduced from 3,139 lb (1,427 kg) to 220 lb (100 kg), or by 2,919 lb (1,327 kg). Thus, their potential loss in gross revenue, estimated to be nearly \$10,280, could be much higher. However, in general, this potential loss in gross revenue could only reduce profit if these entities not only become active in commercial fishing, but specifically intend to harvest gag in 2011 and at a level above their reduced allocation. Alternatively, these potential losses in gross 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 this potential loss in gross revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue and profit from commercial fishing in general and specifically for gag.

Profit estimates are not currently available for the 139 entities with gag shares that participated in commercial fisheries other than gag. However, since these vessels did not have any gag landings, none of their gross revenue and thus none of their profit were the result of gag harvests. Under the proposed action to decrease the commercial quota for gag, their average allocation of gag in 2011 would be reduced from 540 lb (245 kg) to 38 lb (17 kg), or by approximately 502 lb (228 kg). Using the 2008 average price of \$3.52 per pound, this loss in allocation could potentially represent an annual loss of nearly \$1,800 in gross revenue per entity. However, this potential loss in gross revenue could only lead to a loss in profit if these entities intend to become active in the gag component of the Gulf reef fish fishery in 2011 and at a level above their reduced allocation. Thus, for example, assuming these vessels intend to harvest gag in 2011 at a level equivalent to their 2010 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 three percent in gross revenue which could in turn reduce profit. Alternatively, these losses in gross 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.

Profit estimates are not currently available for the 521 entities with gag shares that participated in the commercial gag sector of the Gulf reef fish fishery in 2008 or 2009. Under the proposed action to decrease the commercial gag quota, these vessels' gag allocations would be reduced from 2,121 lb (964 kg) to 148 lb (67 kg), or by approximately 1,973 lb (897 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 a future 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 \$6,950, or approximately 10 percent, in average annual gross revenue. A loss in gross revenue of this magnitude would likely lead to a reduction in profit.

However, for the 52 vessels with gag shares that were active in the gag component of the Gulf reef fish fishery and also received a bottom longline endorsement in 2010, their allocation of gag in 2011 would decrease from 5,707 lb (2,594 kg) to 400 lb (182 kg), or by approximately 5,307 lb (2,412 kg) under the proposed action. This loss in landings is estimated to be valued at approximately \$18,700 in gross revenue, or 12 percent of their average annual gross revenue. Such a loss in gross revenue would likely reduce their profit.

Under the proposed 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. Given the proposed reduction in the commercial gag quota, it is likely these entities will exhaust their gag and gag multi-use allocations relatively early in 2011. Revenue from gag landings is greater than revenue from an equivalent amount of red grouper landings since gag commands a relatively higher market price. Thus, total 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 \$1.34 million per year while NOR for headboats from trips targeting gag are estimated to be \$81,000 per year. Thus, NOR for all trips targeting gag is estimated to be approximately \$1.35 million per year. The average annual NOR from trips targeting gag is estimated to be \$1,716 per charter vessel and \$1,881 per headboat.

When the length of the gag season is reduced by setting the recreational bag limit for gag 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 that all of the current for-hire trips targeting gag will be cancelled. 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 set the gag recreational bag limit for gag at zero, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately \$750,000 and \$43,000, respectively, if the proposed temporary rule is not extended for up to 186 days as allowed under the Magnuson-Stevens Act for interim measures. Thus, the losses in NOR from trips targeting gag are estimated to be \$962 and \$1,000 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 56 percent and 53 percent per charter vessel and headboat, respectively. However, if the proposed temporary rule is extended, the losses in NOR for charter vessels and headboats are estimated to be approximately \$1.34 million and \$81,000, respectively. Thus, the losses in NOR are estimated to be \$1,716 and \$1,881 per charter vessel and headboat, respectively. These losses in NOR represent a loss in profit from trips targeting gag of 100 percent per charter vessel and headboat, respectively. The proposed action is not expected to affect profit for charter vessels and headboats from trips not targeting gag. Vessel dependence on fishing for individual species cannot be determined with available data. Although some vessels are likely more dependent on trips that target gag than other vessels, overall, about three percent of for-hire anglers are estimated to target gag. As a result, while the proposed 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.

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

Three alternatives, including the status quo, were considered for the action to reduce the commercial quota for gag from 1.49 million lb (0.68 million kg) to 100,000 lb (45,359 kg) in 2011. The first alternative, the status quo, would have maintained the commercial quota for gag at 1.49 million lb (0.68 million kg) in 2011. 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 this quota would be above the ABC recommended by the Council's SSC of 1.17 million lb (0.53 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would have set the commercial quota for gag at 390,000 lb (0.18 million kg), with one option to release the entire quota on January 1, 2011 and a second option to release 50 percent of the quota on January 1, 2001 and the remaining 50 percent on July 1, 2011. This quota is based on projected  $F_{OY}$  yield streams, 1.01 million lb (0.46 million kg) for 2011, and is consistent with the methods used by the Council in Amendment 30B for setting the annual catch target. This harvest level corresponds with the Council's initial request for an interim rule at its June 2010 meeting. The commercial quota for gag under this alternative is less than what the quota would be if based on the SSC's ABC recommendation ( $F_{Rebuild}$  yield stream) of 1.17 million lb (0.53 million kg). Based on the SSC's recommendation, selecting this alternative would have a less than 50 percent chance of overfishing by the commercial sector and would provide a greater than 50 percent chance of rebuilding the stock if this yield stream is adhered to in future actions. However, recent discrepancies with the estimation of dead discards could affect how the assessment projects the status of the stock. If these discrepancies show a more pessimistic condition of the stock when the assessment is rerun, then selecting this alternative could result in harvest levels inconsistent with rebuilding the stock within the time frames outlined in the Magnuson-Stevens Act. Should these discrepancies result in a more optimistic condition of

the stock, then the commercial quota for gag could be increased in subsequent actions.

The third alternative is the most conservative and would set the commercial quota for gag equal to zero. Under this alternative, any addition to the quota would be initiated through Amendment 32 or some other rulemaking vehicle. Closure of the commercial sector to gag would benefit the stock by ending overfishing as well as halt gag fishing during the primary gag spawning season. However, this alternative would not allow gag allocation holders to land gag that might be caught incidentally when fishing for other species. Instead, these fish would have to be released. Because the commercial sector generally operates in relatively deep waters, a large proportion of these fish would likely die from barotrauma and handling. Release mortality has been estimated to be 67 percent on average for commercial discards. This high rate of discard mortality would contribute to overall mortality, thereby slowing recovery of the stock and thus is contrary to the Council's objectives.

Two alternatives, including the status quo, were 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. The first alternative, the status quo, 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.

The second alternative would allow a smaller percentage (1.6 percent) of red grouper allocation to be converted into multi-use allocation based on the buffer existing between the commercial annual catch limit (ACL) and quota for gag. This alternative is consistent with a gag commercial ACL of 1.76 million lb (0.8 million kg) and a 1.49 million lb (0.68 million kg) commercial quota for gag. Since the proposed commercial quota for gag is only 100,000 lb (45,359 kg), the percentage of red grouper allocation that could be converted to multi-use allocation is too high under this alternative as it is expected to result in gag harvests that would exceed specified ACLs, promote overfishing,

and therefore slow recovery of the stock, contrary to the Council's objectives.

Two alternatives, including the status quo, were considered for the action to set the recreational bag limit at zero. The first alternative, the status quo, would maintain the recreational catch target at 2.20 million lb (1 million kg) as defined in Amendment 30B and thus maintain the current recreational bag limit of 2 gag within the 4-fish aggregate grouper bag limit. Selection of this alternative would be inconsistent with current National Standard 1 guidance because this level of harvest would be above the ABC recommended by the Council's SSC of 1.17 million lb (0.53 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero on the date when 620,000 lb (0.28 million kg) of gag is projected to be landed by the recreational sector in 2011. This harvest level is consistent with the fishing mortality rate associated with the OY used by the Council in Amendment 30B to set the recreational annual catch target. Under certain assumptions regarding the disposition of discards, this alternative is expected to result in a fishing season of 83 days. Given the closure of the shallow water grouper (SWG) recreational sector annually from February 1 to March 31, fishing would be allowed for the month of January and from April 1 to May 22. However, this fishing season is dependent on achieving the same percentage reduction in dead discards as obtained from the harvest. If these levels of reduction are not met, then harvesting this amount of fish could exceed the reductions needed for the stock to recover under the rebuilding plan being developed in Amendment 32 which, in turn, could require deeper cuts in future harvests than those projected by the current assessment update.

Although by regulation, the actions in this proposed temporary rule do not need to end overfishing, they do need to reduce overfishing. This alternative could limit the types of long-term measures developed by the Council in Amendment 32 that could be applied to the 2011 fishing year since the 620,000 lb (0.28 million kg) catch target would likely be achieved before rulemaking from Amendment 32 is implemented. Therefore, the harvest for the rest of the fishing year could be zero and any long-term measures developed in Amendment 32 would not apply until 2012.

Further, recent discrepancies with the estimation of dead discards could affect how the assessment projects the status

of the stock. If these discrepancies show a more pessimistic condition of the stock when the assessment is rerun, then selecting this alternative could result in harvest levels inconsistent with rebuilding the stock within the time frames outlined in the Magnuson-Stevens Act. This is particularly important for the recreational sector which harvests a greater proportion of the gag total catch than the commercial sector. Conversely, should these discrepancies result in a more optimistic condition of the stock, the recreational catch target and bag limit could be increased in subsequent actions.

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: October 12, 2010.

**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.*

##### § 622.20 [Amended]

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

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

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

(v) *Closure of the recreational sector for gag.* The recreational sector for gag in the Gulf EEZ is closed. During the closure, all recreational harvest and possession of gag grouper in or from the Gulf EEZ is prohibited. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

4. In § 622.39, paragraph (b)(1)(ii) is suspended, and paragraph (b)(1)(viii) is added, to read as follows:

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

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(viii) Groupers, combined, excluding goliath grouper, Nassau grouper, and

gag—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

\* \* \* \* \*

5. 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—4.83 million lb (2.19 million kg).

(B) \* \* \*

(4) For fishing year 2011 and subsequent fishing years—100,000 lb (45,359 kg).

\* \* \* \* \*

[FR Doc. 2010-26198 Filed 10-15-10; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080513659-0476-01]

RIN 0648-AW75

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 4

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

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

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 4 to the Atlantic Herring (Herring) Fishery Management Plan (FMP). Amendment 4 was developed by the New England Fishery Management Council (Council) to bring the FMP into compliance with new Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements by: Revising definitions and the specifications-setting process, consistent with annual catch limit (ACL) requirements; and establishing fishery closure thresholds, a haddock incidental catch cap, and overage paybacks as