

government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on these governments or small governments such that it is subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538.

*E. Federalism*

This action will not have federalism implications as specified in Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) because it is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*F. Indian Tribal Governments*

This action will not have tribal implications as specified in Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000). This action is not expected to have substantial direct effects on Indian Tribes, will not significantly or uniquely affect the communities of Indian Tribal governments, and will not involve or impose any requirements that affect Indian Tribes.

*G. Protection of Children*

This action is not subject to Executive Order 13045, entitled “Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

*H. Effect on Energy Supply, Distribution, or Use*

This action is not a “significant energy action” as defined in Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. Technical Standards*

Because this action will not involve any technical standards, section 12(d) of the National Technology Transfer and

Advancement Act (NTTAA), 15 U.S.C. 272 note, does not apply to this action.

*J. Environmental Justice*

This action will not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

**XI. Congressional Review Act**

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 721**

Environmental protection, Barometers, Chemicals, Elemental mercury, Hazardous substances, Hygrometers, Manometers, Psychrometers, Reporting and recordkeeping requirements.

Dated: May 3, 2012.  
**Wendy C. Hamnett**,  
*Director, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 721—[AMENDED]**

- 1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

- 2. In § 721.10068:
  - a. Add the following definitions in alphabetical order to paragraph (a).
  - b. Add paragraph (b)(2)(viii).

The additions read as follows:

**§ 721.10068 Elemental mercury.**

(a) \* \* \*

*Barometer* means an instrument used in various applications to measure atmospheric pressure.

\* \* \* \* \*

*Hygrometer* means an instrument used in various applications to measure humidity of gases.

*Manometer* means an instrument used in various applications to measure pressure of gases or liquids.

\* \* \* \* \*

*Psychrometer* means an instrument used in various applications to measure humidity of gases.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(viii) Manufacturing or processing of elemental mercury for use in barometers, manometers, hygrometers, and psychrometers except for: Natural gas manometers covered by paragraph (b)(2)(vii) of this section; barometers, manometers, hygrometers, and psychrometers that were in service prior to May 6, 2011; and portable battery powered and motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury.

\* \* \* \* \*

[FR Doc. 2012–13071 Filed 5–29–12; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 120213124–1066–02]

**RIN 0648–BB91**

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement management measures described in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule increases the commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf reef fish fishery for the 2012 fishing year, and for the 2013 fishing year if NMFS determines the acceptable biological catch (ABC) is not exceeded in the 2012 fishing year; eliminates the October 1 closure date of the recreational fishing season; and announces the quota closure date of the 2012 recreational fishing season. This final rule is intended to provide more flexibility in managing recreational red snapper and to help achieve optimum yield (OY) for the Gulf red snapper resource without increasing the risk of red snapper experiencing overfishing.

**DATES:** This rule is effective June 29, 2012.

**ADDRESSES:** Electronic copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727-824-5305; email: [Cynthia.Meyer@noaa.gov](mailto:Cynthia.Meyer@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 12, 2012, NMFS published a proposed rule for the regulatory amendment and requested public comment (77 FR 21955). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Through this final rule, NMFS sets the 2012 commercial quota at 4.121 million lb (1.869 million kg), round weight; the 2012 recreational quota at 3.959 million lb (1.796 million kg), round weight; the 2013 commercial quota at 4.432 million lb (2.010 million kg), round weight; and the 2013 recreational quota at 4.258 million lb (1.931 million kg), round weight. The 2013 quota increases are contingent on the ABC not being exceeded in the 2012 fishing year. If NMFS determines the 2012 ABC is exceeded, NMFS will maintain the 2012 commercial and recreational quotas in the 2013 fishing year. If this is the case, the Assistant Administrator will file a notification with the Office of the Federal Register to announce that commercial and recreational quotas will remain at 2012 levels in the 2013 fishing year.

This final rule also changes the end of the recreational fishing season from October 1 to December 31. If a quota closure is implemented mid-season and subsequent data indicate the quota was not reached by the quota closure date, NMFS may reopen the season for a limited amount of time before the December 31 end date.

Gulf recreational red snapper landings for 2011 totaled 4.59 million lb (2.08 million kg), round weight, resulting in a 730,000 lb (331,122 kg), round weight, overage. The average weight of red

snapper increased from 5.31 to 6.39 lb (2.41 to 2.90 kg), round weight, from 2011 to 2012. In 2011, all Gulf states, except Texas, implemented compatible fishing seasons for red snapper. Taking into account all of these factors, the NMFS Southeast Regional Office conducted an analysis to predict when the recreational red snapper sector would reach the adjusted 2012 quota. This analysis may be found online at the following Web site: <http://sero.nmfs.noaa.gov/sf/pdfs/SERO-LAPP-2012-01%20Gulf%20Red%20Snapper%20Quota%20Closure%202012%20FINAL.pdf>. The analysis uses three different modeling approaches to predict the 2012 closure date. Across all three modeling approaches, the predicted season length ranges from 32 to 41 days. In order to maximize socio-economic benefits to recreational red snapper fishermen, NMFS has determined that the 2012 recreational red snapper quota will be reached in 40 days.

Under 50 CFR 622.34(m), the red snapper recreational fishing season opens each year on June 1 and closes when the recreational quota is projected to be reached. Using finalized 2011 recreational landings data, the increased size of red snapper being landed, and state compatibility with red snapper seasons, NMFS projects the 2012 recreational quota will be met on July 10, 2012. Therefore, the recreational fishing season will open on June 1, 2012, and close at 12:01 a.m., July 11, 2012, for a 40-day season. If subsequent data indicate the quota has not been reached by July 10, 2012, NMFS may reopen the season, before the December 31 end date, by announcing a reopening in the **Federal Register**.

This final rule also revises the definition for “shrimp” in the codified text, a change unrelated to the actions in the regulatory amendment.

#### Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' respective responses. During the comment period, NMFS received 56 comments, including 52 from private citizens, 3 from recreational fishing organizations, and 1 from an environmental group. Comments pertinent to the rule unanimously supported increasing the red snapper quota and removing the fixed closed season to allow for a potential fall season. These comments are not individually addressed in NMFS' responses; NMFS agrees the quota increases and removal of the fixed fall closed season are appropriate

actions taken in accordance with the red snapper rebuilding plan.

Many of these same commenters provided additional observations and suggestions that are addressed here. In general, commenters questioned the science on which red snapper management is based; suggested harvesting restrictions be relaxed; and alternative management strategies be developed for recreational red snapper fishing in the Gulf.

*Comment 1:* Several commenters offered suggestions for alternative actions to manage recreational red snapper harvest. They suggested that bag limits should be increased; the size limit should be decreased because of possible increases in discards from increased stock abundance; recreational fishermen should keep the first fish; the recreational and commercial quotas should be increased because the stock size is bigger than assessed; and the season length should be extended for the same reason. A possible option to extend the length of the red snapper recreational season would be to open on weekends only or have a separate fall weekend season.

*Response:* The Council has considered all of the suggested options while developing actions to manage Gulf recreational red snapper harvest under the current rebuilding plan. However, for the reasons provided below, the Council has not chosen these alternative options to manage harvest of recreational red snapper.

Increasing the bag limit or reducing the size limit would allow the quota to be harvested in a shorter time period. The Council received substantial public testimony requesting that the recreational fishing season remain open as long as possible. Therefore, the Council chose to keep the bag limit at 2 fish and the size limit at 16 inches (40.6 cm), total length, to allow for a longer season. The Council reduced the size limit for the commercial sector because that component of the reef fish fishery tends to fish in deeper water and has a higher discard mortality rate. NMFS presented analyses to the Council indicating similar reductions in discard mortality are not achieved by reducing the size limit for the recreational sector, which fishes in shallower depths. The Council addressed reducing discard mortality in other actions such as the requirement for dehookers, circle hooks, and venting tools. The Council determined a requirement to keep the first fish presents significant enforcement difficulties.

As of January 10, 2012, the preliminary estimate of the 2011 recreational harvest is 4.59 million lb

(2.08 million kg). However, the 48-day 2011 harvest exceeded the 3.959 million lb (1.796 million kg) 2012 quota established by this rule; therefore, the length of the 2012 season must be reduced to better ensure the recreational quota is not exceeded. The preamble to this rule includes a link to the analysis of how the season length was projected.

The Council recently developed an options paper to consider alternative seasons for the recreational red snapper season and the possibility of a fall weekend season. However, due to the lack of public support and comment at its January 2012 meeting the Council voted to table this regulatory amendment and discuss these actions in the future.

*Comment 2:* The assessment methods for the red snapper stock would be improved by better data collection, accounting for the reductions in shrimp effort and the higher fecundity of larger fish, and using various advanced survey technologies. Thus, the science upon which the recreational season length estimate is based is unreliable and should not be used to set season length or estimate recreational harvest relative to the quota.

*Response:* NMFS has determined that the scientific information underlying the management measures in the rule is sufficient and reliable. The methods and data used to project the recreational season length are thoroughly reviewed by the Southeast Fisheries Science Center (SEFSC) to ensure best scientific practices are followed, and that the measures are based upon the best scientific information available. NMFS uses historical landings and changes in regulations to project the length of the season. Landings information was obtained from the Marine Recreational Information Program, including the for-hire charter survey; SEFSC headboat survey; and Texas Parks and Wildlife Department charter and private/rental creel survey.

In addition, the stock assessment used to estimate the 2012 red snapper season length is based on the Southeast Data, Assessment, and Review (SEDAR) process. The SEDAR process was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. The SEDAR process seeks improvements in the scientific quality of stock assessments, including attempts to place greater relevance on historical and current information to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment

development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. The SEDAR process is organized around three workshops. The data workshop documents, analyzes, and reviews data sets to be used for assessment analyses. The assessment workshop develops and refines quantitative population analyses and estimates population parameters. The final workshop is conducted by a panel of independent experts who review the data and the assessment and recommends the most appropriate values for critical population parameters and management considerations. Recent assessments of the red snapper stock were conducted within this process. All workshops and Council-initiated meetings to review the assessment were open to the public and included constituents on the various SEDAR panels that reviewed the data and provided recommendations on management measures.

NMFS agrees there are opportunities to improve the stock assessment process, and is making efforts to make such improvements in both data collection and data analysis options.

*Comment 3:* Although the recreational quota is being increased, a reduced season will cause economic harm to fishing communities dependent on recreational fishing and associated tourism.

*Response:* NMFS recognizes the 2012 season will be shorter than the 2011 season. In 2011, the recreational sector exceeded the red snapper quota by approximately 730,000 lb (331,122 kg). Section 407(d) of the Magnuson-Stevens Act mandates NMFS to close the recreational red snapper component of the Gulf reef fish fishery when the red snapper quota is met or projected to be met. Although the 2012 season will be shorter than the 2011 season and fishing businesses may not be as profitable, the 2012 season will be longer than the season that would have occurred in the absence of the quota increase, and economic benefits to fishing communities will increase relative to conditions that would occur in 2012 in the absence of the quota increase.

*Comment 4:* Several commenters addressed issues the Council is considering for future action. They suggested the development of a different system for managing red snapper, such as spatial management, state management, and a better system to determine quota management. The allocation between commercial and recreational sectors should be changed to favor the recreational sector. There should be consideration of a

recreational red snapper overage adjustment amendment. The ACLs and AMs for 2013 should be re-assessed and included in a separate amendment to the FMP.

*Response:* These comments are beyond the scope of the rule; however, the Council is developing such actions for future consideration.

#### Classification

The Regional Administrator, Southeast Region, NMFS determined that this final rule and the regulatory amendment are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

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

Dated: May 24, 2012.

**Samuel D. Rauch III,**

*Acting Assistant Administrator for Fisheries, 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 § 622.2, the definition for “shrimp” is revised to read as follows:

#### **§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Shrimp* means one or more of the following species, or a part thereof:

- (1) Brown shrimp, *Farfantepenaeus aztecus*.
- (2) White shrimp, *Litopenaeus setiferus*.
- (3) Pink shrimp, *Farfantepenaeus duorarum*.

(4) Royal red shrimp, *Hymenopenaeus robustus*.

(5) Rock shrimp, *Sicyonia brevirostris*.  
\* \* \* \* \*

■ 3. In § 622.34, paragraph (m) is revised to read as follows:

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

\* \* \* \* \*

(m) *Seasonal closure of the recreational sector for red snapper.* The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and

possession limit for red snapper in or from the Gulf EEZ is zero.

\* \* \* \* \*

■ 4. In § 622.42, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) *Red snapper.* (A) For fishing year 2012—4.121 million lb (1.869 million kg), round weight.

(B) For fishing year 2013—4.432 million lb (2.010 million kg), round weight.

\* \* \* \* \*

(2) \* \* \*

(i) *Recreational quota for red snapper.*

(A) For fishing year 2012, the recreational quota for red snapper is 3.959 million lb (1.796 million kg), round weight.

(B) For fishing year 2013, the recreational quota for red snapper is 4.258 million lb (1.931 million kg), round weight.

\* \* \* \* \*

[FR Doc. 2012-13110 Filed 5-29-12; 8:45 am]

**BILLING CODE 3510-22-P**