

expertise in the subject area as well as the requester's intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding—whether the disclosure is likely to contribute significantly to public understanding of Amtrak operations or activities.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(4) To determine whether the fee waiver requirement in paragraph (k)(2)(ii) of this section is met, Amtrak will consider the following factors:

(i) *The existence and magnitude of a commercial interest—whether the requesting party has a commercial interest that would be furthered by the requested disclosure.* Amtrak shall consider any commercial interest of the requesting party (with reference to the definition of "commercial use" in paragraph (c)(1) of this section) or any person on whose behalf the requesting party may be acting that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure—whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is justified where the public interest standard is satisfied and public interest is greater in magnitude than any identified commercial interest in disclosure.

(5) Requests for a fee waiver will be considered on a case-by-case basis, based upon the merits of the information provided. Where it is difficult to determine whether the request is commercial in nature, Amtrak may draw inference from the requester's identity and the circumstances of the request.

(6) Requests for a waiver or reduction of fees must address the factors listed in paragraphs (k) (3) and (4) of this section. In all cases, the burden shall be on the requesting party to present evidence of information in support of a request for a waiver of fees.

(l) *Aggregating requests.* A requester may not file multiple requests at the same time in order to avoid payment of

fees. Where Amtrak reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, Amtrak may aggregate those requests and charge accordingly. Amtrak may presume that multiple requests of this type made within a thirty-day period have been made in order to avoid fees. Where requests are separated by a longer period, Amtrak may aggregate them only when there exists a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters may not be aggregated.

§ 701.12. Other rights and services.

Nothing in this part shall be construed as entitling any person, as of right, to any service or the disclosure of any record to which such person is not entitled under the FOIA.

Dated: November 10, 2016.

Eleanor D. Acheson,

*Executive Vice President, Chief Legal Officer,
General Counsel & Corporate Secretary.*

[FR Doc. 2016-27620 Filed 11-22-16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160630574-6574-01]

RIN 0648-BG18

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendment 43 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf)(FMP), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council)(Amendment 43). This proposed rule would revise the geographic range of the fishery management unit (FMU) for Gulf hogfish (the West Florida stock) consistent with the South Atlantic Fishery Management Council's (South

Atlantic Council) proposed boundary between the Florida Keys/East Florida and West Florida stocks, set the annual catch limit (ACL) for the West Florida stock, increase the minimum size limit for the proposed West Florida stock, and remove the powerhead exception for harvest of hogfish in the Gulf reef fish stressed area. This proposed rule would also correct a reference in the regulatory definition for charter vessel. The purpose of this proposed rule is to manage hogfish using the best scientific information available.

DATES: Written comments must be received by December 23, 2016.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2016-0126" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/

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

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

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 43, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2016/am43/index.html.

FOR FURTHER INFORMATION CONTACT:

Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes hogfish, 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) (16 U.S.C. 1801 *et seq.*).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield 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.

Hogfish occur throughout the Gulf but are caught primarily off the Florida west coast. Hogfish are managed with a stock ACL and no allocation between the commercial and recreational sectors. Generally, the fishing season for both sectors is open year-round, January 1 through December 31. However, accountability measures (AMs) for hogfish specify that if commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year, if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year. The hogfish ACL and AMs were implemented in 2012 (76 FR 82044, December 29, 2011). The AMs were triggered when the hogfish ACL was exceeded in 2012, and the 2013 season was closed on December 2 because NMFS determined that the 2013 hogfish stock ACL had been harvested (78 FR 72583, December 3, 2013). The stock ACL was exceeded again in 2013. However, there was no closure in 2014 and the stock ACL was not exceeded in the 2014 or 2015 fishing years.

In 2014, the Florida Fish and Wildlife Conservation Commission (FWC) completed the most recent stock assessment for hogfish through the Southeast Data, Assessment, and Review process (SEDAR 37). SEDAR 37 divided the hogfish stock into three stocks based upon genetic analysis as follows: the West Florida stock, the Florida Keys/East Florida stock, and the Georgia through North Carolina stock. The West Florida stock is completely within the jurisdiction of the Gulf Council and the Georgia through North Carolina stock is completely within the jurisdiction of the South Atlantic Council. The Florida Keys/East Florida stock crosses the two Councils' jurisdictional boundary, with a small portion of the stock extending into the Gulf Council's jurisdiction off the west

coast of Florida. Based on SEDAR 37 and the Gulf and South Atlantic Councils' Scientific and Statistical Committee (SSC) recommendations, NMFS determined that the West Florida stock is not overfished or undergoing overfishing, the Florida Keys/East Florida stock is overfished and experiencing overfishing, and the status of the Georgia through North Carolina stock is unknown. NMFS notified the Gulf and South Atlantic Councils of these stock status determinations via letter on February 17, 2015.

Because only a small portion of the Florida Keys/East Florida stock extends into the Gulf Council's jurisdiction off south Florida, the Gulf Council's SSC recommended that the South Atlantic Council's SSC take the lead in setting the overfishing limit (OFL) and acceptable biological catch (ABC) for the Florida Keys/East Florida stock. The Gulf Council's SSC reviewed and provided recommendations on the west Florida shelf (Gulf) portion of the stock assessment.

Management Measures Contained in This Proposed Rule

If implemented, this proposed rule would: Revise the hogfish FMU managed by the FMP to the West Florida hogfish stock, which includes hogfish in the Gulf exclusive economic zone (EEZ), except south of a line extending due west from 25°09' N. lat. off the west coast of Florida; specify the ACL for the West Florida hogfish stock; increase the minimum size limit for the West Florida stock; and remove the powerhead exception for harvest of hogfish in the Gulf reef fish stressed area.

Fishery Management Unit

The South Atlantic Council developed and submitted for review by the Secretary of Commerce a rebuilding plan for the Florida Keys/East Florida stock through Amendment 37 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 37). A small portion of the Florida Keys/East Florida stock, as defined by the SEDAR 37, extends into Gulf waters in the Gulf Council's jurisdiction in south Florida. Therefore, in Amendment 43 and this proposed rule, the Gulf Council would revise the hogfish FMU in the Gulf to be the West Florida stock, and would define the geographic range of this stock consistent with the South Atlantic Council's proposed boundary between the Florida Keys/East Florida and West Florida hogfish stocks in Amendment 37. This boundary would be a line extending west along 25°09' N. lat. to the outer boundary of the EEZ,

which is just south of Cape Sable, Florida, on the west coast of Florida. The Gulf Council would manage hogfish (the West Florida stock) in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida. The South Atlantic Council would manage hogfish (the Florida Keys/East Florida stock) in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida, and in the South Atlantic EEZ to the state border of Florida and Georgia. This boundary is south of the line used in SEDAR 37, which defined the West Florida stock as north of the Monroe and Collier County, Florida, boundary line. Therefore, it is possible that some fish that are part of the Florida Keys/East Florida stock will be harvested under the regulations set by the Gulf Council. However, the majority of hogfish landings in Monroe County occur in the Florida Keys, and the proposed boundary is far enough north of the Florida Keys that fishing trips originating in the Florida Keys rarely travel north of the boundary, and far enough south of Naples and Marco Island, Florida, that fishing trips originating from these locations rarely travel south of the boundary. In addition, the boundary line proposed by the Gulf and South Atlantic Councils is currently used by the FWC as a regulatory boundary for certain state-managed species. Using a pre-existing management boundary will increase enforceability and help fishermen by simplifying regulations across adjacent management jurisdictions.

In accordance with section 304(f) of the Magnuson-Stevens Act, the Gulf Council requested that the Secretary of Commerce designate the South Atlantic Council as the responsible Council for management of the Florida Keys/East Florida hogfish stock in Gulf Federal waters south of 25°09' N. lat. near Cape Sable on the west coast of Florida. If the Gulf Council's request is approved, the Gulf Council would continue to manage hogfish in Federal waters in the Gulf, except in Federal waters south of this boundary. Therefore, the South Atlantic Council, and not the Gulf Council, would establish the management measures for the entire range of the Florida Keys/East Florida hogfish stock, including in Federal waters south of 25°09' N. lat. near Cape Sable in the Gulf. Commercial and recreational for-hire vessels fishing for hogfish in Gulf Federal waters, *i.e.*, north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils (approximately at the Florida Keys), as defined at 50 CFR 600.105(c), would still be required to have the appropriate Federal Gulf reef fish permits, and

vessels fishing for hogfish in South Atlantic Federal waters, *i.e.*, south and east of the jurisdictional boundary, would still be required to have the appropriate Federal South Atlantic snapper-grouper permits. Those permit holders would still be required to follow the sale and reporting requirements associated with the respective permits.

NMFS specifically seeks public comment regarding the revised stock boundaries and the manner in which the Councils would have jurisdiction over these stocks if both Amendment 37 for the South Atlantic Council and Amendment 43 for the Gulf Council are approved and implemented. NMFS published notices of availability, seeking comments on Amendment 37 and Amendment 43, on October 7, 2016, and November 4, 2016, respectively (81 FR 69774 and 81 FR 76908).

Annual Catch Limit

The current stock ACL and annual catch target (ACT) for Gulf hogfish were established based on 1999–2008 landings. The ACL and ACT were set using the Gulf Council's ABC control rule for stocks that have not been assessed, but are stable over time, or are unlikely to undergo overfishing at current average levels. The SEDAR 37 projections produced annual yields for OFL and ABC for the West Florida hogfish stock for the 2016 through 2026 fishing years are based on an overfishing threshold of the fishing morality rate (F) at 30 percent spawning potential ratio ($F_{30\%SPR}$). However, because of increasing uncertainty with long-range projections, the Gulf Council's SSC only provided OFL and ABC recommendations for the West Florida hogfish stock for the first 3 years, 2016 through 2018. The 2016–2018 OFLs were 257,100 lb (116,619 kg), 229,400 lb (104,054 kg), and 211,000 lb (95,708 kg), round weight, respectively, and the 2016–2018 ABCs were 240,400 lb (109,044 kg), 216,800 lb (98,339 kg), and 200,800 lb (91,081 kg), round weight, respectively. The Gulf Council's SSC also made constant catch OFL and ABC recommendations based on the averages of the 2016–2018 OFLs and ABCs of 232,000 lb (105,233 kg), and 219,000 lb (99,337 kg), round weight, respectively. For 2019, and subsequent years, the SSC recommended an OFL and ABC set at the equilibrium yield of 161,900 lb (73,028 kg), and 159,300 lb (72,257 kg), round weight, respectively.

The proposed rule would set the ACL for the West Florida hogfish stock at 219,000 lb (99,337 kg), round weight, for the 2017 and 2018 fishing years and is based on the Gulf Council's SSC ABC recommendations that averaged the

2016 through 2018 ABC yield streams. In 2019, and subsequent fishing years, the stock ACL would be set at the equilibrium ABC of 159,300 lb (72,257 kg), round weight. The Council decided to discontinue the designation of an ACT, because it is not used in the current AMs or for other management purposes.

Minimum Size Limit

Although the West Florida hogfish stock is not overfished or undergoing overfishing, the stock could be subject to seasonal closures if landings exceed the stock ACL and AMs are triggered. The Gulf Council's Reef Fish Advisory Panel recommended increasing the minimum size limit in Federal waters from 12 inches (30.5 cm), fork length (FL), to 14 inches (35.6 cm), FL, to reduce the directed harvest rate and reduce the probability of exceeding the ACL. This minimum size limit increase was also supported in public testimony by fishermen. The minimum size limit increase is projected to reduce the recreational harvest rate by 10 to 35 percent and reduce the commercial harvest rate by 6 to 28 percent, depending upon time of year and type of fishing. This action has an additional benefit of allowing hogfish to grow larger and have an additional spawning opportunity before being susceptible to harvest.

Powerhead Exemption

Currently, as described at 50 CFR 622.35(a), a regulatory exemption allows for the harvest of hogfish using powerheads in the reef fish stressed area. The powerhead exemption is a regulatory holdover from when hogfish were listed in the regulations as a "species in the fishery but not in the reef fish fishery management unit." Amendment 15 to the FMP (62 FR 67714, December 30, 1997) removed 25 reef fish species and left 4 species (hogfish, queen triggerfish, sand perch, and dwarf sand perch) in the category of "species in the fishery but not in the management unit." Amendment 15 to the FMP also included a provision that reinstated the allowance of powerheads in the reef fish stressed area to harvest these four reef fish species. In 1999, Amendment 16B to the FMP (64 FR 57403, October 10, 1999) removed the distinction between reef fish species in the management unit and those in the fishery but not in the management unit and also removed queen triggerfish from the FMU. Even though the "species in the fishery but not in the management unit" category no longer existed, the other three species from this category continued to be listed as exempt from

powerhead prohibition. Sand perch and dwarf sand perch were removed from the FMP in 2011, through the Gulf Council's Generic ACL/AM Amendment (76 FR 82043, December 29, 2011), leaving only hogfish subject to the powerhead exemption.

This proposed rule would remove the provision that exempts hogfish from the prohibition on the use of powerheads to take Gulf reef fish in the Gulf reef fish stressed area. By removing the powerhead exemption for hogfish, hogfish would be subject to the same regulations for Gulf reef fish in the stressed area as other species in the reef fish FMU. The stressed area begins at the shoreward boundary of Federal waters and generally follows the 10-fathom contour from the Dry Tortugas to Sanibel Island, Florida; the 20-fathom contour to Tarpon Springs, Florida; the 10-fathom contour to Cape San Blas, Florida; the 25-fathom contour to south of Mobile Bay, Alabama; the 13-fathom contour to Ship Island, Mississippi; the 10-fathom contour off Louisiana; and the 30-fathom contour off Texas. The original FMP established the stressed area for purposes of preventing the localized depletion of reef fish stocks in nearshore waters, and to reduce the potential for gear conflicts (49 FR 39548, October 9, 1984). The coordinates for the reef fish stressed area are provided in 50 CFR part 622, Table 2 in Appendix B.

Management Measures Contained in Amendment 43 But Not Codified Through This Proposed Rule

Amendment 43 would also specify hogfish status determination criteria (SDC) for the hogfish West Florida stock. The minimum stock size threshold (MSST) and maximum fishing mortality threshold (MFMT) are used to determine if a stock is overfished or undergoing overfishing, respectively. If the stock biomass falls below the MSST, then the stock is considered overfished and the Gulf Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to produce maximum sustainable yield (MSY) on a continuing basis. If fishing mortality exceeds the MFMT, a stock is considered to be undergoing overfishing because this level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition.

Currently, the only SDC implemented for Gulf hogfish is the overfishing threshold, or MFMT. This threshold was approved by NMFS through the Gulf Council's Sustainable Fisheries Act Generic Amendment on November 17, 1999. The overfished threshold, or

MSST, and MSY in the Sustainable Fisheries Act Generic Amendment were disapproved because these values were not biomass based.

In setting SDC in Amendment 43, the Council selected the spawning potential ratio (SPR) as the basis for an MSY proxy. The SPR is calculated as the average number of eggs per fish over its lifetime when the stock is fished compared to the average number of eggs per fish over its lifetime when the stock is not fished. The SPR assumes that a certain amount of fish must survive and spawn in order to replenish the stock. Analyses of stocks with various life histories suggest that, in general, SPR levels of 30 to 40 percent are most commonly associated with MSY. Amendment 43 proposes to use the equilibrium yield from fishing at $FF_{30\%SPR}$ as a proxy for MSY. This proxy is consistent to that used in SEDAR 37 and is consistent with the MSY proxy commonly used for reef fish species.

Both the proposed hogfish MFMT and MSST are based on this MSY proxy. The current MFMT value of $FF_{30\%SPR}$ for hogfish is already consistent with the MSY proxy and is not being changed in Amendment 43. To be consistent with the MSY proxy, the MSST needs to be equal to or reduced from the spawning stock biomass (SSB) capable of producing an equilibrium yield when fished at $FF_{30\%SPR}$ ($SSBF_{30\%SPR}$). The closer the MSST value is to $SSBF_{30\%SPR}$, the more likely a stock could be mistakenly declared overfished due to year-to-year fluctuations in SSB resulting in an unneeded rebuilding plan. However, if MSST is set too low, then rebuilding the stock equilibrium levels could take longer because the difference between $SSBF_{30\%SPR}$ and MSST is larger. Therefore, in Amendment 43, the Gulf Council determined that setting the MSST at 75 percent of $SSBF_{30\%SPR}$ balanced the likelihood of declaring the stock as overfished as a result of natural variations in stock size with being able to allow the stock to recover quickly from an overfished state.

Additional Proposed Changes to Codified Text Not in Amendment 43

In 2013, NMFS reorganized the regulations in 50 CFR part 622 to improve the organization of the regulations and make them easier to use (78 FR 57534, September 19, 2013). However, during that reorganization, a regulatory reference in the definition of “charter vessel” in § 622.2, was inadvertently not updated as needed. The current charter vessel definition includes a reference to § 622.4(a)(2) as the provision that specifies the required

commercial permits under the various fishery management plans. Although § 622.4(a)(2) addressed all of the required commercial permits before the 2013 reorganization, that provision now refers to operator permits. The reorganization of the regulations removed the various commercial permit provisions from § 622.4 and placed them in the appropriate subparts throughout part 622. This proposed rule would update the regulatory reference in the definition of charter vessel in § 622.2 to refer to commercial permits “as required under this part”. This update in language would make the regulatory reference in the definition of charter vessel consistent with the current regulatory definition for headboat in § 622.2.

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 Amendment 43, other provisions of the Magnuson-Stevens Act, and other applicable laws, 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 initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the RFA, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or record-keeping requirements are introduced by this proposed rule.

This proposed rule would directly affect all vessels with a Gulf Federal commercial reef fish permit that harvest hogfish. A Federal commercial reef fish permit is required for commercial vessels to harvest reef fish species, including hogfish, in the Gulf EEZ. Over the period 2010 through 2014, the number of vessels with recorded commercial harvests of hogfish in the Gulf EEZ ranged from 55 in 2010 to 75 in 2014, or an average of 61 vessels per year, based on mandatory Federal logbook data. The average annual

revenue per vessel from the harvest of all finfish species during this period by these vessels was approximately \$35,600 (this estimate and all subsequent monetary estimates in this analysis are in 2014 dollars), of which approximately \$2,200 was derived from the harvest of hogfish.

NMFS has not identified any other small entities that might be directly affected by this proposed rule. Although recreational anglers would be directly affected by the actions in this proposed rule, recreational anglers are not small entities under the RFA. The actions in this proposed rule would not directly apply to or change the operation of the charter vessel and headboat (for-hire) component of the recreational sector or the service this component provides, which is providing a platform to fish for and retain those fish which are caught and within legal allowances. Although angler demand for for-hire services could be affected by the management changes in this proposed rule, the resultant effects on for-hire businesses would be indirect consequences of this proposed rule.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily engaged in commercial fishing (NAICS code 11411) 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 \$11 million for all its affiliated operations worldwide. All commercial fishing vessels expected to be directly affected by this proposed rule are believed to be small business entities.

This proposed rule contains four actions pertaining to the management of the West Florida hogfish stock in the Gulf: Defining the hogfish FMU, establishing the stock ACL, setting the minimum size limit, and prohibiting the harvest of hogfish with powerheads in the reef fish stressed area. Two of these actions, defining the FMU and prohibiting the use of powerheads, would not be expected to have any direct economic effects on any small entities.

Defining the FMU is an administrative action that forms the platform from which subsequent harvest regulations, such as the ACL and minimum size limit, are based. Although direct economic effects may accrue due to the imposition and change of these harvest regulations, these effects would be indirect consequences of defining the

FMU. Indirect effects are outside the scope of the RFA.

Prohibiting the use of powerheads would not be expected to directly affect any small entities because powerheads are not expected to be a gear used to harvest hogfish. The use of powerheads for the harvest of other reef fish species in these areas is currently prohibited and, because of the small size of hogfish, powerheads would be expected to result in excessive damage to the fish and adversely affect its market quality. Thus, it is not expected that any hogfish in the reef fish stressed area are commercially harvested using powerheads, and the proposed prohibition would not be expected to reduce revenue to any commercial fishermen.

The proposed changes in the West Florida hogfish stock ACL and minimum size limit have independent and interactive effects. The proposed West Florida hogfish stock ACL would be expected to result in an increase in total (all vessels) commercial fishing revenue for 2016 through 2018 fishing years by approximately \$8,900 per year, followed by a decrease in revenue of approximately \$39,300 in 2019, and thereafter until the stock ACL (or other management aspect) is changed. The proposed minimum size limit would be expected to reduce commercial harvest by 17 percent, resulting in a decrease in commercial revenue each year if vessels are unable to compensate for the increased minimum size limit. Independent of the proposed West Florida hogfish stock ACL, the proposed minimum size limit would be expected to result in a decrease in total (all vessels) commercial revenue of approximately \$28,500 per year.

In combination, the proposed revisions to the West Florida hogfish stock ACL and minimum size limit would be expected to result in a decrease in total (all vessels) commercial revenue of approximately \$21,100 per year for 2016 through 2018 and approximately \$61,100 in 2019 and each year thereafter until the stock ACL (or other management aspect) is changed. As previously stated, these projected reductions assume an inability of fishermen to benefit from the full proposed increase in the ACL due to the proposed increase in the minimum size limit, as well as compensate for the effects of the larger minimum size limit on their normal harvests (*i.e.*, pre-ACL increase). Averaged across the number of small business entities expected to be directly affected by this proposed action (55–75 entities, or an average of 61 entities per year), the expected reduction in revenue each year for 2016

through 2018 would range from \$282 (75 entities) to \$384 (55 entities) per year, or an average of \$347 (61 entities). For 2019, and thereafter, the expected average reduction would range from \$814 (75 entities) to \$1,111 (55 entities) per year, or an average of \$1,001 (61 entities).

Compared to the average annual revenue per vessel from all commercial fishing (approximately \$35,600), the expected reduction in revenue per year as a result of the proposed West Florida hogfish stock ACL and minimum size limit would average approximately one percent of average annual total revenue for 2016 through 2018. For 2019, and thereafter, the average expected reduction in annual revenue would be approximately three percent of average annual total revenue.

In conjunction with the proposed ACL for the West Florida stock, this proposed rule would eliminate the ACT (*i.e.*, an ACT would not be defined). Although this would eliminate the current West Florida hogfish ACT, the hogfish ACT is not currently used as a fishing restraint and does not affect the harvest of hogfish, or associated revenue, in the Gulf. As a result, not defining an ACT would not be expected to have any economic effects on any small entities.

In addition to the four actions that pertain to the management of hogfish in the Gulf, this proposed rule would make a minor revision to the definition of a charter vessel. A regulatory reference within the definition of charter vessel was inadvertently not updated when the regulations at 50 CFR part 622 were reorganized in 2013 (78 FR 57534, September 19, 2013). This revision would be editorial in nature and would not be expected to have any direct effect on any small entities.

Because the proposed actions to define the Gulf hogfish FMU, specify the SDC for the West Florida hogfish stock, prohibit the use of powerheads to harvest hogfish in the reef fish stressed area, and revise the definition of charter vessel would not be expected to have any direct adverse economic effects on any small entities, the issue of significant alternatives is not relevant.

Four alternatives, including no action, were considered for the action to set the West Florida hogfish stock ACL. Each of these alternatives included options to set the West Florida hogfish ACT, and the option selected by the Gulf Council was to not define an ACT. As previously discussed, the current ACT does not restrict harvest. Thus, not defining an ACT would not be expected to have any direct economic effects, and the issue of

significant alternatives (or options) is not relevant.

The first alternative (no action) to the proposed ACL for the West Florida hogfish stock would have resulted in less revenue to commercial fishermen in 2016 through 2018, and more revenue in 2019, and thereafter than the proposed change. Cumulatively (2016 through 2019 and thereafter), this alternative would have resulted in more commercial fishing revenue than the proposed ACL. However, this alternative was not selected by the Gulf Council because it would not enable the increase in stock ACL for the West Florida hogfish stock resulting from SEDAR 37. Under the proposed rule, the ACL in 2019 will be substantially reduced from the 2017 and 2018 ACL if a new hogfish assessment is not completed. This may suggest the “no action” ACL would be preferable to the proposed ACL. However, retaining the “no action” ACL in 2019 and beyond would have been inconsistent with the ABC recommendations provided by the Council’s SSC. In addition, the Council expects a new assessment to be completed in sufficient time to avoid the scheduled reduction to the ACL beginning in the 2019 fishing year.

The second alternative to the proposed ACL for the West Florida hogfish stock would set the ACL higher in 2016 and reduce it thereafter, until it reached the lowest level in 2019. This alternative would be expected to result in increased commercial fishing revenue in 2016, decreased revenue in 2017 and 2018, and the same revenue in 2019, and thereafter compared to the proposed ACL. This alternative was not adopted by the Gulf Council because it would require successive reductions in the ACL in 2017 and 2018 (after the initial increase in 2016), in addition to the reduction in 2019, common to both this alternative and the proposed ACL. The Gulf Council determined that employing a constant ACL for the 2016 through 2018 fishing years would result in greater economic stability for affected fishermen and associated businesses.

Finally, the fourth alternative to the proposed ACL for the West Florida hogfish stock would set the ACL at the lowest level, resulting in less revenue in 2016 through 2018, and the same revenue in 2019, and thereafter compared to the proposed ACL. This alternative was not selected because it would unnecessarily limit hogfish harvest and cause greater economic losses than the proposed ACL.

Four alternatives, including no action, were considered for the action to change the hogfish minimum size limit. The Gulf Council determined that slowing

the hogfish directed harvest rate was prudent to reduce the likelihood that the ACL is exceeded, thus triggering AMs. Exceeding the ACL may require an AM closure in the following year, and the Gulf Council determined that a closure is more economically harmful than reducing the harvest rate to help ensure a longer open season. Therefore, to reduce the harvest rate, the Gulf Council is proposing to increase the hogfish minimum size limit.

The first alternative (no action) to the proposed minimum size limit would not change the minimum size limit, would not reduce the harvest rate, and would not achieve the Gulf Council's objective. Two other minimum size limits were considered in Amendment 43, each of which are higher than the current and proposed size limits. Because these alternatives would result in a higher minimum size limit than the Council's

preferred alternative, each would be expected to result in greater reductions in hogfish harvest and associated revenue. These alternatives were not adopted because the Gulf Council concluded that the resultant reductions in the hogfish harvest rate would be greater than necessary, and would result in excessive adverse economic effects on fishermen and associated businesses.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf of Mexico, Hogfish, Recreational, South Atlantic.

Dated: November 16, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, 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 § 622.1, revise the Table 1 entry for “FMP for the Reef Fish Resources of the Gulf of Mexico”, and add footnote 7 to Table 1 to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1 TO § 622.1—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographic area
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf. ^{1 3 4 7}

¹ Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

³ Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

⁴ Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

⁷ Hogfish are managed by the FMP in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida. Hogfish in the remainder of the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida are managed under the FMP for the Snapper-Grouper Fishery of the South Atlantic Region.

■ 3. In § 622.2, revise the first two sentences in the definition of *Charter vessel* to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under this part, is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef fish or South Atlantic snapper-grouper. * * *

* * * * *

■ 4. In § 622.34, add paragraph (g) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(g) *Recreational sector for hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.* See § 622.183(b)(4) for the applicable seasonal closures.

■ 5. In § 622.35, revise paragraph (a)(1) to read as follows:

§ 622.35 Gear restricted areas.

(a) * * *

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie*

evidence that such reef fish was taken with a powerhead in the stressed area.

* * * * *

■ 6. In § 622.37, revise paragraph (c)(2) to read as follows:

§ 622.37 Size limits.

* * * * *

(c) * * *

(2) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida—14 inches (40.6 cm), fork length.* See § 622.185(c)(3)(ii) for the hogfish size limit in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.

* * * * *

■ 7. In § 622.38, revise paragraph (b)(7) to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(7) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida*—5. See § 622.187(b)(3)(ii) for the hogfish bag and possession limits in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.

* * * * *

■ 8. In § 622.41, revise paragraph (p) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(p) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida*. If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. For the 2016 through 2018 fishing years, the stock ACL for hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida is 219,000 lb (99,337 kg), round weight. For the 2019 and subsequent fishing years, the stock ACL for hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida is 159,300 lb (72,257 kg), round weight. See § 622.193(u)(2) for the ACLs, ACT, and AMs for hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.

* * * * *

■ 9. In § 622.43, add paragraph (c) to read as follows:

§ 622.43 Commercial trip limits.

* * * * *

(c) *Hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida*—see § 622.191(a)(12) for the applicable commercial trip limit.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160816746–6746–01]

RIN 0648–XE819

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Proposed 2017–2018 Fishing Quotas

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes status quo commercial quotas for the Atlantic surfclam and ocean quahog fisheries for 2017 and projected status quo quotas for 2018. This action is necessary to establish allowable harvest levels of Atlantic surfclams and ocean quahogs that will prevent overfishing and allow harvesting of optimum yield. This action would also continue to suspend the minimum shell size for Atlantic surfclams for the 2017 fishing year. It is expected that the industry and dealers will benefit from the proposed status quo quotas, as they will be able to maintain a consistent market.

DATES: Comments must be received by December 8, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2016–0122, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2016-0122, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on the 2017–2018 Surfclam/Ocean Quahog Specifications.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying

information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Environmental Assessment (EA), Supplemental Information Report (SIR), and other supporting documents for these proposed specifications are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The EA and SIR are also accessible via the internet at:

www.greateratlantic.fisheries.noaa.gov/.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION: The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS, in consultation with the Mid-Atlantic Council, specify quotas for surfclam and ocean quahog for up to a 3-year period, with an annual review. It is the policy of the Council that the catch limits selected allow sustainable fishing to continue at that level for at least 10 years for surfclams, and 30 years for ocean quahogs. In addition to this, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481; May 19, 1998) added Maine ocean quahogs (locally known as Maine mahogany quahogs) to the management unit, and provided for a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat., with an annual quota within a range of 17,000 to 100,000 Maine bu (0.6 to 3.524 million L). As specified in Amendment 10, the Maine ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970; December 16, 2003) established the ability to propose multi-year quotas with an annual quota review to be conducted by the Council to determine if the multi-year quota specifications remain appropriate for each year. NMFS then publishes the annual final quotas in the **Federal Register**. The fishing quotas must ensure overfishing will not occur. In recommending these quotas, the Council considered the most recent stock assessments and other relevant scientific information.