

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

RIN 0648–BH39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 43

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

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) submitted Amendment 43 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 43 would allow for the harvest of red snapper in South Atlantic Federal waters by revising red snapper commercial and recreational annual catch limits (ACL). The purpose of Amendment 43 is to minimize adverse socio-economic effects to fishermen and fishing communities that utilize red snapper as part of the snapper-grouper fishery, while preventing overfishing from occurring and continuing to rebuild the red snapper stock.

DATES: Written comments on Amendment 43 must be received by June 15, 2018.

ADDRESSES: You may submit comments on Amendment 43, identified by “NOAA–NMFS–2017–0148,” by either of the following methods:

- *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0148, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Frank Helies, 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 required fields if you wish to remain anonymous).

Electronic copies of Amendment 43 may be obtained from www.regulations.gov or the Southeast Regional Office website at <http://sero.nmfs.noaa.gov>. Amendment 43 includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act analysis, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: frank.helies@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit FMPs or amendments to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

Amendment 43 to the FMP was prepared by the South Atlantic Council and, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Harvest of red snapper from South Atlantic Federal waters was prohibited in 2010 through a temporary interim rule and then through Amendment 17A to the FMP when the stock was determined to be overfished and undergoing overfishing (Southeast Data, Assessment, and Review (SEDAR) 15, 2009)(74 FR 63673, December 4, 2009; 75 FR 76874, December 9, 2010). Amendment 17A also implemented a 35-year red snapper rebuilding plan that began in 2010, and set the red snapper stock ACL at zero. In 2013, Amendment 28 to the FMP established a process that allowed red snapper harvest (ACL greater than zero) if total removals (landings plus dead discards) were less than the acceptable biological catch (ABC) in the previous fishing year (78 FR 44461, July 24, 2013). Using the process established through Amendment 28, limited harvest of red snapper was allowed in 2012, 2013, and 2014. However, because the estimated

total removals of red snapper exceeded the ABC in 2014, 2015, and 2016 due to estimates of red snapper discards that were incidentally harvested as bycatch while targeting other species, there was no allowable harvest in 2015 and 2016. In 2017, as a result of new scientific information regarding the red snapper stock, NMFS allowed limited commercial and recreational harvest of red snapper by a temporary rule through emergency action (82 FR 50839, November 2, 2017).

Status of the Stock

The most recent stock assessment for South Atlantic red snapper, SEDAR 41 (2017), was completed in 2016 and subsequently revised in 2017. SEDAR 41 (2017) evaluated data through 2014 and determined the red snapper stock was overfished and that overfishing was occurring. The stock assessment indicated that overfishing was occurring because the estimated fishing mortality based on the average over the last three years of the assessment represented in the model (2012–2014) exceeded the maximum fishing mortality threshold. Though limited red snapper harvest was allowed during those years, a large majority of the estimated fishing mortality occurred from very large and uncertain dead discard estimates when fishermen were targeting red snapper and species that co-occur with red snapper, such as vermilion snapper, gag, red grouper, black sea bass, gray triggerfish, greater amberjack, and scamp. The review of the SEDAR 41 stock assessment indicated the estimate of recreational discards was the greatest source on uncertainty in the stock assessment. It was acknowledged in the assessment that discarding of red snapper has increased over time due to changes in minimum landing size to 20 inches (51 cm) in 1992, increases in abundance of young fish from above-average year classes in some recent years, the introduction of the moratorium in 2010 and 2011, and the small commercial catch limits and recreational bag limits in the mini seasons for 2012 onwards. Because most of the catch is now discarded, the number of discards is dependent upon fisher recalls, and these estimates are expanded based on small sample size; thus, the quality of total fishery removals estimates is poor and uncertain, which will impact estimation of stock size and fishing mortality.

In May 2016, the Council’s Scientific and Statistical Committee (SSC) reviewed SEDAR 41 (2017), and had an extensive discussion of the uncertainties associated with the assessment. The SSC stated that the assessment was

based on the best scientific information available, but noted the assessment findings were highly uncertain regarding to what extent overfishing was occurring (*i.e.*, the actual numerical value of the current fishing mortality estimate), and regarding the measures of discards. The SSC indicated that the most significant sources of uncertainty in the assessment include: The stock-recruitment relationship, natural mortality at age, the age structure of the unfished population, the composition and magnitude of recreational discards (where dead discards greatly outnumbered the landings during the years 2012 through 2014), and potential changes in catch per unit effort (CPUE). The SSC developed its ABC recommendations based on SEDAR 41, and the total ABC recommendation for 2018 is 53,000 red snapper.

The projections of yield streams used in SEDAR 41 (2017) included both landings and dead discards, which were added to obtain an estimate of the total removals. The SSC divided its 53,000 fish ABC recommendation into landed fish (18,000) and discarded fish (35,000). Because of the recent closures in the fishery, in January 2017, the Council requested that the NMFS Southeast Fishery Science Center (SEFSC) provide red snapper projections under the assumption that all fish caught are subsequently discarded, believing that such projections would be more informative for management. The SEFSC advised the Council in February 2017 that the requested projections were not appropriate for management because the uncertainty in the stock assessment inhibits the ability to set an ABC that can be effectively monitored. The SEFSC further stated in an April 2017 letter to the Council, that the use of an ABC based primarily on fishery discards for monitoring the effectiveness of management action is likely ineffective due to the high level of uncertainty in measures of discards. NMFS has determined that given the extreme uncertainty associated with the red snapper recreational discard estimates, it is not appropriate to rely on those discard estimates for the management of red snapper, and the division of the SSC's ABC recommendation of 53,000 fish into landed fish and discarded fish is unwarranted.

The results of SEDAR 41 (2017) using data through 2014, indicated that the red snapper stock was still overfished but was rebuilding in accordance with the rebuilding plan. NMFS sent the Council a letter on March 3, 2017, noting these results, the SEFSC's concerns regarding the substantial

uncertainty in the assessment, and advising the Council that sufficient steps had been taken to address overfishing of red snapper while continuing to rebuild the stock through harvest prohibitions in 2015 and 2016. This determination is supported by a significant increase in stock biomass since 2010 to levels not seen since the 1970's, and increasing abundance of older age classes (SEDAR 41 2017). Additional support comes from fishery-independent information collected through the Southeast Reef Fish Survey (SERFS) program, and the East Coast Fisheries Independent Monitoring information conducted by Florida Fish and Wildlife Conservation Commission (FWCC). According to the SERFS, the relative abundance (CPUE) of red snapper has increased since 2009, reaching the highest level observed in the entire time series (1990–2016) in 2016. In addition, the SERFS program notified the Council at the December 2017 meeting that red snapper relative abundance, as measured through fishery-independent monitoring, increased 18 percent from 2016 to 2017. According to the results of FWCC's study, CPUE for red snapper for hook gear (surveyed in 2012, 2014, 2016, and 2017) and the standardized index of abundance (surveyed from 2014–2017) was highest in 2017. The FWCC data also showed a greater number of large red snapper and a broader range of ages in recent years, which suggests rebuilding progress of the red snapper stock. Additionally, the increase in relative abundance of red snapper indicated by the fishery-independent CPUE indices has taken place despite landings during the limited seasons in 2012–2014 and despite the large number of estimated red snapper dead discards during harvest restrictions for red snapper since 2010.

As a result of the new scientific information regarding the red snapper stock, NMFS allowed limited harvest of red snapper beginning November 2, 2017, by a temporary rule through emergency action (82 FR 50839, November 2, 2017). The amount of harvest authorized in the temporary rule was equivalent to the amount of observed landings in the 2014 fishing season. Amendment 43 would allow the same amount of harvest annually beginning in 2018. Therefore, NMFS determined that allowing that same amount of harvest that occurred in 2014 is unlikely to result in overfishing or change the red snapper rebuilding time period. NMFS has determined that Amendment 43 is based on the best scientific information available.

Additionally, the ACL proposed in Amendment 43 is less than the ABC provided by the SSC from SEDAR 41, in accordance with the Magnuson-Stevens Act and the National Standard 1 Guidelines. *See* 16 U.S.C. 1852(h)(6), 50 CFR 600.310(f)(4)(i).

Action Contained in Amendment 43

Based on the actions in Amendment 28, the FMP currently contains total ABCs that are then divided, with one component for landings and another for discards. Beginning in 2018, Amendment 43 would change the process for determining the red snapper ACL and allowable harvest that was established in Amendment 28. Limited commercial and recreational harvest would be allowed by implementing a total ACL of 42,510 fish, which is based on the landings observed during the limited red snapper season in 2014. This ACL is less than the SSC's most recent total ABC recommendation of 53,000 red snapper, and is less than the 79,000 fish landings component of the 135,000 fish total ABC projection for 2018 in Amendment 28. The total ACL is divided into a commercial sector ACL of 124,815 lb (56,615 kg), round weight, and a recreational sector ACL of 29,656 fish, based on the current sector allocation ratio developed by the Council for red snapper (28.07 percent commercial and 71.93 percent recreational). The commercial sector's ACL is set in pounds of fish because the commercial sector reports landings in weight, and therefore, weight is a more accurate representation of commercial landings. For the commercial sector, one red snapper is equivalent to 9.71 lb (4.40 kg), round weight. The ACL for the recreational sector is specified in numbers of fish, because the Council determined that numbers of fish are a more reliable estimate for that sector than specifying the ACL in weight of fish. Because surveys that estimate recreational landings collect information on numbers of fish and convert those numbers to weights using biological samples that are sometimes limited, the Council believes that there can be uncertainty in estimates of recreational landings by weight.

NMFS and the Council have specified several management measures that function as accountability measures (AMs) to constrain red snapper harvest to these ACLs, including limited commercial and recreational red snapper seasons. The harvest of red snapper would begin in July, with the opening and closing of the recreational sector specified before the recreational season begins and would consist of weekends only (Friday, Saturday,

Sunday). The commercial red snapper season would close when the commercial ACL is met or projected to be met. The length of the recreational red snapper season would be projected and announced before the start of the season, based on catch rate estimates from previous years. In addition to authorizing commercial and recreational harvest by setting sector ACLs and AMs, Amendment 43 would retain the current commercial trip limit of 75 lb (34 kg), gutted weight, and the recreational bag limit of 1 fish per person per day. No size limits would be implemented for either sector through Amendment 43 in an effort to decrease regulatory discards (fish returned to the water because they are below the minimum size limit). The NMFS Regional Administrator has the authority to delay the opening of red snapper fishing seasons in the event of

a tropical storm or hurricane affecting the area of the Council's jurisdiction.

Proposed Rule for Amendment 43

A proposed rule that would implement Amendment 43 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, Amendment 43, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 43 for Secretarial review, approval, and implementation. Comments on Amendment 43 must be

received by June 15, 2018. Comments received during the respective comment periods, whether specifically directed to Amendment 43 or the proposed rule, will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 43. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 43 or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 11, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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