

days to allow any interested persons to submit comments on the proposed rule.

Approved: April 06, 2021.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 210415-0081]

RIN 0648-BK34

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish 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 a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this proposed rule would modify catch limits in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) for gray triggerfish. The purpose of this proposed rule and the framework action is to modify the catch limits, as applicable, consistent with the most recent interim analysis for gray triggerfish and to achieve optimum yield (OY) for the stock.

**DATES:** Written comments must be received on or before May 21, 2021.

**ADDRESSES:** You may submit comments on the proposed rule, identified by “NOAA-NMFS-2021-0030” by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2021-0030”, in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Kelli O'Donnell, Southeast Regional Office, NMFS, 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](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), 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 the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-action-modification-gray-triggerfish-catch-limits>.

**FOR FURTHER INFORMATION CONTACT:** Kelli O'Donnell, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: [Kelli.ODonnell@noaa.gov](mailto:Kelli.ODonnell@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery, which includes gray triggerfish, is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS 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 to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that 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.

Gray triggerfish in the Gulf EEZ are managed using both commercial and recreational sector measures with each sector having its own annual catch limit (ACL) and annual catch target (ACT). The sector allocation of the stock ACL, which equals the acceptable biological catch (ABC), is 21 percent commercial and 79 percent recreational and was implemented in 2008 through Amendment 30A to the FMP (73 FR 38139; July 3, 2008). Inseason accountability measures (AMs) for gray triggerfish specify that if commercial and/or recreational landings meet or are projected to meet the respective sector's ACT, that sector will close for the

remainder of the fishing year. For the commercial sector, the post-season AM specifies that if the commercial ACL is exceeded despite the quota closure, then the following fishing year's commercial ACL and ACT (commercial quota) will be reduced by the amount of the prior-year's commercial ACL overage. For the recreational sector, if the recreational ACL is exceeded and gray triggerfish are overfished then in the following fishing year the recreational ACL and ACT would be reduced by the amount of the ACL overage in the prior fishing year. The current gray triggerfish ACLs, ACTs (set at 5 percent and 10 percent less than the commercial and recreational sector ACLs, respectively), and inseason AMs for both sectors and the post season AM for the recreational sector, were established in 2013, through Amendment 37 to the FMP (78 FR 27084; May 9, 2013). The postseason AM for the commercial sector was established in 2008, through Amendment 30A to the FMP (73 FR 38139).

The most recent Southeast Data, Assessment, and Review (SEDAR) stock assessment for gray triggerfish was completed and reviewed by the Council's Scientific and Statistical Committee (SSC) in October 2015 (SEDAR 43). SEDAR 43 indicated that the gray triggerfish stock was not experiencing overfishing but remained overfished and would not be rebuilt by the end of 2017 as previously projected. As a result of SEDAR 43, the Council's SSC made recommendations for an increased overfishing limit (OFL) based on a fixed maximum fishing mortality threshold, which is independent of rebuilding, and ABCs based on an 8, 9, or 10-year rebuilding timeline. Because of the stock not rebuilding as anticipated, the Council decided not to change the ABC, sector ACLs, and sector ACTs set by Amendment 37 but to change the rebuilding timeline to rebuild the stock by 2025. Amendment 46 implicitly adopted the SSC's recommendations for an increased OFL by including alternatives with an ABC that was higher than the *status quo* OFL. Amendment 44 to the FMP, implemented in 2017 (82 FR 61488; December 28, 2017), updated the stock status to not overfished but did not revise the sector ACLs or ACTs.

Between 2012 and 2019, the commercial sector has exceeded its ACL of 64,100 lb (29,075 kg), round weight, two times, in both 2012 and 2018. During that same time frame, the recreational sector has exceeded its ACL of 241,200 lb (109,406 kg), round weight, five times, in 2012, 2013, 2016, 2018, and 2019.

At its September 2020 meeting, the Council's SSC accepted a 2020 gray triggerfish interim analysis conducted by the NMFS Southeast Fisheries Science Center (SEFSC). Unlike full SEDAR stock assessments, interim analyses are designed to occur between regular SEDAR assessments to determine trends in stock condition and project future catch advice. While interim analyses take less time to complete, they cannot be used to determine if a stock is making progress towards rebuilding. Based on the interim analysis, abundance trends of the Gulf gray triggerfish stock suggest an increase in biomass that could support additional removals. The Council's SSC determined the interim analysis was suitable for providing ABC catch advice through 2023. From the interim analysis, the Council's SSC recommended the gray triggerfish stock ABC be increased to 456,900 lb (207,246 kg), round weight, for 2021 and subsequent fishing years, with the request that another interim analysis be completed in 2023. The Council's SSC previously recommended an increased OFL (1,220,000 lb (553,383 kg), round weight) that was implicitly adopted by Amendment 46 and was not examined by this interim analysis.

In January 2021, the Council took final action on this framework action, consistent with the most recent interim analysis for gray triggerfish, and recommendations from the Council's SSC, the SEFSC, and the Council's Reef Fish Advisory Panel (Reef Fish AP) to increase the commercial and recreational catch limits for Gulf gray triggerfish, in order to achieve OY consistent with the requirements of the Magnuson-Stevens Act.

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

This proposed rule would revise the commercial and recreational ACLs and ACTs consistent with the interim analysis and the Council's SSC, SEFSC, and the Council's Reef Fish AP recommendations.

##### *Commercial ACL and ACT*

If implemented, this proposed rule would increase the Gulf gray triggerfish commercial ACL from 64,100 lb (29,075 kg), round weight, to 95,949 lb (43,522 kg), round weight, for the 2021, and subsequent fishing years based on the current ACL sector allocation of 21 percent commercial. To determine the new ACT, the Council used its ACL/ACT control rule to determine the buffer to be applied to the commercial ACL to account for updated information. Application of the control rule indicated

that an 8 percent buffer is appropriate between the commercial ACL and ACT. This is an increase from the current buffer of 5 percent. Using a more recent time series, the control rule yielded a larger buffer due to the number of times sector landings exceeded the commercial ACL during the time series, current stock status (the stock is rebuilding), and the precision of landings data. The 8 percent buffer applied to the proposed commercial ACL, revises the commercial ACT (commercial quota) from 60,900 lb (27,624 kg), round weight to 88,273 lb (40,040 kg), round weight, for the 2021, and subsequent fishing years. The increased buffer between the commercial ACL and ACT is expected to reduce the risk of the commercial sector exceeding its ACL as well as reduce the likelihood of overfishing the gray triggerfish stock. NMFS notes that the commercial sector has never exceeded the commercial ACL that is proposed in this rule.

##### *Recreational ACL and ACT*

If implemented, this proposed rule would increase the Gulf gray triggerfish recreational ACL from 241,200 lb (109,406 kg), round weight, to 360,951 lb (163,725 kg), round weight, for the 2021, and subsequent fishing years based on the ACL sector allocation of 79 percent recreational. To determine the new recreational ACT, the ACL/ACT control rule was applied to determine the buffer using updated information. The control rule yielded a 24 percent buffer between the recreational ACL and ACT. This is an increase from the current 10 percent buffer. The reason for the buffer increase was the result of past ACL overages, the stock is rebuilding, a more recent time series being applied, and the precision of landings data. When the buffer is applied to the proposed recreational ACL, the ACT would be increased from 217,100 lb (98,475 kg), round weight, to 274,323 lb (124,431 kg), round weight, for the 2021, and subsequent fishing years.

NMFS notes that recreational landings in the 2013, 2016, and 2018 fishing years, have exceeded the recreational ACL proposed in this rule. The increased buffers between the recreational ACL and ACT are expected to reduce the risk of the recreational sector exceeding its ACL.

#### **Measure in the Framework Action but not Codified in This Proposed Rule**

In addition to the other measures contained in this proposed rule, the framework action would also revise the Gulf gray triggerfish stock ABC. As a result of the gray triggerfish interim

analysis, and the recommendation of the Council's SSC, the framework action would increase the Gulf gray triggerfish stock ABC from 305,300 lb (138,482 kg), round weight, to 456,900 lb (207,246 kg), round weight. The stock ACL would remain equal to the stock ABC. A buffer between the stock ABC and ACL was not recommended by the Council's Reef Fish AP as a result of wanting to retain the management approach currently in use for gray triggerfish by the Council of setting the stock ACL equal to the ABC. In addition, the increased ABC is 37.5 percent of the OFL (1,220,000 lb (553,383 kg), round weight). This large difference between the ABC and OFL reduces the risk of overfishing of the gray triggerfish stock.

#### **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 framework action, the FMP, 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.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule would apply to all federally-permitted commercial vessels and recreational anglers that fish for or harvest gray triggerfish in Federal waters of the Gulf. It would not directly apply to or regulate charter vessels and headboats (for-hire vessels). For-hire vessels sell fishing services to recreational anglers. The proposed changes to the gray triggerfish management measures would not directly alter the services sold by these vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this proposed rule would be a consequence of a behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be indirect, they

fall outside the scope of the RFA. Furthermore, for-hire captains and crew are allowed to retain gray triggerfish under the recreational bag limit; however, they are not allowed to sell these fish. As such, for-hire captains and crew would be directly affected only as recreational anglers. Recreational anglers who would be directly affected by this proposed rule are not considered small entities under the RFA, and are, therefore, outside the scope of this analysis. 5 U.S.C. 603. Small entities include “small businesses,” “small organizations,” and “small governmental jurisdictions.” 5 U.S.C. 601(6) and 601(3)–(5). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on commercial vessels will be further discussed.

As of December 8, 2020, there were 831 vessels with Federal limited access valid or renewable Gulf reef fish permits, 62 of which had longline endorsements. On average from 2015 through 2019, there were 263 federally permitted commercial vessels each year with reported landings of gray triggerfish in the Gulf. Their average annual vessel-level gross revenue from all species for 2015 through 2019 was approximately \$158,000 (2019 dollars) and gray triggerfish accounted for less than 0.3 percent of this revenue. The maximum annual revenue from all species reported by a single one of the commercial vessels that landed Gulf gray triggerfish from 2015 through 2019 was approximately \$2.37 million (2019 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). 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 of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this rule have been identified.

This proposed rule would modify the commercial and recreational ACLs and ACTs for gray triggerfish consistent with the most recent interim analysis for gray triggerfish, and recommendations from the Council’s SSC, the SEFSC, and the Council’s Reef Fish AP. Under the proposed rule, the commercial ACT would increase by 27,373 lb (12,416 kg), round weight, which if harvested in full, would correspond to an estimated increase in annual ex-vessel revenue of \$56,115 (2019 dollars). Divided by the average number of commercial vessels with reported landings of gray triggerfish from 2015 through 2019, this would be an annual increase of approximately \$213 per vessel. Economic benefits to each vessel may vary based on individual fishing practices. However, such distributional effects cannot be quantified with available data. If annual commercial landings are less than the proposed new ACT, the positive economic effects associated with this rule would be reduced accordingly.

The information provided above supports a determination that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Annual catch limit, Fisheries, Fishing, Gray triggerfish, Gulf, Quota, Reef fish.

Dated: April 16, 2021.

**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 § 622.39, revise paragraph (a)(1)(vi) to read as follows:

#### **§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(vi) Gray triggerfish—88,273 lb (40,040 kg), round weight.

\* \* \* \* \*

■ 3. In § 622.41, revise the last sentence of paragraph (b)(1) and revise paragraph (b)(2)(iii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* The commercial ACL is 95,949 lb (43,522 kg), round weight.

(2) \* \* \*

(iii) The recreational ACL for gray triggerfish is 360,951 lb (163,725 kg), round weight. The recreational ACT for gray triggerfish is 274,323 lb (124,431 kg), round weight.

\* \* \* \* \*

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