

term viability of the NRM gray wolf population. Below we discuss each of these regulatory developments.

*Wyoming*—The U.S. District Court for the District of Montana's preliminary injunction order cited several examples of what it perceived as deficiencies in the adequacy of Wyoming's regulatory mechanisms. The court stated that plaintiffs were likely to prevail on their claim that Wyoming State law did not commit the State to maintaining 15 breeding pairs of wolves. We have long maintained that Wyoming, Montana, and Idaho must each manage for 15 breeding pairs and 150 wolves in mid-winter to ensure the population never falls below the minimum recovery goal of 10 breeding pairs and 100 wolves per State. We are accepting comments on the ability of Wyoming State law and their management plan to satisfy this necessary commitment.

Further, the preliminary injunction order questioned our approval of a trophy game area that we estimate as 12 percent of the land area of the State and 70 percent of the suitable habitat (Oakleaf *et al.* 2006; 72 FR 6106, February 8, 2007) and that could be reduced by the Wyoming Fish and Wildlife Commission. Wolves are unlikely to survive in the 88 percent of Wyoming where they are classified as predatory animals. Potential expansion of the predatory animal area could further limit occupancy in Wyoming. The court concluded that the plaintiffs were likely to prevail on their claim that the Wyoming State law and management plan were not adequate regulatory mechanisms. Based on the concerns expressed by the U.S. District Court, we also are accepting comments on the size and "malleability" of the trophy game area, including whether a larger or Statewide trophy game area designation for wolves is necessary.

The court also stated that the State management regime in regard to control of wolves in defense of property and take associated with a hunt presented the possibility of irreparable harm to the population. The court also was concerned about the "expansive" nature of take authorized Wyoming's depredation control law. On March 13, 2008, the Wyoming Game and Fish Commission adopted regulations (Wyoming Chapter 21) for the management and control of gray wolves designated as trophy game animals.

Wyoming's hunting season was designed around an allowable hunter-caused mortality in each of four hunting districts in the trophy game area. Hunting would end by December 31 or when 25 wolves had been harvested, whichever is sooner. This level of

hunter-caused mortality would likely result in a Wyoming wolf population outside the National Parks of just under 200 wolves by mid-winter 2008. Wolves in the National Parks would not be substantially affected by a regulated public hunt, as hunting is not allowed in National Parks and our data demonstrate that wolves rarely leave the parks during the time period when the fall hunting season would occur. As a result of the court's July 18, 2008, order, the delisting was preliminarily enjoined, thus barring the implementation of the 2008 hunting season. We invite public comment on Wyoming's management regime in regard to control of wolves in defense of property and take associated with a hunt.

The Wyoming State law, their wolf management plan, their implementing regulations (Wyoming Chapter 21), and other supporting information are available on our Web site at: <http://westerngraywolf.fws.gov>.

*Idaho*—The court stated that Idaho's depredation control law was not likely to threaten the continued existence of the wolf in Idaho because that State has committed to managing for at least 15 breeding pairs. However, the court also specifically noted that Idaho's final wolf hunting regulations set a quota of 428 wolves from all causes of mortality Statewide with the season set to end December 31, 2008. Mortality limits also were set by zone so that once reached, the hunting season for that zone would be closed. As implemented, Idaho included all take in defense of property in the above total allowable mortality levels. Mandatory reporting of harvest or defense of property take is required within 72 hours. The court's July 18, 2008, order preliminarily enjoining the delisting rule prevented implementation of the 2008 hunting season. Had the hunting season occurred, this level of wolf mortality would have likely resulted in a remaining wolf population in Idaho of at least 518 wolves by mid-winter 2008. We invite public comment on these potential sources of take and the adequacy of Idaho's regulatory mechanisms. Hunt and defense of property laws, regulations, and other background information can be viewed at: <http://westerngraywolf.fws.gov>.

*Montana*—The court stated that Montana's depredation control law was also not likely to threaten the continued existence of the wolf. Montana's wolf hunting regulations would have established a quota-based system in which the total hunter harvest within a hunting district was pre-determined after taking into account the level and causes of non-hunting wolf mortality,

reproduction, immigration, and emigration. Montana was to establish wolf harvest quotas for each district and sub-area annually. Up to, but not more than, 25 percent of the total quota for a district was to be harvested in December. The agency recommended, and the Montana Fish, Wildlife, and Parks Commission adopted, a tentative Statewide total harvest quota of 75 wolves for the fall 2008 season. This conservative level of harvest would likely still result in a Statewide increase in the total wolf population and the number of breeding pairs from the previous year. As a result of the court's July 18, 2008, order, the delisting was preliminarily enjoined, thus barring the implementation of the 2008 hunting season. Montana's commitment to manage for at least 15 breeding pairs ensured licensed public hunting would not occur unless this minimum standard was satisfied. The Montana defense of property policy is similar to the Service's regulations and policies under the experimental population regulations for States with approved post-delisting wolf management plans. Hunt and defense of property laws, regulations, and other background information can be viewed at: <http://westerngraywolf.fws.gov>. We invite public comment on these potential sources of take and the adequacy of Montana's regulatory mechanisms.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 21, 2008.

**Kenneth Stansell,**

*Acting Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

RIN 0648-AV80

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 30B

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

**ACTION:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 30B to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico for review, approval, and implementation by NMFS. The amendment proposes actions to end overfishing of gag, revise red grouper management measures as a result of changes in the stock condition, establish annual catch limits (ACLs) and accountability measures (AMs) for gag and red grouper, manage shallow-water grouper (SWG) to achieve optimum yield (OY), and improve the effectiveness of Federal management measures.

**DATES:** Written comments must be received on or before December 29, 2008.

**ADDRESSES:** You may submit comments on Amendment 30B, identified by "0648-AV80" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Fax: 727-824-5308; Attention: Peter Hood.

- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0203" in the keyword search and then select "send a comment or submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 30B, which includes an environmental impact statement, an initial regulatory flexibility analysis, and a regulatory impact review may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813-348-1630; fax 813-348-1711; e-mail [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be

downloaded from the Council's website at <http://www.gulfcouncil.org/>.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, 727-824-5305.

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

### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, OY from federally managed fish stocks. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable. The reauthorized Magnuson-Stevens Act as amended through January 12, 2007, requires the councils to establish ACLs for each stock or stock complex and AMs to ensure these ACLs are not exceeded. The actions proposed in Amendment 30B are intended to address these mandates and achieve OY from the SWG fishery.

### Proposed Gag Provisions of Amendment 30B

A stock assessment conducted in 2006 determined gag to be undergoing overfishing. To end overfishing of gag, Amendment 30B proposes to lower the total allowable catch (TAC), but would allow increases every year for the first three years (2009-2011) in accordance with the projected rebuilding of the stock. Under Amendment 30B's proposed minimum stock size threshold definition, gag would not be considered overfished. To distribute the gag TAC between the recreational and commercial sectors, the Council proposes an interim allocation of 61:39, respectively.

Given the above allocation, the gag commercial quota in gutted weight would be 1.32 million lb (598,742 kg) in 2009, 1.41 million lb (639,565 kg) in 2010, and 1.49 million lb (675,853 kg) in 2011 and thereafter until the stock is reassessed. To ensure the commercial

harvest remains within the prescribed quota, Amendment 30B proposes AMs that would give the Assistant Administrator for Fisheries, NOAA, (AA) the authority to close the fishery should the quota be met. If despite such a closure, gag commercial landings exceed the ACL, the amendment would allow the AA to maintain the quota in the following year at the level of the prior year's quota.

For the recreational fishery, harvest would be reduced an estimated 26 percent, which is greater than the minimum reduction needed to end overfishing. Amendment 30B would set the bag limit at 2 gag in a reduced 4-fish grouper aggregate bag limit and prohibit the recreational harvest of gag, as well as other SWG species, from February 1 to March 31. To ensure gag overfishing ends, AMs are proposed that would allow the AA to take action should the specified recreational ACL be exceeded. The following year's recreational SWG season would be reduced by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in that following fishing year.

### Proposed Red Grouper Provisions of Amendment 30B

The red grouper stock was assessed in 2007 and was found to have fully recovered from its previous condition of being overfished and undergoing overfishing. Amendment 30B would raise TAC from the current 6.56 million lb (2.97 million kg) to 7.57 million lb (3.43 million kg) gutted weight, the yield associated with the equilibrium OY level. To distribute the red grouper TAC between the recreational and commercial sectors, the Council proposes an interim allocation of 24:76, respectively.

Based on the above allocation, Amendment 30B would set the red grouper commercial quota at 5.75 million lb (2.61 million kg) gutted weight. Amendment 30B would also set ACLs and AMs for the commercial fishery. If red grouper landings reach or exceed the established quota, the AA would close the SWG fishery for the remainder of the year. In addition, should the commercial fishery exceed the ACL, the AA would be allowed to maintain the quota in the following year at the level of the prior year's quota. Amendment 30B also proposes to reduce the minimum size limit for red grouper in the commercial fishery from 20 inches to 18 inches total length to reduce discard mortality.

For the recreational red grouper fishery, Amendment 30B would increase the red grouper bag limit from

1 to 2 red grouper in a reduced 4–fish grouper aggregate bag limit and prohibit the recreational harvest of red grouper and other SWG species from February 1 to March 31. Overall, these measures should allow the recreational harvest of red grouper to increase by 17 percent. To prevent the possibility of red grouper overfishing, proposed AMs would give the AA the authority to shorten the following recreational fishing season should the ACL be exceeded. The application of the red grouper AMs would be the same as those described above for the gag recreational fishery.

#### Proposed SWG Provisions of Amendment 30B

The SWG fishery includes eight species: gag, red grouper, black grouper, scamp (until the commercial SWG quota is reached, at which time scamp is considered a deep-water grouper), yellowfin grouper, rock hind, red hind, and yellowmouth grouper. Amendment 30B would set the commercial SWG quota as the sum of the gag and red grouper quotas with an allowance for other SWG species. Should the gag, red grouper, or SWG quotas be met, the entire SWG commercial fishery would be closed. It is likely the gag quota would be met prior to the red grouper or SWG quotas; therefore, Amendment 30B would establish an incidental harvest trip limit of 200 lb (91 kg) gutted weight for either gag or red grouper once either species reaches 80 percent of its quota. This would allow the SWG fishery to remain open until one of the three quotas was met. Proposed ACLs and AMs for the commercial SWG fishery would be similar to those developed for gag and red grouper, except the commercial SWG fishery would be closed once the gag, red grouper, or commercial SWG quota is met. Should the commercial SWG ACLs be exceeded despite the closure, the subsequent year's quota would be equal to the previous years.

For the recreational fishery, Amendment 30B would limit the overall recreational harvest of SWG species by instituting a reduced aggregate grouper bag limit from 5 to 4 fish and a season closure from February 1 through March 31 for all SWG species.

#### Proposed Season and Area Closure Provisions of Amendment 30B

Amendment 30B proposes a new restricted fishing area called “The Edges” that would remain in place until terminated through a subsequent amendment. This proposed restricted area is located between the existing Madison-Swanson and Steamboat Lumps marine reserves, spans 37

nautical miles along the 40–fathom contour, and covers 390 nautical square miles. It would be closed to all fishing under the Council's jurisdiction from January 1 through April 30 each year. Amendment 30B also proposes to extend indefinitely the Madison-Swanson and Steamboat Lumps marine reserves that are set to expire June 16, 2010. Should “The Edges” restricted fishing area be implemented, the current commercial February 15 to March 15 closed season for gag, black grouper and red grouper would be repealed.

#### Proposed Federal Compliance Provisions of Amendment 30B

To improve the effectiveness of the Federal regulations when there are less restrictive regulations in state waters, Amendment 30B proposes to require all vessels with Federal commercial or for-hire reef fish permits comply with the more restrictive of state or Federal reef fish regulations when fishing in state waters.

#### Proposed Rule for Amendment 30B

A proposed rule that would implement measures outlined in Amendment 30B has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 30B to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

#### Consideration of Public Comments

Comments received by December 29, 2008, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment 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: October 22, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.0909251266–81274–01]

RIN 0648–XJ96

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2009 Summer Flounder, Scup, and Black Sea Bass Specifications; 2009 Research Set-Aside Projects

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

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

**SUMMARY:** NMFS proposes specifications for the 2009 summer flounder, scup, and black sea bass fisheries and provides notice of three conditionally approved projects that will be requesting Exempted Fishing Permits (EFPs) as part of the Mid-Atlantic Fishery Management Council's (Council) Research Set-Aside (RSA) program. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. Furthermore, regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require a notice to be published to provide interested parties the opportunity to comment on applications for EFPs. The intent of this action is to establish harvest levels that assure that the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP are not exceeded and to allow for rebuilding of the stocks as well as to provide notice of EFP requests, all in accordance with the Magnuson-Stevens Act.

**DATES:** Comments must be received on or before November 12, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 0648–XJ96, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: