

habitat, reduce bycatch, or mitigate other threats to river herring, and therefore provides inadequate protection for the species. The NRDC notes that there are Federal protections that may benefit river herring which are intended for other anadromous species such as Atlantic salmon and shortnose sturgeon; however, it asserts that any benefits from these protections are minor and insufficient to fully protect river herring.

Other Natural or Manmade Factors Affecting Its Existence

The petition describes other natural or manmade factors that may be affecting river herring, including invasive species, impingement, entrainment, and water temperature alterations. The petition states that invasive species may threaten food sources for alewives and blueback herring. ASMFC (2008) describes the negative effect zebra mussel introduction to the Hudson River had on phytoplankton and zooplankton, and subsequently water quality. According to ASMFC (2008), a decrease in both micro and macro zooplankton as well as phytoplankton improved water clarity and increased shallow water zoobenthos by 10 percent. Early life stages of river herring feed on zooplankton as well as phytoplankton (ASMFC, 2008). Strayer *et al.* (2004) hypothesized that the introduction of this invasive species created competition for availability of the preferred food source of early life stages of river herring, and found that larval river herring abundance decreased with increased zebra mussel presence. Thus, according to the petition, invasive species introduction and subsequent water quality changes which may affect plankton abundance can decrease the abundance of early life stages of river herring.

As described previously, the petition asserts that various life stages of river herring may be impinged or entrained through water intake structures from commercial, agricultural, or municipal operations. These intake structures alter flow, and may cause direct mortality to various life stages of river herring if they are impinged or entrained by the intake. In addition, aside from direct mortality, the petition asserts that intakes alter flow, which can affect water quality, temperature, substrate, velocity, and stream width and depth. NRDC suggests that these alterations can affect spawning migrations as well as spawning and nursery habitat, which could pose a significant threat to river herring.

Petition Finding

Based on the above information, which indicates ongoing multiple threats to both species as well as potential declines in both species throughout their ranges, and the criteria specified in 50 CFR 424.14(b)(2), we find that the petition presents substantial scientific and commercial information indicating that the petitioned action concerning alewife and blueback herring may be warranted. Under section 4(b)(3)(A) of the ESA, this positive 90-day finding requires NMFS to commence a status review of the species. During our status review, we will review the best available scientific and commercial information, including the effects of threats and ongoing conservation efforts on both species throughout their ranges. Alewife and blueback herring are now considered to be candidate species (69 FR 19976; April 15, 2004). Within 12 months of the receipt of the petition (August 5, 2011), we will make a finding as to whether listing alewife and/or blueback herring as endangered or threatened is warranted, as required by section 4(b)(3)(B) of the ESA. If listing these species is not warranted, we will determine whether any populations of these species meet the DPS policy criteria (61 FR 4722; February 7, 1996), and if so, whether any DPSs are endangered or threatened under the ESA. If listing either species (or any DPS) is warranted, we will publish a proposed listing determination and solicit public comments before deciding whether to publish a final determination to list them as endangered or threatened under the ESA.

References Cited

A complete list of the references used in this finding is available upon request (see ADDRESSES).

Information Solicited

To ensure the status review is based on the best available scientific and commercial data, we solicit information pertaining to alewife and blueback herring. Specifically, we solicit information in the following areas: (1) Historical and current distribution and abundance of these species throughout their ranges; (2) population status and trends; (3) any current or planned activities that may adversely impact these species, especially as related to the five factors specified in section 4(a)(1) of the ESA and listed above; (4) ongoing efforts to protect and restore these species and their habitat; and (5) any biological information (life history, morphometrics, genetics, etc.) on these

species. We request that all information be accompanied by: (1) Supporting documentation such as maps and bibliographic references; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). OMB issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin became effective on June 16, 2005, and generally requires that all "influential scientific information" and "highly influential scientific information" disseminated on or after that date be peer reviewed. The intent of the peer review policy is to ensure that decisions are based on the best scientific and commercial data available. Independent peer reviewers will be selected to review the status review report from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 27, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095-1652-02]

RIN 0648-AY56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 32

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 32 to the Fishery Management Plan for the Reef Fish

Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would adjust the commercial gag quota and recreational annual catch target (ACT) for 2012 through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32; adjust the shallow-water grouper (SWG) quota; adjust the commercial and recreational sector's annual catch limits (ACLs) for gag and red grouper; adjust the commercial ACL for SWG; establish a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish individual fishing quota (IFQ) program in the Gulf of Mexico (Gulf); set the recreational gag fishing season from July 1 through October 31; reduce the gag commercial size limit to 22 inches (59 cm) total length (TL); and modify the gag and red grouper accountability measures (AMs). In addition, Amendment 32 would establish gag commercial ACTs and a 10-year gag rebuilding plan consistent with the requirements of the Magnuson-Stevens Act. This proposed rule is intended to end overfishing of gag, allow the gag stock to rebuild, and co-manage gag and red grouper by implementing concurrent management measures.

DATES: Written comments must be received on or before December 2, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2011-0135" by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **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 Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0135" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0135" in the keyword search and click on

"search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this rule will not be accepted.

Electronic copies of Amendment 32, which includes a draft environmental impact statement (DEIS), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT:

Peter Hood, Southeast Regional Office, NMFS, telephone: (727) 824-5305; email: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) 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. 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/stock complex and AMs to ensure these ACLs are not exceeded. This proposed rule addresses these requirements for gag, red grouper, and the SWG complex.

Status of Stocks

Southeast Data, Assessment, and Review (SEDAR) update stock assessments were conducted for gag and red grouper in 2009. For gag, the assessment indicated the stock size had declined since 2005 and that a large part of the decline was attributed to a 2005

episodic mortality event (most likely associated with red tide). The update assessment indicated the gag stock was both overfished and undergoing overfishing. The Council was informed of this status determination in August 2009.

A rerun of the update assessment for gag was completed by the SEDAR update assessment review panel in December 2010. This rerun assessment identified issues with gag discards and was reviewed by the Council's Scientific and Statistical Committee (SSC) in January 2011. The rerun indicated the gag stock had improved from the 2009 update assessment; however, the improvement was not substantial enough to change the status of the gag stock. Based on the rerun, the Council requested a series of temporary rules to manage the gag stock until Amendment 32 could be implemented. The most recent temporary rule set the gag commercial quota to 430,000 lb (195,045 kg) and established a gag recreational season from September 16 through November 15 (76 FR 31874, June 2, 2011) and became effective June 1, 2011.

For red grouper, a 2009 SEDAR update assessment indicated that although the stock continues to be neither overfished nor undergoing overfishing, the stock has declined since 2005. In late 2010, after reviewing the rerun of the assessment update, the SSC recommended that the overfishing limit for red grouper be set at 8.10 million lb (3.67 million kg) (the equilibrium yield at F_{MSY} (the fishing mortality associated with harvesting the maximum sustainable yield) and the ABC be set at 7.93 million lb (3.60 million kg) (the F associated with equilibrium optimum yield ($F_{REBUILD}$)).

At the request of the Council, NMFS ran a new projection in 2011 that incorporated revised 2010 landings. Actual landings from 2010 were lower than projected, likely due to new longline restrictions implemented through Amendment 31 to the FMP (75 FR 21512, April 26, 2010) and disruptions in the fishery associated with the Deepwater Horizon oil spill that occurred in April 2010. The yield streams from this rerun showed that TAC could be increased in 2011. The Council has submitted a regulatory amendment for red grouper that, if approved, will increase the 2011 TAC and will set TAC through 2015 and subsequent fishing years, following F_{OY} (fishing mortality associated with harvesting at the optimum yield stream as the stock rebuilds). The regulatory amendment also includes a provision to increase the red grouper bag limit.

Gag Rebuilding Plan

The Council selected a 10-year rebuilding plan in Amendment 32 for gag. This is the maximum time frame allowed under the requirements of the Magnuson-Stevens Act. However, because the Council intends to manage the stock using the F_{OY} yield stream, which results in more restrictive TACs than $F_{REBUILD}$, the stock is projected to be rebuilt in 7 years. Given management uncertainties and uncertainties regarding stock assessment projections more than a few years in the future, a 10-year rebuilding plan would allow for fluctuations in catches and provide leeway to account for the needs of fishing communities when setting catch levels and management measures.

Management Measures Contained in This Proposed Rule

ACLs and ACTs

Based on protocols developed in Amendment 30B, sector-specific gag ACLs are derived from allocating the ABC between sectors.

The allocation of gag between the commercial and recreational sectors is 39 percent and 61 percent, respectively. This rule would implement ACLs for the gag commercial and recreational sectors based on this allocation. The ACLs would be set at the $F_{REBUILD}$ (the fishing mortality associated with the harvest needed to rebuild the stock). The ACTs (for the recreational sector only) would be set at the F_{OY} (the fishing mortality associated with harvesting the optimum yield).

This rule would set the commercial gag ACLs at 0.788 million lb (0.357 million kg) for 2012, 0.956 million lb (0.434 million kg) for 2013, 1.100 million lb (0.499 million kg) for 2014, and 1.217 million lb (0.552 million kg) for 2015 and subsequent fishing years. For the recreational sector, this rule would set the ACLs at 1.232 million lb (0.599 million kg) for 2012, 1.495 million lb (0.678 million kg) for 2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years.

This rule would set the recreational ACTs for gag at 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013, 1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years. Recreational landings would be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

Reductions to the gag quota under the rebuilding plan assume a proportional

reduction in dead discards of gag. However, due to the limited amount of gag IFQ allocation available in the initial years of the gag rebuilding plan, gag bycatch and discards from fishermen targeting red grouper or other fish may be higher than assumed in the assessment projections. Therefore, the Council determined the quota should be reduced from the ACT by 14 percent to account for additional dead discards not accounted for in the assessment analyses. Therefore, this rule would set the commercial gag quota at 0.567 million lb (0.257 million kg) for 2012, 0.708 million lb (0.321 million kg) for 2013, 0.835 million lb (0.378 million kg) for 2014, and 0.939 million lb (0.426 million kg) for 2015 and subsequent fishing years.

Reductions in the gag quota correspond to reductions in the SWG quota. Therefore, this rule would set the commercial SWG quota at 6.347 million lb (2.879 million kg) for 2012, 6.648 million lb (3.015 million kg) for 2013, 6.875 million lb (3.118 million kg) for 2014, 7.069 million lb (3.206 million kg) for 2015 and subsequent fishing years.

For red grouper, the protocols for setting sector-specific ACLs are similar to those for gag. The ABC recommended by the SSC is the equilibrium OY. This value was estimated at 7.93 million lb (3.60 million kg). Using the 76 percent commercial and 24 percent recreational allocation as established through Amendment 30B to the FMP (April 16, 2009, 74 FR 17603), this rule would set the commercial ACL at 6.03 million lb (2.735 million kg) and the recreational ACL at 1.90 million lb (0.862 million kg). The rule would set the recreational ACT at 1.730 million lb (0.785 million kg). Recreational landings would be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. Red grouper commercial quotas and ACTs are being established through a separate regulatory amendment that is expected to become effective in late 2011.

Because the commercial SWG ACL is the sum of the commercial gag and red grouper ACLs, in addition to the 0.41 million lb (0.19 kg) of SWG allowance, the rule proposes to set the commercial SWG ACL at 8.04 million lb (3.65 million kg).

AMs

This proposed rule would modify the AMs for gag, red grouper, and SWG. AMs are intended to prevent ACLs from being exceeded or mitigate overages after ACLs have been exceeded. For the commercial sector, the current AMs were implemented through Amendment 30B to the FMP (74 FR 17603, April 16,

2009), before red grouper, gag and SWG were managed under an IFQ program. Therefore, AMs were triggered if the sector exceeded the respective species' quota. However, the IFQ program acts as an AM because the overall quota is divided among shareholders and the program includes controls that do not allow shareholders to exceed their individual allocation of the quota. To reduce redundancy in the commercial AMs, this rule proposes to eliminate the quota-based AM in favor of the existing IFQ program.

For the recreational sector, the current AMs pertain to red grouper and gag. The AMs restrict subsequent increases in future ACTs and ACLs if the current year's ACL is exceeded. The AMs also allow the Assistant Administrator for Fisheries (AA) to reduce the length of the following recreational SWG fishing season by the amount necessary to ensure recreational landings do not exceed the gag or red grouper ACT the following fishing year.

Current recreational AMs for gag and red grouper have no provisions for handling overages or in-season adjustments as authorized under the National Standard 1 guidelines (74 FR 3178, January 16, 2009). Overage adjustments are needed particularly for gag to follow guidance for stocks and stock complexes in rebuilding plans to include overage adjustments that reduce the ACLs in the next fishing year.

This rule would add an overage adjustment and in-season recreational AMs for gag and red grouper. Should gag or red grouper be in a rebuilding plan and the ACL exceeded, the overage adjustment would be equal to the full amount of the overage, unless the best scientific information available shows that a greater, lesser, or no overage adjustment is needed to mitigate the effects of the overage. In addition, the rule proposes that if gag or red grouper landings have met or are projected to exceed the ACL, as estimated by the Southeast Fisheries Science Center (SEFSC), without regard to overfished status, the AA would file a notification with the Office of the Federal Register closing the recreational harvest for the species projected to reach its ACL for the rest of the fishing year on the date the ACL is projected to be harvested.

In addition to these AMs, this rule proposes an AM for recreational red grouper that incorporates an adaptive management approach should the recreational sector exceed its ACL. A red grouper regulatory amendment, currently being reviewed by NMFS, includes a red grouper bag limit increase from two to four fish, within the four-fish aggregate grouper bag limit.

The adaptive management AM would reduce the bag limit from four fish to three fish if, at the end of any season, it is determined that the recreational sector has exceeded the recreational red grouper ACL. The bag limit would be reduced from three fish to two fish if, at the end of any subsequent season, it is determined that the recreational sector has exceeded its ACL again. The minimum bag limit for red grouper would remain at two fish, regardless of whether the recreational sector exceeded the ACL in subsequent fishing years. Based on past annual landings, a two-fish bag limit is likely to be sufficient to avoid exceeding the recreational ACL.

Other Commercial Management Measures

The commercial grouper and tilefish fisheries are currently managed under an IFQ program implemented on January 1, 2010, through Amendment 29 to the FMP (74 FR 44732, August 31, 2009). To allow for flexibility and account for varying gag to red grouper ratios across the Gulf, at the beginning of each fishing year, a percentage of the gag and red grouper allocation is designated as multi-use allocation, valid for harvesting either gag or red grouper. Currently, 4 percent of the red grouper allocation and 8 percent of the gag allocation are designated as multi-use allocation. However, under the red grouper and gag ACLs proposed in this rule, the current multi-use allocations could result in commercial harvest of red grouper or gag exceeding its sector ACL. To prevent this from occurring, this rule proposes that if a stock is not under a rebuilding plan, the respective multi-use allocation would be based on the difference between the ACL and the ACT. If a stock is under a rebuilding plan, as with gag, then no multi-use allocation would be set aside. Therefore, red grouper multi-use allocation would be set to zero if gag is under a rebuilding plan. The equations used to determine multi-use allocation for gag and red grouper are as follows:

Gag Multi-use (in percent) = $100 \times [\text{Red Grouper ACL} - \text{Red Grouper Allocation}] / \text{Gag Allocation}$.

Red Grouper Multi-use (in percent) = $100 \times [\text{Gag ACL} - \text{Gag Allocation}] / \text{Red Grouper Allocation}$.

National Standard 9 dictates bycatch and the mortality of unavoidable bycatch should be minimized to the extent practicable. Because the commercial sector fishes in deeper waters on average than the recreational sector, it has a higher discard mortality rate. One possible way to reduce gag

regulatory dead discards is to reduce the commercial minimum size limit so that gag that would have been discarded can be retained. To reduce gag discards, this rule would reduce the minimum size limit of gag from 24 inches (61 cm) to 22 inches (56 cm) TL. Until an IFQ shareholder's gag allocation is reached, this alternative is expected to reduce total gag discards (live plus dead) by 31 percent for the vertical line component of the Gulf reef fish fishery and by 27.8 percent for the longline component of the Gulf reef fish fishery. After an IFQ shareholder's gag allocation has been fished, all gag would be discarded. However, a commercial fisherman without IFQ allocation available to harvest gag would not specifically target gag and so the species would be encountered less frequently as fishermen target other stocks for harvest. An additional advantage of this measure is that it would simplify enforcement by having a single size limit for both sectors.

Other Recreational Management Measures

In determining the percentage reductions needed in total recreational gag removals (landed fish plus dead discards), the Council evaluated two baseline time periods: 2006–2008 when effort was high, and 2009 when effort was low. The needed reductions are between 36 percent and 61 percent depending on the baseline time period and F value used. In addition, different management strategies used to achieve reductions in the landed catch of gag change the number of discards and dead discards. Thus, the number of dead discards was taken into account in calculating the expected reductions from different management strategies.

In selecting a recreational management strategy, the Council favored achieving the longest fishing season for gag, while maintaining the current size and bag limits. Therefore, this rule proposes to set the gag fishing season from June 1 through October 31. The current two-gag bag limit within the four-fish grouper aggregate bag limit and 22-inch (56-cm) TL minimum size limit will remain unchanged.

Other Changes to Codified Text

This proposed rule also includes minor revisions to codified text to align existing language with new codified terminology. In § 622.49(a)(1) and (2), “commercial fishery” and “recreational fishery” would be revised to read “commercial sector” and “recreational sector”, and in § 622.49(a)(2)(ii), the last two sentences would be revised to a more generic statement to read,

“Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.” These revisions are consistent with the terminology used in Amendment 32.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the AA has determined that this proposed rule is consistent with Amendment 32, 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.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact that this rule, if adopted, would have on small entities. A description of the action, why it is being considered, and 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 rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The preamble of this proposed rule provides a statement of the need for and objectives of this proposed rule, and it is not repeated here.

This rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting 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 \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

This rule is expected to directly affect commercial fishing vessels whose owners possess gag or red grouper fishing quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper and tilefish

IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 875 entities specifically received gag shares and an initial allocation of the commercial sector's gag quota in 2010. These 875 entities are expected to be directly affected by the actions to reduce the gag commercial quota to 86 percent of the ACT to account for dead discards, modify the percentages of red grouper and gag allocation that can be converted into multi-use allocation, and reduce the commercial size limit for gag. Of these 875 entities, 815 also received red grouper shares and an initial allocation of the commercial sector's red grouper quota in 2010.

Of the 875 entities that initially received gag shares, 215 were not commercially fishing in 2008 or 2009 and thus had no commercial fishing revenue during these years. On average, these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of gag in 2010, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing gross revenue in 2008 or 2009 by an individual vessel with commercial gag fishing quota shares was approximately \$606,000 (2008 dollars).

The average charterboat is estimated to earn approximately \$88,000 (2008 dollars) in annual gross revenue, while the average headboat is estimated to earn approximately \$461,000 (2008 dollars). Based on these values, all commercial and for-hire fishing vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately \$50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of snapper, mackerel, dolphin, and wahoo landings. On average, in 2010, these vessels received an initial allocation of 540 lb (245 kg) of gag quota.

The remaining 521 commercially active fishing vessels did have landings of gag in 2008 or 2009. Their average annual gross revenue from commercial fishing was approximately \$71,000

(2008 dollars) between the 2 years. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009 respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat, though not significantly, dependent on revenue from gag landings. These vessels' average initial gag allocation in 2010 was 2,121 lb (964 kg). Therefore, on average, their 2008 gag landings were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately \$156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings decreased from approximately \$15,900 to \$8,400 in 2009 and thus they became relatively less dependent on gag landings. These vessels are highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009, respectively. Revenue from deep-water grouper (DWG) landings decreased only slightly, from approximately \$36,000 in 2008 to \$31,000 in 2009, and thus these vessels became relatively more dependent on revenue from DWG landings. Their average initial 2010 allocation of gag was approximately 5,507 lb (2,503 kg) while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009, respectively. Thus, vessels that now have a bottom longline endorsement have been harvesting well below that allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the exclusive economic zone (EEZ) by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to 1 year after expiration. Because of the extended permit renewal period, numerous permits may be expired but still renewable at any given time of the year during the renewal period after the permit's expiration. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were

registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that state; however, vessels would be subject to any applicable state permitting requirements. Although the permit does not distinguish between headboats and charter vessels, it is estimated that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Given that nearly 99 percent of target effort for gag and 97 percent of the economic impacts from the recreational sector for gag in the Gulf reef fish fishery are in west Florida, it is assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) in Florida are expected to be directly affected by the proposed action to establish a recreational gag fishing season of July 1 through October 31.

Establishing a rebuilding plan for gag not expected to generate direct, adverse economic effects on commercial or for-hire entities. Thus, the proposed action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less is not expected to reduce profits for commercial or for-hire entities.

Net operating revenues (NOR) are assumed to be representative of profit for for-hire vessels. It is assumed that 823 for-hire vessels, 780 charter vessels, and 43 headboats, participate in the recreational gag component of the Gulf reef fish fishery. Estimates of NOR from recreational fisheries other than gag, and thus across all fisheries in which these charter vessels and headboats participate, are not currently available. However, on average, NOR for charter vessels from trips targeting gag are estimated to be approximately \$1.56 million per year while NOR for headboats from trips targeting gag are estimated to be \$91,300 per year. NOR for all trips targeting gag are estimated to be approximately \$1.65 million per year. The average annual NOR from trips targeting gag are estimated to be \$2,000 per charter vessel and \$2,124 per headboat.

When the length of the recreational gag season is reduced and the daily bag limit for gag is set at zero, some trips that formerly targeted gag will instead target other species while other trips that formerly targeted gag will be cancelled. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from trips cancelled as a result of the shortened season length. Information regarding the number of trips cancelled as a result of the

shortened season is not currently available. Thus, this analysis assumes all of the current for-hire trips targeting gag will be cancelled when the recreational sector is closed. Because some of these trips would probably not be cancelled, this assumption is expected to overestimate the actual reduction in NOR associated with a shorter season. Thus, the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

Under the proposed action to establish a recreational gag fishing season of July 1 through October 31, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately \$1,304,000 and \$76,000, respectively, and thus NOR for all trips targeting gag is estimated to be approximately \$1,380,000. The average annual losses in NOR from trips targeting gag are estimated to be \$1,672 and \$767 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 84 percent and 36 percent per charter vessel and headboat, respectively.

The proposed action to establish a recreational gag fishing season of July 1 through October 31 is not expected to affect profit from trips not targeting gag for charter vessels and headboats. For-hire vessel dependence on fishing for individual species cannot be determined with available data. Although some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels, overall, about 3 percent of for-hire anglers are estimated to target gag. As a result, while the action would be expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips nor would they, by extension, be expected to account for a substantial portion of total for-hire NOR.

Under the proposed action to increase the recreational bag limit for red grouper from two fish to four fish, the number of trips in all recreational fishing modes is assumed to remain the same regardless of any change in the red grouper bag limit. As such, no changes to producer surplus in the for-hire sector are expected. Thus, the proposed action is not expected to reduce profits for for-hire entities.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn profit from commercial fishing in those 2 years. Under the proposed action to reduce the commercial gag

quota to 86 percent of the ACT to account for dead discards, their average allocation of gag in 2012 would be reduced from 421 lb (191 kg) to 362 lb (165 kg), or by approximately 59 lb (27 kg). Using the average 2008 price of \$3.52 per lb, this loss in allocation could potentially represent a loss of nearly \$208 (2008 dollars) in gross revenue per entity. Using the 2010 average price of \$1.00 per lb of gag allocation, this loss in allocation could potentially represent a loss of \$59 (2008 dollars) in net revenue per entity. For 8 of these 215 entities that also possess longline endorsements, their average allocation of gag in 2012 would be reduced from 1,512 lb (687 kg) to 1,300 lb (591 kg), or by 212 lb (96 kg). Thus, their potential losses in gross revenue and net revenue, estimated to be \$746 and \$212 (2008 dollars) respectively, are expected to be somewhat higher.

However, in general, these potential losses in gross revenue and net revenue would only be realized if these 215 entities not only become active in commercial fishing but also specifically intend to harvest gag in 2012 and at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings, and thus gross revenue, if these entities intend to harvest at levels above their reduced allocation. Alternatively, these losses in gross and net revenue could be due to these entities' inability to sell the allocations they are losing under the proposed action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of these potential losses in gross and net revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue, net revenue, and profits from commercial fishing in general and specifically for gag.

Similarly, for the 139 entities with gag shares that participated in commercial fisheries other than gag, they earned approximately \$50,800 in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, because they did not have any gag landings, none of their gross revenue and thus none of their potential profits were the result of gag harvests. Under the proposed action to reduce the commercial gag quota to 86 percent of the ACT to account for dead discards, their average allocation of gag in 2012 would be reduced from 260 lb (118 kg) to 224 lb (102 kg), or by 36 lb (16 kg). Using the average 2008 price of \$3.52 per lb, this loss in allocation could potentially represent a loss of \$127 (2008 dollars) in gross revenue per

entity. Using the 2010 average price of \$1.00 per lb of gag allocation, this loss in allocation could potentially represent a loss of approximately \$36 (2008 dollars) in net revenue per entity.

However, these potential losses in gross and net revenue could only lead to a loss in profits if these 139 entities intend to commercially harvest gag in 2012 and at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings if these entities intend to harvest at levels above their reduced allocation. Thus, for example, if these vessels intended to harvest gag in 2012 at a level equivalent to their 2012 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately .3 percent in gross revenue, which could in turn reduce net revenue and profits. Alternatively, losses in gross and net revenue could be due to these entities' inability to sell the allocations being lost under the proposed action, though this possibility presumes that a demand for these allocations exists.

The 521 entities with gag shares that commercially harvested gag in 2008 or 2009 earned approximately \$71,000 (2008 dollars) in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat but not significantly dependent on revenue from gag landings. Under the proposed action to reduce the commercial gag quota to account for dead discards, these vessels' 2012 gag allocations would be reduced from 1,022 lb (465 kg) to 879 lb (400 kg), or 143 lb (65 lb) on average. As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of \$3.52 per lb, it is estimated that these vessels could lose nearly \$503 (2008 dollars), or approximately .7 percent, in annual gross revenue on average. Using the 2010 average price of \$1.00 per lb of gag allocation, this loss in allocation would represent a loss of \$503 (2008 dollars) in net revenue per entity. Since net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

However, 52 of these 521 vessels also received a bottom longline endorsement

in 2010. These particular vessels' average annual gross revenue was approximately \$156,000 (2008 dollars) in 2008 and 2009, with gag landings accounting for approximately 8 percent of that gross revenue. These vessels are highly dependent on revenue from red grouper rather than gag landings. Under the proposed action to reduce the commercial gag quota, their allocation of gag in 2012 would decrease from 2,749 lb (1,250 kg) to 2,364 lb (1075 kg), or by 385 lb (175 kg). As these vessels have harvested at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of \$3.52 per lb, it is estimated that these vessels could lose \$1,355 (2008 dollars), or approximately .9 percent, in annual gross revenue on average. Using the 2010 average price of \$1.00 per lb of gag allocation, this loss in allocation would represent a loss of approximately \$1,355 (2008 dollars) in net revenue per entity. Since net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

No additional economic effects would be expected to result from the revised SWG quota because the updated SWG quota simply reflects the reduction in the commercial gag quota, the effects of which have already been discussed.

Given the proposed action to establish a rebuilding plan for gag, the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag would be suspended under the proposed action to modify the percentages of red grouper and gag allocation that can be converted into multi-use allocation. Because red grouper is not under a rebuilding plan at this time, gag shareholders would be allowed to convert 8 percent of their gag allocation into multi-use allocation and thus no adverse economic effects are expected. However, minimal adverse economic effects are expected as a result of commercial fishing entities not being allowed to convert 4 percent of their red grouper allocation into multi-use allocation. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. Given the proposed reduction in the commercial gag quota due to dead discards, it is possible these entities will exhaust their gag and gag multi-use allocations. Gross revenue from gag landings is greater than gross revenue from an equivalent amount of red grouper landings because

gag commands a relatively higher market price. Thus, gross revenue from commercial fishing and therefore profits per vessel could be slightly lower than if the conversion were allowed to continue.

Under the proposed action to reduce the commercial size limit for gag from 24 inches (61 cm) to 22 inches (56 cm) total length, commercial fishing entities would be allowed to retain more and discard less of the gag they catch and thus are expected to be economically better off relative to the status quo. However, if commercial fishermen prefer to harvest larger gag due to a higher market demand for larger fish, then additional high-grading may be possible because the commercial sector is managed under the IFQ program. As such, few additional gag may be retained and thus the potential increases in gross revenue, net revenue, and profits per vessel are likely minimal.

Establishing AMs is not expected to generate direct, adverse economic effects on commercial or for-hire entities. Direct, adverse economic effects would only occur if and when the AMs are actually triggered. This action would replace current AMs established under Amendment 30B to the FMP with the current IFQ program because an IFQ functions as an AM. This action would also add an overage adjustment and an in-season closure to the current AMs for the recreational sector when the gag or red grouper stocks are overfished and under a rebuilding plan. Because red grouper is not overfished or under a rebuilding plan, this action does not currently apply to the red grouper component of the reef fish fishery. The action to establish a recreational fishing season of July 1 through October 31 for gag is expected to restrain landings in the gag recreational sector well below its 2012 ACL, and in fact is intended and expected to constrain landings below the 2012 recreational annual catch target. In turn, the probability an overage adjustment or in-season closure will be required in 2013 is also minimal. Thus, the proposed action to establish new AMs for the commercial and recreational sectors of the gag, red grouper, and SWG component of the reef fish fishery is not expected to reduce profits for commercial or for-hire entities.

Three alternatives, including the status quo, were considered for the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less. In the absence of all fishing mortality, including bycatch mortality,

the shortest possible time in which the gag stock can rebuild is 5 years. Under the National Standard 1 guidelines, the maximum time allowed for rebuilding the gag stock is 10 years. In the Generic ACL/AM Amendment, currently under development, the proposed ACLs are based on yields that are projected to rebuild the stock in 10 years, while the proposed ACTs are based on yields that are projected to rebuild the stock in 7 years.

The first alternative, the status quo, would not have established a rebuilding plan for gag. The fishing mortality rate for gag has shown an increasing trend over time and fishing mortality rates in recent years are not consistent with rebuilding or maintaining the gag stock at its maximum sustainable yield level. Moreover, because the gag stock has been determined to be overfished and undergoing overfishing, this alternative does not comply with Magnuson-Stevens Act requirements regarding rebuilding plans.

The second alternative would have established a rebuilding plan that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 7 years or less. Seven years is the estimated time to rebuild if the stock is managed at $F_{0.1}$ rather than the rate corresponding to a 10-year rebuilding plan ($F_{rebuilding}$). Although the yields under a 7-year rebuilding plan would eventually catch up to those for a 10-year plan, the initial catch targets in the early years would be smaller under a 7-year rebuilding plan relative to a 10-year rebuilding plan. Thus, this alternative would potentially imply more restrictive regulations and thus more adverse indirect economic effects in the short-term relative to the proposed action.

The third alternative would have established a rebuilding plan that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 5 years. If this alternative were adopted, strong measures to reduce bycatch of gag in other fisheries would also need to be considered. Because a total elimination of discard mortality is unlikely to be achieved, this alternative would likely result in the stock being slightly under the rebuilding target at the end of 5 years. Most importantly, this alternative would require a complete closure of the gag component of the reef fish fishery for at least 5 years. Therefore, this alternative would eliminate all net revenue from the commercial sector and all consumer and producer surplus from the recreational sector for at least 5 years and, as such, would lead to the most restrictive regulations and, thus,

considerably greater adverse indirect economic effects in the short-term relative to the proposed action.

Four alternatives, including the status quo, were considered for the action to establish a recreational gag fishing season of July 1 through October 31. The first alternative, the status quo, would maintain a year-round gag recreational fishing season, with the exception of the current February 1 through March 31 closed season for SWG. This alternative would be expected to result in a 14 percent reduction in gag removals relative to the 2006–2008 baseline and a 1 percent increase in gag removals relative to the 2009 baseline. As such, this alternative does not achieve the necessary reduction in removals to rebuild the gag stock, contrary to the Council's goals and objectives and Magnuson-Stevens Act requirements.

The second alternative, which would establish a gag recreational season of September 16 through November 15, would reduce gag removals by 60 percent relative to the 2009 baseline, which exceeds the annual catch target reduction of 47 percent. Relative to the 2006–2008 baseline, this alternative also reduces removals by 60 percent. Therefore, this alternative does not fully meet the annual catch target of 61 percent relative to the 2006–08 baseline, but does exceed the ACL and rebuilding yield reduction level of 53 percent. This alternative is more conservative biologically than the proposed action, but only allows a 61-day fishing season as opposed to the 123-day fishing season allowed under the proposed action.

The third alternative, which would establish a gag recreational season of January and April, would reduce removals by 52 percent, which exceeds the annual catch target reduction of 47 percent. Relative to the 2006–2008 baseline, this alternative reduces removals by 56 percent. This alternative does not fully meet the annual catch target of 61 percent relative to the 2006–2008 baseline, but it does exceed the ACL and rebuilding yield reduction level of 53 percent. This alternative is similar to the second alternative in that it allows 61 days of fishing, and thus is shorter than the 123-day fishing season allowed under the proposed action, but it splits the season into two segments to provide more fishing opportunities. Biologically, this alternative is as conservative as the proposed action.

The fourth alternative would establish the same gag recreational season of July 1 through October 31 as the proposed action. However, rather than maintain the current 22 inch (56 cm) recreational minimum size limit, it would

implement a 22–30 inch (56–76 cm) slot limit. Although this alternative would achieve a larger reduction in removals relative to the proposed action, a larger percentage of those removals would consist of dead discards. Furthermore, a portion of those additional dead discards would consist of larger fish above the slot limit. These larger fish produce more eggs in spawning season. Thus, this alternative could negatively impact the spawning potential ratio and in turn the rate of rebuilding.

Two alternatives, including the status quo, were considered for the action to increase the recreational bag limit for red grouper from two fish to four fish. The first alternative, the status quo, would retain the current recreational bag limit for red grouper of two fish. The recreational ACL for red grouper has not been met in recent years. Recreational red grouper landings averaged less than 1 million lb (454,545 kg) between 2006 and 2009. With the planned increase in the red grouper TAC through a regulatory amendment currently under development, the recreational ACL would be increased from 1.51 million lb (686,364 kg) to 1.72 million lb (781,818 kg), which would create a larger difference between the ACL and the expected catch in 2012, and additional increases in the red grouper recreational ACL are planned through 2016. This alternative would not allow for-hire entities to increase their landings per trip even though the recreational sector's harvest has been and is expected to be well below its allocation. As such, opportunities to increase the economic value of red grouper harvests in the recreational sector would be unnecessarily foregone.

The second alternative would increase the recreational bag limit for red grouper from two fish to three fish. This alternative would allow for-hire entities to increase their landings per trip, but would not enhance their opportunities to increase the economic value of red grouper harvests to the same extent as the proposed action. Such opportunities should be enhanced as much as possible given the large difference between the recreational sector's ACL and the expected catch under the current bag limit. Like the proposed action, this alternative includes an adaptive feedback mechanism that would adjust the bag limit if the recreational sector exceeds its ACL, though it would not be a two-stage process as under the proposed action.

Two alternatives, including the status quo, were considered for the action to reduce the gag commercial quota to 86 percent of the ACT to account for dead

discards. The first alternative, the status quo, would not adjust the gag commercial quota to account for dead discards. This alternative would set the gag commercial quota at the current ACT. The ACT assumes dead discards in the commercial sector will be reduced by the same proportion as landings. If this assumption is not valid, then total removals of gag will exceed the harvest levels projected in the assessment. The ACT provides a buffer against reaching the ACL, but this buffer may not be sufficient to offset increased removals due to dead discards.

The second alternative would reduce the gag commercial quota to 47 percent of the ACT to account for dead discards. This alternative represents the worst case scenario, under which dead discards are assumed to remain at their 2006–2008 level. Analyses associated with the 2011 gag interim rule indicated that, if dead discards remain at their 2006–2008 levels, the gag commercial quota would need to be reduced to 47 percent of the ACT in order to compensate for the increased removals. Although this alternative would provide the greatest allowance for dead discards and, thus, the highest likelihood of rebuilding the gag stock successfully, it is based on the unlikely assumption that dead discards will remain at their 2006–2008 levels. Longline vessels have historically landed about 34 percent of the commercial gag harvest. As a result of the longline endorsement requirements implemented in 2010, the number of reef fish longline vessels has decreased substantially. Of the 908 initial grouper/tilefish shareholders in 2010, 293 vessels used bottom longline or trap gear for commercial reef fish harvesting purposes between 1999 and 2007. However, only 62 of these vessels qualified for the bottom longline endorsement. Given the substantial reduction in the number of longline vessels, dead discards are expected to be considerably less now and in the future compared to their 2006–2008 levels. As such, reducing the gag commercial quota to 47 percent of the ACT would unnecessarily impose more significant economic and social impacts on commercial harvesters and associated communities relative to the proposed action.

Two alternatives, including the status quo, were considered for the action to modify the percentage of red grouper allocation that can be converted into multi-use allocation if a rebuilding plan for gag is in effect. The first alternative, the status quo, would allow 4 percent of the red grouper allocation to be converted into multi-use allocation at the beginning of each year. Under this

alternative, the amount of red grouper multi-use allocation could exceed the available gag commercial quota, thereby leading to harvests that exceed the ACL. Such a result is contrary to the purposes of the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less and is therefore inconsistent with Magnuson-Stevens Act requirements and National Standard 1 guidance.

The second alternative would base the amount of red grouper multi-use allocation on the buffer between the gag ACL and ACT. Subsequent ACLs and ACTs may be set by the ACL/ACT control rule adopted in the Generic ACL/AM Amendment. Although a control rule has not been adopted yet, the alternatives currently under consideration would have little or no buffer for IFQ fisheries, which would render this alternative unusable. Furthermore, the gag ACL is set at the level where there is only a 50-percent probability of meeting the target to rebuild the gag stock in 10 years or less. Thus, this alternative will reduce the probability of the rebuilding plan being successful.

One alternative, the status quo, was considered for the action to modify the percentage of gag allocation that can be converted into multi-use allocation if a rebuilding plan for red grouper is in effect. Under this alternative, 8 percent of the gag allocation would be converted into multi-use allocation. If a rebuilding plan for red grouper was necessary in the future, this alternative could result in red grouper harvests that would exceed the commercial ACL in the future, which would in turn trigger AMs and reduce the ability of the red grouper stock to rebuild.

Three alternatives, including the status quo, were considered for the action to reduce the commercial gag minimum size limit from 24 inches (61 cm) to 22 inches (56 cm) in TL. The first alternative, the status quo, would maintain the commercial gag minimum size limit at 24 inches (61 cm) TL. The size at 50 percent female maturity is approximately 24 inches (61 cm) TL. Under this alternative, regulatory discards due to the minimum size limit would continue at the current rate, which is contrary to the Council's goal of reducing gag discards.

The second alternative would reduce the commercial gag minimum size limit from 24 inches (61 cm) to 20 inches (51 cm) TL. Until a commercial fisherman's IFQ allocation is reached, this alternative is expected to reduce total gag discards by 62 percent for the

vertical line component of the commercial sector and by 47.2 percent for the longline component. At the same time, the number of gag needed to fill an IFQ allocation is expected to increase by 29.7 percent for the vertical line component and by 0.9 percent for the longline component. This alternative has a greater likelihood of creating a price differential by size, which would in turn likely result in additional high-grading as fishermen attempt to maximize the economic return on their IFQ shares. Additional high-grading would lead to higher rather than lower levels of gag discards, which is contrary to the Council's goals.

The third alternative would eliminate the minimum size limit and thus would effectively require all commercially caught gag be retained regardless of size. As a result, this alternative also effectively requires that each commercial fisherman possess sufficient gag allocation to cover all harvest of gag. Grouper sizes in the commercial sector have been recorded as small as 11 inches (28 cm) prior to the implementation of size limits, but the numbers landed are few below 18 inches (46 cm). At a minimum size limit of 18 inches (46 cm), the expected reduction in total gag discards is 79.9 percent for the vertical line component and 66.7 percent for the longline component. At the same time, the increase in number of gag needed to fill an individual's allocation of gag is expected to be 38.2 percent for the vertical line component and 1.3 percent for the longline component. At minimum size limits less than 18 inches (46 cm), these values will change little because both gears become less selective for gag at smaller sizes. To the extent a market demand for larger fish exists, this alternative is likely to create a price differential for larger size fish. Given the limited amount of gag allocation expected to be distributed under the proposed gag commercial quota, this alternative could encourage high-grading by commercial fishermen, which would lead to higher rather than lower levels of gag discards, contrary to the Council's goals.

Four alternatives, including the status quo, were considered for the action to expand the current time and area closures off the west coast of Florida. The first alternative would expand the current closed areas of Madison-Swanson and the Edges by approximately 70 square miles (181 square km). Four options were considered under this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1

through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. The percentage of gag and red grouper commercial landings coming from this area ranges from 0.55 percent for gag and 0.06 percent of red grouper under the third option to 1.25 percent and 0.39 percent for gag and red grouper respectively under fourth option. These numbers indicate it is unlikely that gag and particularly red grouper are being targeted in this area. Thus, the expected reduction in gag bycatch is relatively small and, thus, so are the biological benefits.

The second alternative would expand the current closed areas of Madison-Swanson and the Edges by approximately 244 square miles (632 square km). Four options were considered under this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. Gag bycatch is expected to increase as a result of the proposed action to reduce the gag commercial quota and the resulting reduction in the gag to red grouper quota ratio. The percentage of gag and red grouper commercial landings coming from this area ranges from 3.23 percent for gag and 0.26 percent of red grouper under the third option to 5.92 percent and 0.93 percent for gag and red grouper respectively under fourth option. If this alternative was selected, by limiting where recreational fishermen may fish, the adverse economic and social effects incurred as a result of the proposed recreational fishing season for gag would be amplified, particularly under the fourth option. Furthermore, the Council determined that these additional adverse economic and social effects on the recreational sector outweighed the biological benefits to the gag stock.

The third alternative would modify the seasonal closure dates of The Edges 40 fathom contour area, which is approximately 390 square miles (1,010 square km) in size and currently

prohibits all fishing from January 1 through April 30 and allows all fishing from May 1 through December 31. Four options were also considered under this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. This alternative would close a larger area than the other alternatives that would expand the existing closures. Because The Edges 40 fathom contour area is relatively large, the percentage of gag and red grouper commercial landings coming from it is greater than under the other alternatives that would expand the existing closures, ranging from 4.13 percent for gag and 0.57 percent of red grouper under the third option to 8.92 percent and 2.41 percent for gag and red grouper respectively under fourth option. Thus, the expected reduction in gag bycatch is greater than under the other alternatives that would expand the existing time/area closures. If this alternative was selected, by limiting where recreational fishermen may fish, the adverse economic and social effects incurred as a result of the proposed recreational fishing season for gag would be amplified, particularly under the fourth option. Furthermore, the Council determined that these additional adverse economic and social effects on the recreational sector outweighed the biological benefits to the gag stock.

The fourth alternative would modify the seasonal closure dates for the Madison Swanson and Steamboat Lumps closed areas, which cover approximately 219 square miles (567 square km). At present, these closures prohibit all fishing from November 1 through April 30, but allow surface trolling for species other than reef fish from May 1 through October 31. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. Because Madison Swanson and Steamboat

Lumps have been closed to reef fish fishing for an extended time period, no data is available to determine how much harvesting activity may occur in these areas. As such, it is not possible to determine the potential effects from closing them for a longer time period and, thus, considerable uncertainty exists regarding those potential effects. However, it is highly likely the biological benefits to the gag stock would be minimal at best.

One alternative, the status quo, was considered for the action to replace the current AMs for the commercial sector of gag, red grouper, and the SWG component of the reef fish fishery with the IFQ program. By retaining the current AMs, this alternative would close the commercial SWG sector if commercial landings of red grouper, gag, or SWG reach or are projected to reach their respective quotas. As such, these measures are inconsistent with the Council's management goals and objectives for the commercial sector of the reef fish fishery, as reflected by the IFQ program. Furthermore, concerns regarding the need for additional AMs appear to be unfounded given that, to this point, commercial landings have been less than the quotas for all individual species and species complexes managed under the IFQ program.

Three alternatives, including the status quo, were considered for the action to establish additional AMs for the recreational harvest of gag and red grouper. The first alternative, the status quo, would retain the existing AMs for the recreational harvest of gag and red grouper. The current AMs do not include in-season management measures or an overage adjustment if either the gag or red grouper stocks are determined to be overfished. The gag stock is currently overfished. Thus, this alternative would allow the recreational ACLs to be exceeded before taking action, which could have short-term negative effects on the red grouper stock and particularly the gag stock. These additional AMs are recommended by the National Standard 1 guidance and are currently being considered by the Council for the management of other reef fish species in the Generic ACL amendment.

The second alternative would add an overage adjustment to the existing AMs if gag or red grouper are determined to be overfished. This alternative would provide some benefit to the gag and red grouper stocks if they are under a rebuilding plan. The Council is proposing an action to establish a rebuilding plan for gag, and, thus, this alternative would be expected to apply

immediately to the gag recreational sector. If the recreational ACL is exceeded, the overage adjustment would mitigate any damage done to a stock's recovery by reducing the ACL for the following year by the size of the overage or by some other level depending on what the best available science indicates will place the stock back on its rebuilding path. However, relative to the proposed action, this alternative would not allow in-season closures as a result of projections indicating the recreational sector will exceed its red grouper or gag ACL. Thus, this alternative would allow the recreational ACLs to be exceeded before taking action, which could have short-term negative effects on the red grouper stock and particularly the gag stock.

The third alternative would add in-season AMs to the existing AMs that would allow the gag or red grouper recreational fishing seasons to close early if necessary. This alternative would provide some benefit to the gag and red grouper stocks. However, this alternative does not add an overage adjustment as per National Standard 1 guidance. Moreover, by not requiring an overage adjustment, this alternative would allow overages to occur from one year to the next if the in-season closures are implemented after the ACL has been exceeded. If these overages consistently occur over time, the cumulative effect could be sufficient to preclude rebuilding if a stock is under a rebuilding plan. As such, this alternative is not as beneficial to the red grouper and gag stocks as the proposed action.

This proposed rule does not establish any new reporting, recordkeeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

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

Dated: October 28, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, 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, 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 § 622.20, paragraphs (b)(2)(iv)(A) and (B) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) *Red grouper multi-use allocation.*

(1) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

Red Grouper multi-use allocation (in percent) = $100 * [\text{Gag ACL} - \text{Gag commercial quota}] / \text{Red grouper commercial quota}$.

(2) However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero. Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred.

(B) *Gag multi-use allocation.* (1) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

Gag multi-use allocation (in percent) = $100 * [\text{Red grouper ACL} - \text{Red grouper commercial quota}] / \text{Gag commercial quota}$.

(2) However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero. Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred.

* * * * *

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

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(v) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through June 30 and November 1 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

* * * * *

4. In § 622.37, the heading of paragraph (d)(2)(iii) is revised and paragraph (d)(2)(v) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(2) * * *

(iii) Black grouper— * * *

* * * * *

(v) Gag—22 inches (55.9 cm), TL.

* * * * *

5. In § 622.39, the first sentence in paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. * * *

* * * * *

6. In § 622.42, paragraphs (a)(1)(iii)(A) and (B) and paragraph (a)(1)(vi) are revised to read as follows:

§ 622.42 Quotas.

(a) * * *

(1) * * *

(iii) * * *

(A) *SWG combined*—(1) For fishing year 2012—6.347 million lb (2.879 million kg).

(2) For fishing year 2013—6.648 million lb (3.015 million kg).

(3) For fishing year 2014—6.875 million lb (3.118 million kg).

(4) For fishing year 2015 and subsequent fishing years—7.069 million lb (3.206 million kg).

(B) *Gag.* (1) For fishing year 2012—0.567 million lb (0.257 million kg).

(2) For fishing year 2013—0.708 million lb (0.321 million kg).

(3) For fishing year 2014—0.835 million lb (0.378 million kg).

(4) For fishing year 2015 and subsequent fishing years—0.939 million lb (0.426 million kg).

* * * * *

(vi) Gray triggerfish—106,000 lb (48,081 kg), round weight.

* * * * *

7. In § 622.49, the section heading, the headings and first sentences of paragraphs (a)(1)(i) and (ii), the heading and first and last sentences in paragraph (a)(2)(i), paragraph (a)(2)(ii), and paragraphs (a)(3), (a)(4), and (a)(5) are revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability measures (AMs).

(a) * * *

(1) * * *

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(v), the Assistant Administrator for Fisheries, NOAA, (AA) will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(2)(ii), the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. * * *

(2) * * *

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * * The commercial ACL for 2010 and subsequent fishing years is 138,000 lb (62,596 kg).

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register reducing the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational target catch for that following fishing year. The recreational ACL for 2010 and subsequent fishing years is 457,000 lb (207,291 kg). The recreational target catch level for 2010 and subsequent fishing years is 405,000 lb (183,705 kg). Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) *Shallow-water grouper (SWG) combined.* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial SWG. The commercial ACL for SWG, in gutted weight, for 2012 and subsequent

fishing years is 8.04 million lb (3.65 million kg).

(ii) [Reserved]

(4) *Gag.* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial gag. The applicable commercial ACLs for gag, in gutted weight, are 0.788 million lb (0.357 million kg) for 2012, 0.956 million lb (0.434 million kg) for 2013, 1.100 million lb (0.499 million kg) for 2014, and 1.217 million lb (0.552 million kg) for 2015 and subsequent fishing years.

(ii) *Recreational sector.* (A) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gag in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in the following fishing year.

(B) Without regard to overfished status, and in addition to the measures specified in paragraph (a)(4)(ii)(A), if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D), the AA will file a notification with the Office of the Federal Register to maintain the gag target catch level, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's target catch, unless the best scientific information available determines that maintaining the prior year's target catch is unnecessary. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in the following fishing year.

(C) In addition to the measures specified in paragraphs (a)(4)(ii)(A) and (B), if gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(4)(ii)(D) of this section, and gag are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The applicable recreational ACLs for gag, in gutted weight, are 1.232 million lb (0.559 million kg) for 2012, 1.495 million lb (0.678 million kg) for 2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years. The recreational target catch levels for gag, in gutted weight, are 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013, 1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(5) *Red grouper*—(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The applicable commercial ACL for red grouper, in gutted weight, for 2012 and subsequent fishing years is 6.03 million lb (2.735 million kg).

(ii) *Recreational sector.* (A) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species

were harvested, *i.e.* in state or Federal waters.

(B) Without regard to overfished status, and in addition to the measures specified in paragraph (a)(5)(ii)(A), if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D), the AA will file a notification with the Office of the Federal Register to maintain the red grouper target catch level, specified in paragraph (a)(5)(ii)(D) of this section, for that following fishing year at the level of the prior year's target catch, unless the best scientific information available determines that maintaining the prior year's target catch is unnecessary. In addition, the notification will reduce the bag limit by one fish and reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational target catch level in the following fishing year. The minimum red grouper bag limit for 2014 and subsequent fishing years is two fish.

(C) In addition to the measures specified in paragraphs (a)(5)(ii)(A) and (B), if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, and red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The recreational ACL for red grouper, in gutted weight, is 1.90 million lb (0.862 million kg) for 2012 and subsequent fishing years. The recreational target catch level for red grouper, in gutted weight, is 1.730 million lb (0.785 million kg) for 2012 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

* * * * *

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