

Subpart D—Reporting and Records**§ 605.40 Reports and Information.**

The Administrator may order any grantee or operator for the grantee to file special or separate reports setting forth information relating to any transportation service rendered by such grantee or operator, in addition to any other reports required by this part.

Subpart E—Grandfathering of Existing School Bus Operations**§ 605.50 Grandfathering Provisions.**

(a) Each grantee shall have until June 30, 2010, to modify its school bus operations to comply with this part.

(b) If a grantee provided school bus operations for a school or school district and received no payment from that school or school district for the school bus operations prior to August 1, 2008, then that grantee may continue to provide the school bus operations for that particular school or school district. If a grantee receives payment from a school or school district for school bus operations on or after August 1, 2008, then this grandfathering provision does not apply.

Issued in Washington, DC, on this 3rd day of November, 2008.

James S. Simpson,
Administrator.

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

[Docket No. 070719384-7386-01]

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: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 30B 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). This proposed rule would establish annual catch limits (ACLs) and

accountability measures (AMs) for commercial and recreational gag, red grouper, and shallow-water grouper (SWG); establish a commercial quota for gag; adjust the commercial quotas for red grouper and shallow-water grouper; establish an incidental bycatch allowance trip limit for commercial gag and red grouper; reduce the commercial minimum size limit for red grouper; reduce the gag bag limit and the aggregate grouper bag limit; increase the red grouper bag limit; extend the closed season for recreational shallow-water grouper; establish a new reef fish seasonal-area closure; eliminate the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and require that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters. In addition, Amendment 30B would establish management targets and thresholds for gag consistent with the requirements of the Sustainable Fisheries Act; set the gag and red grouper total allowable catch (TAC); and establish interim allocations for the commercial and recreational gag and red grouper fisheries. This proposed rule is intended to end overfishing of gag and maintain catch levels of red grouper consistent with achieving optimum yield.

DATES: Written comments must be received on or before January 2, 2009.

ADDRESSES: You may submit comments on the proposed rule, 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 Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA-NMFS-2008-0203” in the keyword search, 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 (IRFA), and a regulatory impact review (RIR) 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; 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 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 Fishery Conservation and Management Act (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 or stock complex and AMs to ensure these ACLs are not exceeded. This proposed rule addresses these requirements for gag and red grouper.

NMFS has published proposed guidelines to address the new Magnuson-Stevens Act requirements for ACLs and AMs. A proposed rule for these guidelines was published in the **Federal Register** on June 9, 2008 (73 FR 32526), and requested public comment. According to these guidelines, stocks in the fishery should have quantitative reference points, including status determination criteria, maximum

sustainable yield (MSY), overfishing limit (OFL), acceptable biological catch (ABC), an annual catch limit (ACL), and an annual catch target (ACT). These reference points have been defined in the proposed guidelines and have not been repeated here. NMFS recommends a management approach where the $OFL > ABC > ACL > ACT$, however, the relationship between these reference points could also be $OFL \geq ABC \geq ACL \geq ACT$. The intent of the proposed guidance is to establish a system of limits and targets that account for scientific and management uncertainty and reduce the likelihood that overfishing will occur. The Magnuson-Stevens Act also requires each Council to develop ACLs that may not exceed the fishing level recommendations of the Science and Statistical Committee (SSC) or peer review process. In this proposed rule, NMFS identifies these recommended reference points for gag, red grouper, and SWG, and how they comply with the proposed guidance.

Status of Stocks

The most recent gag stock assessment completed in 2006 concluded that the stock is not overfished, but is undergoing overfishing. Following a re-analysis in 2007, overfishing was still determined to be occurring in 2004 under the maximum fishing mortality threshold (MFMT). The Council's Reef Fish SSC concurred with the overfishing determination at its June 2007 and May 2008 meetings. This proposed rule is necessary to end overfishing of gag by defining benchmarks and thresholds for gag, adjusting TAC, and implementing new management measures to reduce gag fishing mortality to sustainable levels. Although the gag stock would not be overfished under any of the alternatives for minimum stock size threshold (MSST) considered by the Council in Amendment 30B, the stock was recognized to be below the biomass levels associated with harvesting the stock at OY (B_{OY} , or biomass at OY). Therefore, proposed management measures are designed to end overfishing and allow the stock to increase to B_{OY} .

In 2002, red grouper were determined to be undergoing overfishing, but not overfished. At that time, stock biomass was below B_{MSY} (biomass at MSY), requiring a rebuilding plan be established in 2004. In 2007, red grouper were re-assessed. Using data through 2005, the new stock assessment determined overfishing had ended and stock biomass had increased to optimum yield. The assessment showed the stock had recovered, in large part due to strong recruitment year classes in

the late 1990s and 2000. This proposed rule would increase TAC and revise management measures to reflect the improved condition of the red grouper stock.

Reference Points and Thresholds for Gag

The Magnuson-Stevens Act requires that each FMP define reference points in the form of MSY and OY, and specify objective and measurable criteria for identifying when a fishery is overfished (MSST) or undergoing overfishing (MFMT). Together, these four parameters are intended to provide fishery managers with the tools to measure fishery status and performance. Amendment 30B would establish MSST, MFMT, and OY for gag based on the biomass reference point corresponding to maximum yield per recruit (MAX), which in this instance is the proxy for MSY. MFMT would be the fishing mortality rate (F) equal to F_{MAX} . MSST would be defined as $(1-M) * SSB_{MAX}$ ($M=0.15$), where M is the natural mortality rate, and SSB is the spawning stock biomass. To be consistent with NMFS' technical guidance, Amendment 30B would also revise the current specification of OY, 20 percent spawning potential ratio, to be the yield corresponding to an F defined as $F_{OY} = 0.75 * F_{MAX}$.

Gag and Red Grouper TAC

National standard 1 of the Magnuson-Stevens Act requires management measures prevent overfishing, while achieving, on a continuing basis, the OY for the fishery. To end overfishing of gag, but still achieve the OY in the fishery, the SSC recommended the ACL for gag to be the yield no greater than that associated with fishing at F_{MAX} . For 2009, this value would be no greater than 4.25 million lb (1.92 million kg). However, in Amendment 30B, the Council proposes to set TAC under a more conservative constant F_{OY} management approach. Under this scenario, TAC for gag would be set at 3.38 million lb (1.53 million kg) for 2009. In 2010, it would increase to 3.62 million lb (1.64 million kg), and in 2011, it would increase again to 3.82 million lb (1.73 million kg). TAC would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking.

For red grouper, the SSC recommended an ABC range from 7.57 million lb (3.43 million kg), which equals the long-term OY, to 7.72 million lb (3.50 million kg), which is equal to the long-term MSY. Under Amendment 30B, the Council proposes to set the red grouper TAC at the more conservative

equilibrium OY level for the years 2009 through 2011. TAC would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking. This increase in TAC from the current 6.56 million lb (2.97 million kg) would allow the species to be fished at the OY level because the stock has been rebuilt.

Allocations

National standard 4 of the Magnuson-Stevens Act requires that fisheries be managed in a fair and equitable manner across all sectors. This is true of both the commercial and recreational components of gag and red grouper. However, management measures differ between commercial and recreational sectors, due to differences inherent in the fisheries (e.g., fishing gear, fishing effort). Recognizing the difficulties involved in allocating resources across fishery sectors, the Council appointed an Ad Hoc Allocation Committee composed of Council members to examine fair and equitable ways to allocate reef fish resources. Amendment 30B includes interim allocations, which would be in effect until the Council and NMFS could implement separate rulemaking to allocate grouper resources between recreational and commercial components of the SWG fishery on a permanent basis.

In the interim, Amendment 30B proposes allocations for commercial and recreational gag and red grouper based on the average landings during the years 1986 through 2005. For gag, the allocation would be 61 percent recreational and 39 percent commercial. For red grouper, the allocation would be 24 percent recreational and 76 percent commercial.

Proposed Management Measures for Gag, Red Grouper, and SWG

Commercial Measures

The proposed rule would establish commercial quotas and ACLs for gag, red grouper, and SWG, and reduce the commercial minimum size limit for red grouper. The quotas are ACTs and the ACLs are OFLs, which is consistent with the proposed NMFS guidelines. Also consistent with the NMFS proposed guidance, the quotas, or ACT levels, are less than the ACLs. The ACLs are based on the yield associated with fishing at F_{MAX} (gag) or equilibrium MSY (red grouper). The gag and red grouper quotas are associated with the yields from fishing at the more conservative F_{OY} (gag) or equilibrium OY (red grouper). The gag and red grouper quotas are calculated by multiplying the TAC for a specific year

by each species' commercial interim allocations. The gag quota would be set at 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. The red grouper quota would be set at 5.75 million lb (2.61 million kg) for all three years. The SWG quota includes gag, red grouper, and the other SWG species that make up the SWG complex, namely black grouper, yellowfin grouper, rock hind, red hind, yellowmouth grouper, and scamp before the SWG quota is reached, at which time scamp is considered a DWG. The other SWG species allowance would be 0.41 million lb (0.19 million kg) for all three years, which is based on the average landings for the baseline years of 2001 through 2004. Therefore, the SWG quota would be the sum of the gag and red grouper quotas and the other SWG species allowance and be set at 7.48 million lb (3.39 million kg) in 2009, 7.57 million lb (3.43 million kg) in 2010, and 7.65 million lb (3.47 million kg) in 2011. These commercial quotas would remain at the 2011 level until revised based on a subsequent stock assessment and appropriate rulemaking.

The commercial minimum size limit for red grouper would be reduced from 20 inches (50.8 cm) to 18 inches (45.7 cm) total length (TL). Reducing the commercial minimum size limit for red grouper would decrease the number of discarded fish and is estimated to increase yield-per-recruit.

The proposed management measures for gag, including the quota reduction, in combination with the recreational restrictions and accountability measures, are intended to end overfishing of gag immediately. The increase in the red grouper quota, in combination with reduction in the commercial minimum size limit, would help to ensure the fishery achieves OY for the red grouper stock.

To prevent an early season closure of the SWG fishery, this proposed rule would authorize the Assistant Administrator for Fisheries, NOAA, (AA) to file a notification with the Office of the **Federal Register** to implement an incidental bycatch allowance trip limit when 80 percent of the gag or red grouper quota is reached or projected to be reached. Harvest of the remaining shallow-water species would continue with an incidental harvest allowance on the closed species of 200 lb (91 kg) until either the gag, red grouper, or SWG quota is reached or projected to be reached, upon which the entire SWG fishery would close. The incidental harvest provision would not be implemented unless the quota for the applicable species is projected to be

harvested prior to the end of the fishing year.

Recreational Measures

This proposed rule would establish new grouper bag limits and extend the Gulf grouper recreational closed season. These recreational measures would reduce gag landings by 26 percent and increase red grouper landings by 17 percent. The aggregate grouper bag limit would be reduced from 5 fish to 4 fish per person per day. Within this aggregate bag limit, there is a 2-fish gag bag limit and a 2-fish red grouper bag limit per person per day. Lowering the aggregate grouper bag limit is intended to slow or prevent a shift in effort from gag to other SWG and deep-water grouper (DWG) species as a result of actions to constrain the harvest of gag. Although DWG and SWG species other than gag and red grouper represent a small portion of the recreational harvest, they could be significantly affected by shifts in fishing effort resulting from changes to gag and red grouper regulations. Reducing the aggregate bag limit to 4 fish will slightly reduce the likelihood that AMs in the proposed rule will be triggered. Few recreational anglers (approximately 3 percent) currently land on average more than 4 grouper per trip.

The recreational closed season would be extended from a one month closed season, namely February 15 through March 15, to a two month closed season, from February 1 through March 31 each year and would include all SWG species instead of just gag, black, and red grouper. This would allow for a 291 day open season for SWG species. Although regional differences in the distribution of gag, red grouper, and other SWG exist, in general, the various species are caught in the same geographic areas, depth, and habitat. For this reason, seasonal closures that pertain to the entire recreational SWG fishery are proposed to minimize bycatch and prevent effort shifting. DWG species were not included in the seasonal closure because they are infrequently caught when fishing for SWG, account for a small percentage of the recreational grouper harvest, and suffer from severe barotrauma upon ascent from the deep depths where they are caught, increasing the likelihood of discard mortality. Warsaw grouper and speckled hind are further protected by a 1-fish per vessel per day bag limit.

The proposed rule would also establish ACLs and ACTs for the recreational fishery. ACLs are equal to OFLs, which is consistent with the proposed NMFS guidelines. Also consistent with the proposed NMFS

guidance, the ACTs are less than the ACLs. The ACLs are based on yield associated with fishing at F_{MAX} (gag) or equilibrium MSY (red grouper) but the ACTs are based on the yields from fishing at the more conservative F_{OY} (gag) or equilibrium OY (red grouper). Harvests exceeding the ACLs would trigger implementation of the AMs. For gag, the respective ACTs and ACLs would be 2.06 million lb (934,400 kg) and 2.59 million lb (1.17 million kg) for 2009; 2.14 million lb (969,648 kg) and 2.64 million lb (1.20 million kg) for 2010; and 2.20 million lb (997,903 kg) and 2.67 million lb (1.21 million kg) for 2011, and subsequent fishing years. For red grouper, the ACT and ACL would be 1.82 million lb (824,642 kg) and 1.85 million lb (838,235 kg), respectively. These ACTs and ACLs could be revised in the future based on subsequent stock assessment results and through appropriate rulemaking.

Accountability Measures (AMs) for Gag, Red Grouper, and SWG

This proposed rule would establish AMs for gag, red grouper, and SWG. These AMs are intended to ensure landings do not exceed the TACs proposed for gag, red grouper, and SWG.

If commercial landings, as estimated by the Southeast Fisheries Science Center (SEFSC), reach or are projected to reach the commercial quotas for gag, red grouper, or SWG, the proposed rule would authorize the AA to file a notification with the Office of the Federal Register to close the SWG fishery, in accordance with the application of quota closures described in the "Commercial Measures" section above, for the remainder of that fishing year. In addition, if the in-season closure does not prevent commercial landings from exceeding the applicable ACL, this proposed rule would authorize the AA to file a notification with the Office of the Federal Register maintaining the prior year's gag, red grouper, or SWG commercial quota in the following fishing year.

If recreational landings, as estimated by the SEFSC, exceed the red grouper or gag ACLs, this proposed rule would authorize the AA to file a notification with the Office of the Federal Register maintaining the prior year's gag or red grouper target catch level the following fishing year. In addition, the notification would reduce the length of the recreational SWG fishing season in the following year by the amount necessary to ensure recreational gag and red grouper landings do not exceed the recreational target catch level for that fishing year. Recreational landings would be evaluated relative to the

applicable ACL as follows. For 2009, only 2009 recreational landings for gag and red grouper will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings for gag and red grouper will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings for gag and red grouper will be compared to the ACL. By averaging across multiple years, year-to-year fluctuations in landings resulting from recruitment variability, regulatory restrictions on other species, and prevailing economic conditions would be diminished. Using 3-year averages of landings for ACLs is consistent with the proposed NMFS guidelines. Target catches, quotas, and ACLs would remain at 2011 levels unless revised based on subsequent stock assessment results and through appropriate rulemaking.

Gulf Seasonal and Area Closures

The Madison-Swanson and Steamboat Lumps marine reserves were established in 2000, and reauthorized in 2004 to protect spawning areas for gag and other reef fish species. The proposed rule would allow the Madison-Swanson and Steamboat Lumps marine reserves to remain in effect until terminated by a subsequent amendment.

This proposed rule would also create a seasonal/area closure called the "Edges" to protect grouper spawning aggregations. This closure is implemented in lieu of the February 15 through March 15 commercial closure for gag, red grouper, and black grouper. Within this new seasonal/area closure, fishing for any species under Council jurisdiction would be prohibited from January 1 through April 30 each year. Closing this area to all fishing for any species under Council jurisdiction, will aid enforcement, reduce poaching, and benefit other reef fish stocks undergoing overfishing or that are overfished (e.g. red snapper, greater amberjack, gray triggerfish).

Federal Regulatory Compliance in State Waters

NMFS and state fishery management agencies usually work cooperatively to implement consistent regulations in Federal and state waters, making it easier for enforcement capabilities and for managing the fisheries. However, there are some situations in which Federal and state regulations differ. When there are less restrictive regulations in state waters, the effectiveness of Federal regulations diminishes. In developing regulations, analyses for Council amendments and FMPs assume that Gulf states will

comply with proposed Federal regulations. If some of the states do not adopt consistent regulations, then projected reductions in harvest and fishing mortality may not occur, compromising the Council's ability to end overfishing and rebuild overfished stocks. To prevent overfishing, or stay within rebuilding schedules, NMFS and the remaining states, may be forced to implement even stricter regulations. Therefore, to improve the effectiveness of Federal management measures, federally permitted reef fish vessels, as a condition of their permit, would be required to comply with the more restrictive of state or Federal reef fish regulations when fishing in state waters.

Availability of Amendment 30B

Additional background and rationale for the measures discussed above are contained in Amendment 30B. The availability of Amendment 30B was announced in the **Federal Register** on October 28, 2008 (73 FR 63932). Written comments on Amendment 30B must be received by December 29, 2008. All comments received on Amendment 30B or on this proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

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 30B, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Draft Environmental Impact Statement (DEIS) for this amendment. A notice of availability for the DEIS was published on August 8, 2008 (73 FR 46269).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, 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 the Council (see **ADDRESSES**). A summary of the IRFA follows.

The proposed rule would set thresholds and benchmarks for gag, with MFMT equated to F_{MAX} , MSST equated

to $(1-M)*SSB_{MAX}$, and OY equated to the yield at 75 percent of F_{MAX} ; set gag TACs in 2009, 2010, and 2011 at 3.38 million lb (1.53 million kg), 3.62 million lb (1.64 million kg), and 3.82 million lb (1.73 million kg), respectively, with 3.82 million (1.73 million kg) being the TAC for subsequent years until changed by another amendment; set red grouper TAC at 7.57 million lb (3.43 million kg); set the recreational:commercial allocation of TACs at 61:39 for gag and 24:76 for red grouper; set SWG ACLs and AMs; set the commercial gag and red grouper quotas based on the commercial allocation ratio, the other SWG allowance at 0.41 million lb (0.19 million kg), and the aggregate grouper quota as the sum of the gag, red grouper, and other SWG allowance; implement an incidental harvest of 200 lb (90.8 kg) per trip for gag or red grouper when 80 percent of its quota is projected to be reached until either the gag, red grouper, or SWG quota is reached or projected to be reached, upon which the SWG fishery would close; establish an aggregate grouper bag limit of 4 grouper per person, establish a gag and a red grouper bag limit of 2 fish per person for each species within the aggregate bag limit, and close the recreational SWG fishery February 1–March 31; reduce the red grouper minimum size limit to 18 inches TL for the commercial fishery; prohibit all fishing under the Council's jurisdiction January-April, but allow all fishing in other months, within the Edges closed area; allow the Madison-Swanson and Steamboat Lumps reserves to remain in effect indefinitely; and, require all vessels with Federal commercial or charter vessel/headboat reef fish permits to comply with the more restrictive of state or Federal reef fish regulations when fishing in state waters. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not alter existing reporting, record-keeping, or other compliance requirements.

This proposed rule would be expected to directly affect vessels that operate in the Gulf of Mexico commercial reef fish fishery and for-hire reef fish fisheries, and reef fish dealers or processors. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. 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 affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is \$6.5 million (NAICS code 713990, recreational industries). For seafood processors and dealers, rather than a receipts threshold, the SBA uses an employee threshold of 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations for a seafood processor and 100 or fewer persons for a seafood dealer.

A Federal commercial reef fish permit is required to operate in the Gulf of Mexico commercial reef fish fishery, and a moratorium on the issuance of new permits has been in effect since 1992. A total of 1,209 vessels with commercial reef fish permits is estimated to comprise the universe of commercial harvest operations in the fishery. For the period 2001–2006, an average of 631 vessels harvested varying amounts of gag, 732 vessels harvested varying amounts of red grouper, and 888 vessels harvested varying amounts of SWG. These numbers are not additive because some of these vessels harvested a combination of grouper species. The SWG complex includes red grouper and gag, therefore there is substantial overlap in harvest of grouper species among these vessels.

The annual average gross revenue and net income per vessel for vessels in the SWG fishery is unknown. For all vessels in the commercial reef fish fishery, the average annual gross revenue, respectively, for vertical line vessels is estimated to range from approximately \$24,100 (2005 dollars; \$6,800 net income) to \$110,100 (\$28,500 net income), while the values for bottom longline vessels are approximately \$87,600 (2005 dollars; \$15,000 net income) to \$117,000 (\$25,500 net income). Some fleet behavior is known to exist in the commercial reef fish fishery, but the extent of such is unknown, though the maximum number of permits reported to be owned by the same entity is six. Additional permits in this and other fisheries (and associated revenues) may be linked through affiliation rules but these links cannot be made using existing data. Nevertheless, based on the average annual gross revenue information for all commercial reef fish vessels, NMFS determines, for the purpose of this analysis, that all commercial reef fish entities potentially affected by this proposed rule are small business entities.

An estimated 1,692 vessels are permitted to operate in the Gulf of Mexico reef fish for-hire fishery. It is unknown how many of these vessels operate as headboats or charterboats, a distinction which is based on pricing behavior, and individual vessels may operate as both types of operations at different times. However, 76 vessels participate in the Federal headboat logbook program. Several entities own multiple for-hire permits, and at least one entity is determined to own as many as 12 permits.

The average charterboat is estimated to generate approximately \$77,000 (2005 dollars) in annual revenues, while the comparable figure for an average headboat is approximately \$404,000 (2005 dollars). Based on the average annual gross revenue information for these vessels, NMFS determines, for the purpose of this analysis, that all for-hire entities potentially affected by this proposed rule are small business entities.

Based on vessel logbook records for 2004–2006, an average of 156 dealers actively bought and sold gag and 172 dealers actively bought and sold red grouper. All reef fish processors would be included in this total because a processor must be a dealer. Dealers often hold multiple types of permits and operate in both Federal and state fisheries. It is unknown what percentage of any of the average dealer's business comes from SWG.

Average employment information per reef fish dealer is unknown. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast is estimated at approximately 700 individuals, both part and full time. Although all processors must be dealers, a dealer need not be a processor. Further, processing is a much more labor-intensive exercise than dealing. Therefore, given the employment estimate for the processing sector and the total number of dealers operating in the reef fish fishery, NMFS determines that the average number of employees per dealer and processor does not surpass the SBA employment benchmark and, NMFS determines, for the purpose of this analysis, that all dealers potentially affected by this rule are small entities.

Relative to the baseline consisting of all no action alternatives, the proposed action would reduce the net operating revenues of commercial vessels by \$5.3 million (in 2005 dollars) over the period 2008–2013. It would be equivalent to an annual loss of \$0.88 million. If this loss were equally shared by all 888 vessels landing any species of SWG, the loss per

vessel would be \$991 annually. Of the 888 vessels landing any grouper species during the period 2001–2006, 114 vessels landed less than 100 lb (45.4 kg), 232 vessels landed between 100 and 1,000 lb (454 kg), 229 vessels landed between 1,000 lb and 5,000 lb (2,270 kg), 271 vessels landed between 5,000 lb and 50,000 lb (22,700 kg), and 42 vessels landed more than 50,000 lb. Although the estimated reduction in net operating income could be accommodated by the 42 highest and even 271 next highest volume vessels, it could be quite burdensome to others, particularly the 114 lowest volume vessels.

Although for-hire vessels do not derive revenues from grouper sales, most vessels target these species at some time during the year. Assuming angler demand declines in response to the proposed restrictions for these species, revenue and profit reductions can be projected. As a result of the proposed action on grouper, the for-hire sector is projected to experience a loss in net income of approximately \$405 thousand to \$794 thousand per year. If these losses were distributed equally across all the 1,692 for-hire vessels in the fishery, the resulting loss per vessel would be between \$239 and \$469 per vessel. Some for-hire vessels, such as those in Florida, are likely more dependent on grouper than other vessels due to where they fish and client preferences and, thus, may be more severely affected by the proposed action.

Three alternatives, including no action, were considered for the action to set thresholds and benchmarks for gag. The first alternative (no action) to the proposed action would not comply with the Sustainable Fisheries Act requirement to establish more scientifically-based thresholds and benchmarks. The other alternative to the proposed action would provide a less conservative proxy for MSY, and would likely result in catch levels in excess of the true MSY. Each of the alternatives, including the proposed action, would not have direct impacts on small entities, but would serve as a platform for the development of specific management measures.

Five alternatives, including no action, were considered for the action to set gag TACs. The first alternative (no action) to the proposed action would not provide for a gag TAC, and thus would allow continued overfishing of the stock. The second alternative to the proposed action uses a stepped approach to managing TAC levels by setting TAC at three-year intervals. This alternative, however, is susceptible to providing

management measures that could result in overages in years 2 and 3 of the interval. It could, thus, trigger AMs that would have potentially larger adverse impacts on small entities. The third alternative to the proposed action is similar to the proposed action, but it would set fishing mortality rate right at the threshold. This is more likely to generate overfishing situations that would only require more stringent regulations. The fourth alternative to the proposed action is similar to the second alternative and thus would be saddled with similar problems. In addition, it is also susceptible to providing management measures that would result in overages in years 2 and 3 of each interval, setting the stage for application of AMs.

Three alternatives, including no action, were considered for the action to set a red grouper TAC. The first alternative (no action) to the proposed action would retain the red grouper TAC at 6.56 million lb (2.98 million kg). The proposed red grouper TAC of 7.57 million lb (3.43 million kg) would provide more benefits to small entities than the no action alternative. The second alternative to the proposed action would set a higher TAC of 7.72 million lb (3.50 million kg) corresponding to fishing at equilibrium FMSY as opposed to equilibrium FOY in the proposed action. Although this higher TAC would be more beneficial to small entities, it is right at the threshold when AMs would set in. This higher TAC, then, would place at higher probability the imposition of stringent management measures that would essentially undo the initial benefits received by small entities.

Three alternatives, including no action, were considered for the action to set gag and red grouper allocations. The first alternative (no action) to the proposed action would revert the recreational:commercial allocation to that of Amendment 1 65:35 for gag and 23:77 for red grouper. The second alternative to the proposed action would set the recreational:commercial allocation at 59:41 for gag and 24:76 for red grouper. The proposed recreational:commercial allocation would be 61:39 for gag and 24:76 for red grouper. The general nature of any allocation is that it would favor one group of small entities at the expense of another group of small entities. The Council's choice for the proposed action considered the longest and most robust time series of data compared to the other alternatives.

Five alternatives, including no action, were considered to set SWG ACLs and AMs. The first alternative (no action) to

the proposed action would not provide for ACLs and AMs. By not specifying AMs, harvests could likely exceed target catch levels and would thereby reduce the likelihood overfishing would be ended or prevented. The second alternative to the proposed action would have identical target catches as the proposed action but would set the ACLs lower than those of the proposed action. It would then likely result in potentially more adverse impacts on small entities. The third alternative to the proposed action would set the same commercial target catches as, but some higher ACLs than, the proposed action. This alternative would set higher recreational target catches and ACLs for gag than the proposed action, but would set the same target catches and ACLs for red grouper. On average, this alternative would result in lower adverse impacts on small entities than the proposed action. The fourth alternative to the proposed action would set the same target catches as, but lower ACLs than, the proposed action. It may then be expected to result in higher adverse impacts on small entities than the proposed action.

Four alternatives, including no action, were considered for the action to set gag, red grouper, and SWG quotas. The first alternative (no action) to the proposed action would maintain the red grouper and SWG quotas. Although this alternative would potentially allow the largest SWG quota, it would not provide specific protection to gag so that overfishing of this stock would continue. In addition, it would not provide flexibility to increase the red grouper quota due to stock improvements. The second alternative to the proposed action would be similar to the proposed action, except that the proposed action would provide for a higher quota for other SWG. Hence, small entities would be provided a better economic environment under the proposed action.

Four alternatives, including no action, were considered for the action on commercial quota closures. The first alternative (no action) to the proposed action would maintain the red grouper or SWG quota, whichever comes first, as a trigger to close the SWG fishery. Given all preferred alternatives for all other actions, this alternative would provide the largest benefits to small entities. However, it would not provide sufficient protection to gag so that overfishing of the stock could continue. The second alternative to the proposed action would add the gag quota as a closure trigger. With the gag quota most likely to be met first, the entire SWG fishery would close early in the year. This alternative would yield the largest

negative effects on small entities. The third alternative to the proposed action is similar to the second, except that it would impose gag trip limits at the start of the fishing year. This alternative would allow the SWG fishery to remain open much longer than the second alternative so that it would result in less adverse impact on small entities. The third alternative differs from the proposed action, which would impose the incidental harvest trip limit only when 80 percent of the gag or red grouper quota is reached. Due to the generally longer closure under the proposed action, the third alternative would turn out to result in less adverse economic impact on small entities. The third alternative, however, would impose more adverse effects on the gag fishery so that in general it would adversely affect hook-and-line vessel trips more than longline trips. The opposite would generally occur under the proposed action.

Seven alternatives, including no action, were considered for the action on measures to control the recreational harvests of gag and red grouper. The first alternative (no action) to the proposed action would maintain current recreational regulations so that it would likely allow overfishing of gag to continue. All other alternatives to the proposed action would eliminate the recreational red grouper bag limit, establish a gag grouper bag limit (except one alternative), establish a recreational closure, and reduce the aggregate grouper bag limit to 3 fish. These other alternatives would reduce gag harvest by a greater amount than the proposed action and either increase red grouper harvest (3 alternatives) or reduce red grouper harvest (2 alternatives), relative to the proposed action. These alternatives would be expected to, therefore, result in greater adverse economic impacts than the proposed action.

Three alternatives, including no action, were considered for the action on reducing the discard mortality of groupers. The first alternative (no action) to the proposed action would not require any new equipment or implement new measures to reduce bycatch, and would retain the size limit for grouper species subject to size limits. This would not address the bycatch problem in the grouper fishery. The second alternative would require pamphlets or placards providing instructions on venting, proper handling, and release methods. The presence of these pamphlets or placards on board would provide convenient resource materials for reducing bycatch mortality, but the extent of their effects

cannot be determined. The proposed action, on the other hand, would reduce the size limit for red grouper and thus may be expected to result in positive effects on small entities.

Four alternatives, including no action, were considered for the action on establishing additional or expanding current marine reserves or closed areas and attendant management measures. The first alternative (no action) to the proposed action would not create additional marine reserves or closed areas, and thus would have no immediate negative effects on small entities. However, this alternative would allow continued adverse impacts of gears on bottom habitats which could eventually lead to habitat degradation particularly in areas suitable as marine reserves or closed areas. The second alternative to the proposed action would expand the Madison-Swanson marine reserve. However, the area for expansion is relatively close to shore and likely would be the most heavily fished area. Its short-run adverse impacts on small entities would be larger than those of the proposed action. The third alternative to the proposed action would expand both the Madison-Swanson and Steamboat Lumps marine reserves, and thus would result in more adverse impacts on small entities than the proposed action.

Four alternatives were considered for the action pertaining to the duration of time/area closures and marine reserves. Three of these alternatives, including no action, were specific to time/area closures. The fourth alternative, with three sub-options inclusive of no action, directly addressed the two existing marine reserves. With respect to time/area closures, two alternatives to the proposed action would set specific expiration dates. These alternatives would have about similar effects as the proposed action, particularly considering the ability and history of the Council in changing time/area closure regulations. With respect to the duration of the two existing marine reserves, two alternatives to the proposed action would allow the reserves to expire within a certain number of years. These two alternatives would provide relatively inadequate time for full evaluation of the effectiveness of the existing marine reserves, as compared to the proposed action.

Two alternatives, including no action, were considered for the action on Federal regulatory compliance. The first alternative (no action) to the proposed action would retain any existing inconsistencies between state and Federal regulations in state waters for

operators of vessels with Federal reef fish permits. This would be particularly problematic for species considered overfished or undergoing overfishing, that have relatively substantial presence in state waters. Although in this case, the no action alternative would provide better economic prospects for small entities in the short run, the long-run sustainability of the fishery and economic benefits derivable from the fishery would be jeopardized.

List of Subjects in 50 CFR Part 622

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

Dated: November 12, 2008.

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

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

PART 622—FISHERIES OF THE CARIBBEAN, GULF, 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 § 622.2, the definitions of “Deep-water grouper (DWG)” and “Shallow-water grouper (SWG)” are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Deep-water grouper (DWG) means yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind. After the shallow-water grouper (SWG) commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is also considered a DWG for purposes of the commercial fishery.

* * * * *

Shallow-water grouper (SWG) means gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. However, after the SWG commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is considered a DWG for the commercial fishery only.

* * * * *

3. In § 622.4, paragraph (a)(1)(iv) is added and paragraph (a)(2)(v) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) * * *

(iv) If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state

regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

(2) * * *

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant’s earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

* * * * *

4. In § 622.34, paragraph (o) is removed and reserved; and the introductory heading of paragraph (k), paragraph (k)(1)(iii), paragraph (k)(3), the first sentence of paragraph (k)(5), and paragraph (u) are revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(k) *Closure provisions applicable to the Madison and Swanson sites, Steamboat Lumps, and the Edges.*

(1) * * *

(iii) The Edges is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°51’	85°16’
B	28°51’	85°04’
C	28°14’	84°42’
D	28°14’	84°54’
A	28°51’	85°16’

* * * * *

(3) Within the Madison and Swanson sites and Steamboat Lumps during November through April, and within the Edges during January through April, all fishing is prohibited, and possession of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section. The provisions of this paragraph, (k)(3), do not apply to highly migratory species.

* * * * *

(5) Within the Madison and Swanson sites and Steamboat Lumps, during May through October, surface trolling is the only allowable fishing activity. * * *

* * * * *

(u) *Seasonal closure of the recreational fishery for shallow-water grouper (SWG)*. The recreational fishery for SWG, in or from the Gulf EEZ, is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ is zero.

5. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iv) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(2) * * *

(ii) Yellowfin grouper—20 inches (50.8 cm), TL.

* * * * *

(iv) Red grouper—(A) For a person not subject to the bag limit specified in § 622.39 (b)(1)(ii)—18 inches (45.7 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—20 inches (50.8 cm), TL.

* * * * *

6. In § 622.39, the first sentence of 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 or 2 red grouper per person per day. * * *

* * * * *

7. In § 622.42, revise paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (DWG) and, after the quota for SWG is reached,

scamp, combined -1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (SWG), including scamp before the quota for SWG is reached, have a combined quota as specified in paragraph (a)(1)(iii)(A) of this section. Within the SWG quota there are separate quotas for gag and red grouper as specified in paragraphs (a)(1)(iii)(B) and (C) of this section, respectively. The quotas specified in paragraphs (a)(1)(iii)(A) through (C) of this section are all in gutted weight, that is eviscerated but otherwise whole.

(A) *SWG combined*. (1) For fishing year 2009—7.48 million lb (3.39 million kg).

(2) For fishing year 2010—5.77 million lb (3.43 million kg).

(3) For fishing year 2011 and subsequent fishing years—7.65 million lb (3.47 million kg).

(B) *Gag*. (1) For fishing year 2009—1.32 million lb (0.60 million kg).

(2) For fishing year 2010—1.41 million lb (0.64 million kg).

(3) For fishing year 2011 and subsequent fishing years—1.49 million lb (0.68 million kg).

(C) Red grouper—5.75 million lb (2.61 million kg).

* * * * *

8. In § 622.44, paragraph (g) is revised and paragraph (h) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(g) *Gulf deep-water grouper (DWG) and shallow-water grouper (SWG), combined*. For vessels operating under the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for DWG and SWG combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero.

(h) *Gulf gag and red grouper*. For vessels operating under the quota specifications in § 622.42(a)(1)(iii)(B) or (a)(1)(iii)(C), once 80 percent of either the gag or red grouper quota is reached, or projected to be reached, and the quota for the applicable species is projected to be reached prior to the end of the fishing year, the AA will file a notification with the Office of the **Federal Register** to implement a trip limit for the applicable species of 200 lb (90.7 kg), gutted weight. However, when the SWG, gag, or red grouper quota as specified in § 622.42(a)(1)(iii)(A), (B), or (C), respectively, is reached, or projected to be reached, the commercial

trip limit for the species subject to the closure is zero.

9. In § 622.49, paragraphs (a)(3) through (a)(5) are added to read as follows:

§ 622.49 Accountability measures.

(a) * * *

(3) *Shallow-water grouper (SWG) combined*—(i) *Commercial fishery*. If either gag, red grouper, or SWG commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii), the AA will file a notification with the Office of the **Federal Register** to close the entire SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, SWG commercial landings exceed the applicable ACL as specified in this paragraph (a)(3)(i), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the SWG commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for SWG, in gutted weight, are 7.94 million lb (3.60 million kg) for 2009, 7.99 million lb (3.62 million kg) for 2010, and 8.04 million lb (3.65 million kg) for 2011 and subsequent fishing years.

(ii) [Reserved]

(4) *Gag*—(i) *Commercial fishery*. If gag commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(B), the AA will file a notification with the Office of the **Federal Register** to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, gag commercial landings exceed the applicable ACL as specified in this paragraph (a)(4)(i), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the gag commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for gag, in gutted weight, are 1.66 million lb (0.75 million kg) for 2009, 1.71 million lb (0.78 million kg) for 2010, and 1.76 million lb (0.80 million kg) for 2011 and subsequent fishing years.

(ii) *Recreational fishery*. If gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(4)(ii), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the gag target catch level for that following year at the level of the prior year's target catch. 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 that following fishing year. The applicable recreational ACLs for gag, in gutted weight, are 2.59 million lb (1.17 million kg) for 2009, 2.64 million lb (1.20 million kg) for 2010, and 2.67 million lb (1.21 million kg) for 2011 and subsequent fishing years. The recreational target catch levels for gag, in gutted weight, are 2.06 million lb (0.93 million kg) for 2009, 2.14 million lb (0.97 million kg) for 2010, and 2.20 million lb (1.00 million kg) for 2011 and subsequent fishing years. Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

(5) *Red grouper*—(i) *Commercial fishery*. If red grouper commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(C), the AA will file a notification with the Office of the **Federal Register** to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper commercial quota for that following year at the level of the prior year's quota.

(ii) *Recreational fishery*. If red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(5)(ii), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper target catch level for that following year at the level of the prior year's target catch. In addition, the notification will 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 the following fishing year. The recreational ACL for red grouper, in gutted weight, is 1.85 million lb (0.84 million kg). The recreational target catch level for red grouper, in gutted weight,

is 1.82 million lb (0.82 million kg). Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3-year running average recreational landings will be compared to the ACL.

* * * * *

[FR Doc. E8-27335 Filed 11-17-08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080404529-81431-01]

RIN 0648-AW61

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2008 fishing year (January 1, 2008, through December 31, 2008) to account for underharvests, and to transfer 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06-02 and 06-03. The North Atlantic 2008 directed baseline quotas plus the 2007 underharvest would be divided equally between the semiannual periods of January through May and June through December. In addition, NMFS proposes to modify the vessel chartering regulations to potentially allow Atlantic Highly Migratory Species (HMS) limited access permit (LAP) holders to charter foreign vessels under a chartering arrangement where catches taken would count against U.S. Atlantic HMS quotas or entitlements.

DATES: Comments on this proposed rule may be submitted at the public hearing (oral or written), or must be received via mail, or fax by December 18, 2008.

The public hearing dates and times are:

1. Monday, December 8, 4-6 p.m., Silver Spring, MD.

2. Tuesday, December 16, 2:30-4:30 p.m., Gloucester, MA.

ADDRESSES: You may submit comments, identified by [0648-AW61], by any one of the following methods:

• **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

• **Fax:** 301-713-1917, Attn: LeAnn Southward Hogan

• **Mail:** 1315 East-West Highway, Silver Spring, MD 20910

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.

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 the supporting documents including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) are available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting LeAnn Southward Hogan (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing locations are:

1. Silver Spring - National Oceanic and Atmospheric Administration, SSMC III, room 1311B, 1301 East-West Highway, Silver Spring, MD 20910; and

2. Gloucester - National Oceanic and Atmospheric Administration, National Marine Fisheries Service Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT:

LeAnn Southward Hogan or Karyl Brewster-Geisz by phone: 301-713-2347 or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the