

blistering due to the internal failure of the paint system.

(6) Any soap, cleaner, or detergent used on vessel surfaces, such as a scum line of the hull, must be minimally toxic, phosphate-free, and biodegradable.

(7) Additional standards applicable to discharges from hulls and associated niche areas when a vessel is operating in federally protected waters are contained in § 139.40(i).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

RIN 0648–BM46

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Amendment 56

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

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

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 56 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 56 would revise stock status determination criteria for Gulf gag, establish a rebuilding plan, and revise catch limits. Amendment 56 would also revise the sector allocations of the annual catch limit, revise recreational accountability measures (AMs), and revise the recreational fishing season. The purpose of this action is to implement a rebuilding plan for gag and to implement revised management measures to end overfishing and rebuild the stock.

**DATES:** Written comments on Amendment 56 must be received no later than December 18, 2023.

**ADDRESSES:** You may submit comments on Amendment 56 identified by “NOAA–NMFS–2023–0103” by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<https://www.regulations.gov> and enter “NOAA–NMFS–2023–0103” in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Dan Luers, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information, e.g., name, address, confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments—enter “N/A” in the required fields if you wish to remain anonymous.

An electronic copy of Amendment 56, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-56-modifications-catch-limits-sector-allocation-and-recreational-fishing-seasons>.

**FOR FURTHER INFORMATION CONTACT:** Dan Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: [daniel.luers@noaa.gov](mailto:daniel.luers@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery, which includes gag, under the FMP in Federal waters of the Gulf. The Council prepared the FMP and NMFS implements the FMP 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.

Unless otherwise noted, all weights in this notice are in gutted weight.

Gag in the Gulf exclusive economic zone (EEZ) are found primarily in the

eastern Gulf. Juvenile gag are estuarine dependent and are often found in shallow seagrass beds. As gag mature, they move to deeper offshore waters to live and spawn. Gag is managed as a single stock with commercial and recreational catch limits. The allocation of the stock annual catch limit (ACL) between the commercial and recreational sectors established in Amendment 30B to the FMP is currently 39 percent commercial and 61 percent recreational.

Commercial fishing for gag is managed under the individual fishing quota (IFQ) program for groupers and tilefishes (GT–IFQ program), which began January 1, 2010, upon implementation of the final rule for Amendment 29 to the FMP (74 FR 44732, August 31, 2009; 75 FR 9116, March 1, 2010). Under the GT–IFQ program, the commercial quota for gag is set 23 percent below the gag commercial ACL, and NMFS distributes allocation (in pounds) of gag on January 1 each year to those who hold shares (in percent) of the gag total commercial quota. Both gag and red grouper, another grouper species managed under the GT–IFQ program, have a commercial multi-use provision that allows a portion of the gag quota to be harvested under the red grouper allocation, and vice versa. As explained further in Amendment 56, the multi-use provision is based on the difference between the respective red grouper and gag ACLs and quotas. However, if gag is under a rebuilding plan, as would occur under Amendment 56, the percentage of red grouper multi-use allocation is equal to zero. Commercial harvest of gag is also restricted by area closures and a minimum size limit.

NMFS and the Council manage the recreational harvest of gag with an ACL an annual catch target (ACT) set approximately 10 percent below the ACL, in-season and post-season AMs, seasonal and area closures, a minimum size limit, and daily bag and possession limits.

The most recent stock assessment for gag was completed in 2021 through Southeast Data, Assessment, and Review 72 (SEDAR 72), and concluded that the gag stock is overfished is undergoing overfishing as of 2019. Compared to the previous assessment for gag, SEDAR 72 used several improved data sources, including corrections for the potential misidentification between black grouper and gag, which are similar looking species, to better quantify estimates of commercial discards. SEDAR 72 also utilized updated recreational catch and effort data from the Marine Recreational

Information Program (MRIP) Access Point Angler Intercept Survey and Fishing Effort Survey (FES) through 2019. MRIP-FES replaced the MRIP Coastal Household Telephone Survey (CHTS) in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). Because MRIP-FES is designed to more accurately measure fishing activity, total recreational fishing effort estimates generated from MRIP-FES are generally higher than both the MRFSS and MRIP-CHTS estimates. Prior to SEDAR 72, the most recent stock assessment for gag was SEDAR 33 Update (2016), which indicated that gag was not subject to overfishing and was not overfished. The SEDAR 33 Update included recreational catch and effort data generated by the MRIP-CHTS.

SEDAR 72 also accounted for observations of red tide mortality directly within the stock assessment model. Gag is vulnerable to red tide events and was negatively affected by these disturbances in 2005, 2014, 2018, and projected for 2021. Modeling changes were also made in SEDAR 72 to improve size estimates of gag retained by commercial and for-hire (charter vessels and headboats) fishermen, and private anglers.

The Council's Scientific and Statistical Committee (SSC) reviewed the results of SEDAR 72 in November 2021 and concluded that the assessment was consistent with the best scientific information available and suitable for informing fisheries management. On January 26, 2022, NMFS notified the Council that gag was overfished and undergoing overfishing. The Magnuson-Stevens Act requires that a rebuilding plan be developed and implemented within 2 years from when NMFS notifies the appropriate fishery management council that a stock is overfished. The Council developed Amendment 56 to comply with this mandate.

At its January 2022 meeting, the Council requested that the NMFS Southeast Fisheries Science Center update the SEDAR 72 base model by replacing MRIP-FES calibrated landing estimates with private mode recreational landings estimates calibrated to the Florida Fish and Wildlife Commission's State Reef Fish Survey (SRFS). Historically, SRFS estimates a slightly larger harvest of gag by private anglers and state charter vessels (in Florida) than MRIP-CHTS, but estimates a substantially smaller harvest of gag by private anglers and state charter vessels than MRIP-FES.

This alternative model run of SEDAR 72 ("SRFS Run") also used MRIP-FES data for the federal permitted charter vessel and shore modes, and Southeast Region Headboat Survey (SRHS) data for federally permitted headboats.

The results of the SRFS Run were presented to the Council's SSC at its July 2022 meeting. The SSC found the SEDAR 72 SRFS Run to be consistent with the best scientific information available. The SSC determined that SRFS is a comprehensive survey for the gag private angling component of the recreational sector given that greater than 95 percent of private angling landings of gag are captured by the SRFS sampling frame and that the SRFS program's collection protocol had been certified by NMFS as scientifically rigorous. NMFS worked in conjunction with the State of Florida to develop a calibration model to adjust historic effort estimates so that they could be compared to new estimates from SRFS. The calibration of SRFS to historical gag landings was reviewed and approved by peer-review through the NOAA Office of Science and Technology in May 2022. Information about the calibration and the SSC's review of the SEDAR 72 SRFS Run can be found here: <https://gulfcouncil.org/meetings/scientific-and-statistical-meetings/july-2022/>. The results of the SEDAR 72 SRFS Run were consistent with the results of the SEDAR 72 base model in that both concluded that the gag stock is overfished and is undergoing overfishing.

Because Amendment 56 would not likely be implemented until 2024, and the Council recognized that maintaining the 2023 catch limits for gag would continue to allow overfishing, the Council sent a letter to NMFS, dated July 18, 2022 (Appendix A in Amendment 56), requesting interim measures that would reduce the gag stock ACL from 3.12 million lb (1.415 million kg) to 661,901 lb (300,233 kg). The Council determined, and NMFS agreed, that for this short-term reduction in harvest it was appropriate to maintain the current sector allocations of 39 percent commercial and 61 percent recreational, and the availability of red grouper multi-use and gag multi-use under the IFQ program. In addition to the reduction in the catch limits, the Council requested that the recreational fishing season for 2023 begin on September 1 and close on November 10, rather than the existing open season of June 1 through December 31. NMFS implemented these interim measures through a temporary rule effective on May 3, 2023 (88 FR 27701, May 3, 2023). The measures in the temporary rule are effective for 180 days (through

October 30, 2023), and NMFS expects to extend them for up to 186 additional days while NMFS reviews public comments on this proposed rule and Amendment 56, and prepares any final regulations. Because the SSC's review of the SEDAR 72 SRFS Run occurred after the Council's request for interim measures for gag, the recreational catch limits in the temporary rule are consistent with MRIP-FES calibrated landings and are not directly comparable to the catch limits in Amendment 56. Based on the results of the SEDAR 72 SRFS Run and the SSC recommendations, the Council is recommending management changes for gag through Amendment 56.

#### Actions Contained in Amendment 56

If approved by the Secretary of Commerce, Amendment 56 would make several changes to the management of gag in the Gulf:

- Revise the maximum sustainable yield (MSY) proxy, OY, and stock status determination criteria (SDC);
- Establish a rebuilding plan for the stock, and revise the overfishing limit (OFL), acceptable biological catch (ABC), and stock ACL consistent with the rebuilding plan;
- Revise the commercial and recreational allocation of the stock ACL and set new commercial and recreational sector ACLs, sector ACTs and commercial quota;
- Modify the recreational AMs; and
- Modify the recreational fishing season.

#### Status Determination Criteria

Based on the results of SEDAR 72, Amendment 56 would revise the SDC, which can be used to determine whether overfishing is occurring or the stock is overfished. The proxy for maximum sustainable yield (MSY) would be defined as the yield when fishing at the fishing mortality rate (F) associated with a 40 percent spawning potential ratio (SPR), where SPR is the ratio of the spawning stock biomass to its unfished state. The maximum fishing mortality threshold (MFMT) would be equal to  $F_{40\%SPR}$ . The minimum stock size threshold (MSST) would be defined as 50 percent of the biomass at the new MSY proxy. The OY would be conditional on the rebuilding plan, such that if the stock is under a rebuilding plan, OY would be equal to the stock ACL; and if the stock is not under a rebuilding plan, OY would be equal to 90 percent of MSY or its proxy. Currently, MSY is defined in the FMP as  $F$  assuming the maximum yield per recruit ( $F_{MAX}$ ), and the MFMT is  $F_{MAX}$ . The MSST is defined as 50 percent of

the biomass at  $F_{MAX}$ . The OY is defined as 75 percent of the yield at  $F_{MAX}$ . The proposed change in SDC represents a more conservative approach to management that would rebuild the gag stock to a more robust size, which should be more resilient to episodic mortality from red tide, harmful algal blooms, and sustainable levels of fishing mortality.

*Stock Rebuilding Plan Timeline, Sector Allocations, and Catch Limits*

Amendment 56 would set the rebuilding timeline for gag at 18 years based on the amount of time the stock is expected to take to rebuild if fished at 75 percent of the MSY proxy (yield at  $F_{40\%SPR}$ ). The OFLs and ABCs for 2024 through 2028 are based on the yield when fishing at  $F_{40\%SPR}$  and the yield when fishing at 75 percent of  $F_{40\%SPR}$ , respectively.

Amendment 56 evaluated two other rebuilding times: 11 years, which is the minimum time to rebuild in the absence of fishing mortality; and 22 years, which is twice the minimum time. In addition, the Council initially considered an alternative rebuilding time of 19 years, which is based on the minimum rebuilding time plus one generation time (8 years for gag). Because this option resulted in a rebuilding time similar to fishing at 75 percent of the MSY proxy, the Council moved this alternative Considered but Rejected (Appendix C in Amendment 56). The Council also discussed whether to consider in more detail a rebuilding time between 11 years and 18 years. The Council decided not to add an additional alternative because a slightly shorter rebuilding time would provide minimal benefits to the stock but increase the negative impacts to fishing communities.

In addition, Amendment 56 would revise sector allocations of the stock ACL from 39 percent commercial and 61 percent recreational to 35 percent commercial and 65 percent recreational, using recreational data from the SEDAR 72 SRFS Run. The Council considered two alternatives to allocate the stock ACL to the commercial and recreational sectors: (1) maintain the current allocation of 39 percent commercial and 61 percent recreational, which was based on MRFSS data from 1986 through 2005, and (2) update historical recreational landings using the SEDAR 72 SRFS Run calibrated data from the same 1986 through 2005 period, which would result in an allocation of the stock ACL of 35 percent to the commercial sector and 65 percent to the recreational sector. During the development of these two allocation alternatives, the Council also reviewed allocation options based on five additional historical reference periods from 1986 to 2019. These options differed by less than 1 percent up to less than 4 percent. Because the options were so similar, the Council decided to move forward with detailed analysis of only the two alternatives described above. The Council determined that the second option would best represent the historic landings for each sector while accounting for the change from MRFSS to SRFS Run data in the recreational sector.

The commercial-recreational sector allocation impacts the catch level projections produced by SEDAR 72. As more of the stock ACL is allocated to the recreational sector, the proportion of recreational discards and associated mortality increases. Recreational discard mortality rates are assumed to be less than commercial discard mortality rates but the total amount of recreational discards is considerably greater than

commercial discards. Generally, a gag caught and released by a recreational fisherman has a greater likelihood of survival than by a commercial fisherman because of how and where they fish. However, because of the much higher numbers of gag that are released by the recreational sector compared to the commercial sector, the total number of discarded fish that die from recreational fishing exceeds dead discards from commercial fishing. This results in additional mortality for the stock and a lower projected annual yield, which means a lower OFL, ABC, and stock ACL. However, the higher number of dead discards is not due to any change in how the recreational sector prosecutes the fishery but occurs because the SEDAR 72 SRFS Run data estimates greater fishing effort, and consequently a greater number of fish being caught, which includes discards and the associated mortality of discarded fish.

Consistent with the Councils' recommended rebuilding time and commercial-recreational allocation, Amendment 56 would revise the OFL and ABC. The Council also recommended the stock ACL be set equal to the ABC. The current OFL and ABC, and the OFLs and ABCs for 2024 through 2028, which increase over the time series as projected for the rebuilding plan, are shown in Table 1. However, the current OLF and ABC are not directly comparable to the proposed OFLs and ABCs because they are based, in part, on recreational landings estimates produced by the different surveys discussed above. Note that in Amendment 56, all of the catch levels were rounded down to the nearest thousand pounds. Values in 2028 would continue for subsequent fishing years unless modified through another action.

TABLE 1—CURRENT AND PROPOSED OFLs AND ABCs FOR GAG

Year	OFL in pounds (kg)	ABC in pounds (kg)
2023	4,180,000 (1,896,016)	3,120,000 (1,415,208)
2024	591,000 (268,073)	444,000 (201,395)
2025	805,000 (365,142)	615,000 (278,959)
2026	991,000 (449,510)	769,000 (348,813)
2027	1,200,000 (544,311)	943,000 (427,738)
2028	1,454,000 (659,523)	1,156,000 (524,353)

**Note:** Values are displayed in gutted weight. Kg is kilograms.

Prior to the implementation of the 2023 temporary rule, the stock ACL was 3.120 million lb (1.415 million kg) and was allocated 39 percent to the commercial sector and 61 percent to the recreational sector. The resulting

commercial ACL and quota were 1.217 million lb (0.552 million kg) and 0.939 million lb (0.426 million kg) respectively, and the recreational ACL and ACT were 1.903 million lb (0.863 million kg) and 1.708 million lb (0.775

million kg) respectively. The commercial ACT is not codified. These catch limits are based on the results of the 2016 SEDAR 33 Update (2016), which included recreational landings estimates generated from MRIP–CHTS.

The 2023 temporary rule reduced these catch limits consistent with the Council’s request. Therefore, the current commercial ACL and commercial quota as implemented by the 2023 temporary rule are 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg), respectively, and the recreational ACL and ACT are 403,759 lb (183,142 kg) and 362,374 lb (164,370 kg), respectively. These catch limits are based on the results of the initial SEDAR 72 base model run, which included recreational landings estimates generated using MRIP–FES.

Amendment 56 would set the stock ACL for gag at 444,000 lb (201,395 kg) in 2024, and would allocate approximately 35 percent to the commercial sector and approximately 65 percent to the recreational sector. This results in a 155,000-lb (70,307-kg) commercial ACL, and a 288,000-lb (130,635-kg) recreational ACL. These catch limits are based on the results of the SEDAR 72 SRFS Run, which included recreational landings estimates generated using SRFS. Amendment 56 would set catch levels from 2024 through 2028. However, the 2028 catch levels would continue after 2028 until

modified by subsequent action. As noted above, all of the catch levels from were rounded down to the nearest thousand pounds. Therefore, the sum of the sector ACLs does not equal the stock ACL. In addition, because of the different recreational landings estimates used to determine the catch limits described above, those catch limits are not directly comparable. However, the proposed catch limits are a significant reduction compared to the catch limits that would go back into effect after the 2023 temporary rule expires.

Based on the Council’s recommendation, Amendment 56 would modify the commercial quota such that it would be set equal to the ACT, and would be approximately 5 percent below the commercial ACL. The current buffer between the commercial ACL and commercial quota is 23 percent. The Council recommended reducing this buffer between the commercial ACL and ACT in Amendment 56 because there have been considerable improvements in the estimation of commercial landings and discards of gag since the buffer was put in place through Amendment 32 to the FMP. Further, the

fraction of gag discarded compared to the total number of gag caught has remained low. NMFS does not expect the actions in Amendment 56 to significantly increase commercial discards of gag. Therefore, the commercial quota would be approximately 95 percent of the commercial ACL.

For the recreational sector, the current buffer between the ACL and ACT is approximately 10 percent. The Council elected to choose a more conservative ACT than if they had applied the ACL and ACT control rule, which would have resulted in the same 10 percent buffer between the recreational ACL and ACT. Instead, the Council decided to double that buffer to increase the probability of rebuilding gag by accounting for uncertainty in managing recreational harvest and further reducing fishing mortality and discards that result from directed harvest. Thus, Amendment 56 would establish a recreational ACT that is approximately 20 percent below the recreational ACL. Table 2 shows the proposed catch levels recommended for gag in Amendment 56.

TABLE 2—PROPOSED STOCK ACL AND SECTOR CATCH LEVELS

Year	Stock ACL lb (kg)	Com ACL lb (kg)	Rec ACL lb (kg)	Com ACT & Quota lb (kg)	Rec ACT lb (kg)
2024	444,000 (201,395)	155,000 (70,307)	288,000 (130,635)	147,000 (66,678)	230,000 (104,326)
2025	615,000 (278,959)	215,000 (97,522)	399,000 (180,983)	204,000 (92,533)	319,000 (144,696)
2026	769,000 (348,813)	269,000 (122,016)	499,000 (226,343)	255,000 (115,666)	399,000 (180,983)
2027	943,000 (427,738)	330,000 (149,685)	613,000 (278,052)	313,000 (141,974)	490,000 (222,260)
2028	1,156,000 (524,353)	404,000 (183,251)	751,000 (340,648)	383,000 (173,726)	600,000 (272,155)

**Note:** Values are displayed in gutted weight. Abbreviations used in this table: Com means commercial and Rec means recreational. Lb is pounds and kg is kilograms.

*Recreational Accountability Measures*

For the recreational sector, the current AMs require NMFS to prohibit harvest of gag for the rest of the fishing year when the recreational ACL is projected to be met. The AMs also state that if the recreational ACL for gag is exceeded in a fishing year, then in the following fishing year, NMFS will maintain the prior year’s ACT at the same level, unless the best scientific information available determines that is unnecessary, and the fishing season duration will be set based on the recreational ACT. In addition to the previous measures, if gag is overfished and the recreational ACL is exceeded in a fishing year, NMFS will reduce the ACL and ACT in the following fishing year by the amount of the ACL overage, unless the best scientific information available determines that is unnecessary. Amendment 56 would

change the AMs to require that NMFS prohibit harvest when the recreational ACT is projected to be met regardless of whether there was an overage of the ACL in the prior year. NMFS and the Council expect this change, in combination with the increased buffer between the recreational ACL and ACT, to decrease the likelihood of recreational harvest exceeding the recreational ACL. The larger buffer between the recreational ACL and ACT would also reduce the level of discards associated with directed harvest, increasing the probability of meeting the 18 years rebuilding time.

Amendment 56 would also remove the provision that requires the previous year’s ACT to be maintained in the year following an overage of the ACL. Because the stock is overfished and NMFS is required to reduce the ACL and ACT by any overage, an additional

adjustment that retains the lower ACT is unnecessary.

*Recreational Fishing Season*

Before NMFS implemented the temporary recreational fishing season for gag in 2023, the season for Gulf gag began on June 1 and continued through December 31. During the effective period of the temporary rule, the recreational fishing season opened on September 1 and was to close on November 10, 2023, unless NMFS projected the recreational ACL would be harvested prior to that date. On October 4, 2023, NMFS published a temporary rule closing recreational harvest effective on October 19, 2023 (88 FR 68495).

Amendment 56 would modify the recreational fishing season for gag so the season would begin each year on September 1. Unlike the season duration implemented by the temporary rule,

Amendment 56 would not establish a predetermined season closure date. Consistent with the revised AMs, Amendment 56 would require NMFS to close the gag recreational season when landings are projected to reach the recreational ACT. NMFS would use the best data available to project the duration of the proposed recreational season in 2024 and in following years. NMFS expects to have better estimates of recreational fishing effort and catch of gag for a season beginning September 1 after data from 2023 are finalized. This should reduce the uncertainty in projecting an appropriate closure date for the 2024 recreational fishing season. Once the ACT for gag is projected to be met and is closed, recreational fishing for gag would not resume before the end

of the year because data would not yet be available to determine whether landings did reach the ACT.

#### **Proposed Rule for Amendment 56**

NMFS has drafted a proposed rule to implement Amendment 56. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

#### **Consideration of Public Comments**

The Council has submitted Amendment 56 for Secretarial review. Comments on Amendment 56 must be

received by December 18, 2023. Comments received during the respective comment periods, whether specifically directed to Amendment 56 or the proposed rule will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 56. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in any final rule.

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

Dated: October 13, 2023.

**Jennifer M. Wallace,**

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

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