tesseract.cloud.dcsa.mil/nccs'' in its place.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220426–0106]

RIN 0648–BK77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 53

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf)(FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council)(Amendment 53). This final rule and Amendment 53 modify the allocation of Gulf red grouper catch between the commercial and recreational sectors as well as revise sector annual catch limits (ACLs) and annual catch targets (ACTs). The purposes of this final rule and Amendment 53 are to revise the red grouper sector allocations using the best scientific information available and to modify the allowable harvest of red grouper based on results of the recent stock assessment.

DATES: This final rule is effective June 1, 2022.

ADDRESSES: Electronic copies of Amendment 53, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, and electronic copies of a minority report submitted by four Council members, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-53-red-grouper-allocations-and-catch-levels.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes red grouper, under the FMP. 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).

On April 21, 2020, NMFS published a notice of intent to prepare a draft environmental impact statement (DEIS) for Amendment 53 and requested public comment (85 FR 22137). On December 9, 2021, NMFS published a notice of availability for Amendment 53 and requested public comment (86 FR 70078). NMFS approved Amendment 53 on March 9, 2022. On January 19, 2022, NMFS published a proposed rule for Amendment 53 and requested public comment (87 FR 2737). The proposed rule and Amendment 53 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 53 and implemented by this final rule is described below.

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

Background

Red grouper in the Gulf exclusive economic zone (EEZ) are found primarily in the eastern Gulf on offshore hard bottom areas and are managed as a single stock with commercial and recreational ACLs and ACTs. The allocation of the ACL between the commercial and recreational sectors is currently 76 percent commercial and 24 percent recreational and was set through Amendment 30B to the FMP in 2009 (74 FR 17603; April 16, 2009).

Commercial red grouper fishing is managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) program, which began January 1, 2010, through Amendment 29 to the FMP (74 FR 44732; August 31, 2009, and 75 FR 9116; March 1, 2010). Under the IFQ program, the commercial red grouper quota is based on the commercial sector's red grouper ACT (commercial quota), and red grouper allocation is distributed on January 1 of each year to those who hold red grouper shares. Both red grouper and gag, another grouper species managed under the IFQ program, have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag allocation, and vice versa. The multi-use provision is based on the difference between the respective ACLs and ACTs and is intended to reduce bycatch.

The recreational red grouper harvest is managed with catch limits, in-season and post-season accountability measures (AMs), season and area closures, a minimum size limit, and a recreational bag limit. The in-season AM for red grouper requires NMFS to close the recreational sector for the remainder of the fishing year when red grouper landings reach or are projected to reach the recreational ACL. If recreational landings exceed the red grouper recreational ACL in a fishing year, the post-season AM requires NMFS to shorten the length of the following recreational fishing season by the amount necessary to ensure landings do not exceed the recreational ACT. If the red grouper stock is overfished, NMFS must also reduce the ACL and ACT by the amount of the recreational ACL overage in the prior year. The recreational red grouper AMs were implemented in 2012 (77 FR 6988; February 10, 2012) and were modified in 2013 (78 FR 6218; January 30, 2013).

In 2018, the Council received a recommendation from its Scientific and Statistical Committee (SSC) to reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. This recommendation was based on an interim analysis conducted by the Southeast Fisheries Science Center (SEFSC). The Council also heard concerns from fishermen about the condition of the red grouper stock because commercial and recreational harvests were well below the respective quota and ACL. The SSC did not recommend a new acceptable biological catch based on the analysis but determined that the analysis did support recommending that the Council reduce the 2019 total ACL from 10.70 million lb (4.85 million kg) to 4.60 million lb (2.09 million kg). The Council noted the severe red tide conditions that occurred in the summer and fall of 2018 off the Florida west coast and decided to further reduce the total ACL to an amount equivalent to the 2017 harvest of 4.16 million lb (1.89 million kg). The Council took action by initially requesting an emergency rule to reduce red grouper ACLs and ACTs (84 FR 22389, May 17, 2019), and then making the harvest reductions permanent in a subsequent framework action (84 FR 52036; October 1, 2019).

The Southeast Data, Assessment, and Review (SEDAR) 61 assessment was completed in September 2019, and used updated recreational catch and effort data from the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey (APAIS) and Fishing Effort Survey (FES). MRIP

began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 53, total recreational fishing effort estimates generated from MRIP–FES are generally higher than both the MRFSS and MRIP–CHTS estimates. This difference is because MRIP–FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. Therefore, the current red grouper total ACL and recreational ACL of 4.16 million lb (1.89 million kg) and 1.00 million lb (0.45 million kg), respectively, in MRIP–CHTS units, would be an estimated 5.26 million lb (2.39 million kg) and 2.10 million lb (0.95 million kg), respectively, in MRIP–FES units.

NMFS developed calibrations models to adjust historic effort estimates so that they can be compared to new estimates from MRIP–FES. The calibration methodologies are discussed in Amendment 53 as well as in the SEDAR 61 final report. In response to comments on the integrated DEIS, NMFS added information to Section 1.1 of Amendment 53 and included links to the calibration peer reviews. However, this peer review information has been publicly available since the reviews were completed in 2017 and 2018. In addition, a publication titled ''Survey Design and Statistical Methods for Estimation of Recreational Fisheries Catch and Effort'' explains the different recreational fishing surveys and the time-series calibration methods. This publication has been available since 2018, and can be found at *https://media.fisheries.noaa.gov/2021-09/MRIP-Survey-Design-and-Statistical-Methods-2021-09-15.pdf.*

The SEDAR 61 assessment concluded that the Gulf red grouper stock is not overfished and overfishing is not occurring, but that as of 2017, the stock remained below the spawning stock biomass (SSB) at 30 percent of the spawning potential ratio (SPR), where SPR is the ratio of SSB to its unfished state. Based on the results of SEDAR 61, the Council's SSC recommended an overfishing limit (OFL) of 5.35 million lb (2.43 million kg) and an acceptable biological catch (ABC) of 4.90 million lb (2.22 million kg). Because these catch levels are in MRIP–FES units, the recommended ABC appears to be greater than the current total ACL of 4.16 million lb (1.89 million kg), but would actually result in a decrease in allowable harvest when compared to the total ACL in MRIP–FES units of 5.26 million lb (2.39 million kg). In addition, these catch level recommendations assumed status quo sector allocations for red grouper, which were based in part on 1986–2005 landings estimates generated by MRFSS. As explained in Amendment 53, retaining the current sector allocations would increase the commercial ACL but substantially decrease the recreational ACL when comparing like units. Therefore, the Council requested that the SSC review alternative catch level projections based on sector allocation alternatives that used MRIP–FES data and several time series (1986–2005, 1986–2009, and 1986–2018). The SSC reviewed these alternative sector allocation scenarios, affirmed that the SEDAR 61 (2019) assessment, which included MRIP–FES recreational landings, represented the best scientific information available, and provided alternative catch level recommendations to the Council based on the allocation alternatives.

The commercial-recreational allocation impacts the catch level projections produced by the assessment. As more of the total ACL is allocated to the recreational sector, the proportion of recreational discards increases. Recreational discard mortality rates are assumed to be less than commercial discard mortality rates, but the magnitude of recreational discards is considerably greater than commercial discards. There are less than 850 vessel with commercial reef fish permits and even less vessels on which red grouper is harvested. In each year from 2014 through 2018, between 374 and 384 commercial vessels were associated with red grouper landings. NMFS does not have information on the number of recreational anglers who harvest red grouper, but recreational anglers are estimated, on average, to have taken over a million trips per year between 2014–2018 on which they have caught red grouper.

Generally, a fish caught and released by a recreational fishermen has a greater likelihood of survival than by a commercial fishermen because of how and where they fish. However, because of the much greater numbers of red grouper that are released by the recreational sector compared to the commercial sector, the total number of discards that die from recreational fishing exceeds those from commercial fishing. This higher discard mortality for the stock, as well as assumed changes to the population structure that results from more recreational harvest, results in a lower projected annual yield, which means a lower OFL, ABC, and total ACL. However, change in discards is not due to any change in how the recreational sector prosecutes the fishery but occurs because MRIP–FES estimates higher levels of fishing effort, and consequently a greater number of fish being caught, which includes discards and the associated mortality of discarding fish.

In Amendment 53, the Council considered several allocation alternatives: Maintaining the current allocation, maintaining the current commercial ACL and allocating the remaining pounds to the recreational sector, and using the various time series reviewed by the SSC to adjust the allocation to reflect the most recent understanding of historical landings. The Council decided to adjust the allocation using the same years used to set the current allocation in Amendment 30B to the FMP (1986–2005). The Council determined that this would best represent the historic landings for the years used in Amendment 30B while accounting for the change from MRFSS data to MRIP–FES data. Because the MRIP–FES landings estimates are greater than the previous estimates of recreational landings estimates, the commercial-recreational allocation would shift from 76 percent and 24 percent, respectively, to 59.3 percent and 40.7 percent, respectively. Based on the results of SEDAR 61 and using the revised allocation of 59.3 percent commercial and 40.7 percent recreational, the Council's SSC recommended an OFL of 4.66 million lb (2.11 million kg) and an ABC of 4.26 million lb (1.93 million kg). The total ACL is equal to the ABC.

Management Measures Contained in This Final Rule

This final rule revises the sector ACLs and ACTs for the Gulf red grouper stock.

Annual Catch Limits and Annual Catch Targets

The current commercial ACL and ACT are 3.16 million lb (1.43 million kg) and 3.00 million lb (1.36 million kg), respectively. The current recreational ACL and ACT are 1.00 million lb (0.45 million kg) and 0.92 million lb (0.42 million kg) in MRIP CHTS units, respectively. In MRIP FES units, the current recreational ACL and ACT are estimated to be 2.10 million lb (0.95 million kg) and 1.93 million lb (0.88 million kg), respectively.

As explained previously, the ABC associated with the preferred allocation is 4.26 million lb (1.93 million kg) and the total ACL is equal to the ABC. Applying the allocation selected by the Council in Amendment 53 to the total

ACL results in a 2.53 million lb (1.15 million kg) commercial ACL and a 1.73 million lb (0.78 million kg) recreational ACL in MRIP FES units.

The Council did not apply the ACL/ACT Control Rule to set the commercial buffer between the ACL and ACT. Normally, a sector managed using an IFQ program without a commercial quota overage during its reference period (as was the case for the reference period 2016–2019) would yield a 0 percent buffer from the control rule. Instead, in Amendment 53, the Council decided to continue using a buffer of 5 percent between the commercial ACL and ACT to allow red grouper and gag share categories in the IFQ program to have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag multi-use allocation, and vice versa. Applying the 5 percent buffer to the revised commercial ACL of 2.53 million lb (1.15 million kg) results in a commercial ACT of 2.40 million lb (1.09 million kg).

The Council did apply the ACL/ACT Control Rule to set the recreational sector buffer between the ACL and ACT. Using 2016–2019 MRIP FES landings data in the control rule produced a buffer of 9 percent, one percentage point greater than the current buffer. Applying this 9 percent buffer to the revised recreational ACL of 1.73 million lb (0.78 million kg) resulted in a recreational ACT of 1.57 million lb (0.71 million kg) in MRIP FES units.

Minority Report

A minority report signed by four Council members raises several objections to the preferred allocation in Amendment 53, including allegations that the preferred allocation violates National Standards 4 and 9, as well as section 302(i)(6) of the Magnuson-Stevens Act. The minority report also asserts that the Council did not follow its allocation policy. These issues, which mirror some of the comments received on the notice of availability for Amendment 53 and the proposed rule, are addressed in this final rule.

Comments and Responses

NMFS received 81 comments on the notice of availability for Amendment 53 and 102 comments on the proposed rule, including comments containing signed letters as part of a petition. The petition, which is opposed to Amendment 53, had 2,588 signatures. In general, anglers and groups supporting recreational fishing are in favor of the revised red grouper allocation in Amendment 53. Commercial fishermen, commercial fishing organizations, seafood dealers and wholesalers, and seafood restaurant organizations and owners oppose the revised allocation and support maintaining the status quo allocation and the higher OFL, ABC, and commercial ACL in Alternative 2 of Action 1. Some comments were outside the scope of this action. These comments include suggestions that additional red grouper management measures are necessary such as allowing anglers to keep undersized fish, shortening the recreational season, developing a tag system for red grouper recreational fishing to make the sector more accountable, and eliminating the red snapper and grouper-tilefish IFQ programs. Other comments expressed concern that this action would result in less monitoring of red tide and suggested that NMFS determine that red grouper be considered overfished based on a previous minimum stock size threshold. NMFS has not made any changes from the proposed rule to this final rule based on public comment.

Comments specific to Amendment 53 and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: The Council did not follow NMFS' Policy Directive 01–119, Fisheries Allocation Review Policy or NMFS' Procedural Directive 01–119–01, Criteria for Initiating Allocation Reviews. These directives require the Council to undertake an allocation review before it considers a potential change to an existing allocation in an amendment document (*i.e.,* an allocation action).

Response: The NMFS Allocation Review Policy recommends a three-step process to ensure fisheries allocations are periodically evaluated to remain relevant to current conditions: Trigger, review, evaluation of options. Nothing in the policy states that the steps are mandatory or that the review and evaluation of options must happen sequentially. The Council initiated a review of the red grouper allocation through Amendment 53 because SEDAR 61 included MRIP–FES calibrated recreational landings data and the catch level advice provided by the SSC was in MRIP–FES units. Amendment 53 incorporated both the Council's allocation review and evaluation of options, and all of the relevant ecological, economic, social, and performance factors identified in NMFS' Procedural Directive 01–119–01 were considered in Amendment 53.

Comment 2: NMFS failed to comply with NEPA by using an inappropriate no action allocation alternative for Action 1, not considering a sufficient range of alternatives for Action 1, and not taking a hard look at the environmental impacts.

Response: NMFS has complied with the requirements of NEPA. With respect to the no action allocation alternative, a red grouper management system is in place. Therefore, ''the 'no action' alternative may be thought of in terms of continuing with the present course of action until that action is changed.'' (See ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' (*https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act*).) Consistent with this guidance, the no action alternative (Alternative 1) maintains the current allocation and catch levels in MRIP–CHTS units. However, selecting this alternative would not be consistent with the requirements of the Magnuson-Stevens Act because the best scientific information available, which the SSC used to make its catch level recommendations, indicates the OFL and ABC (and consequently ACLs) need to be revised to incorporate MRIP–FES data and reflect the condition of the stock. With respect to a reasonable range of alternatives, six alternatives were considered in Action 1 including a no action alternative. These alternatives considered maintaining the current sector allocation percentages, adjusting the allocation percentages by maintaining the current commercial ACL, and adjusting the allocation percentages using three different time series in keeping with amendment's need to ensure the allocation accurately reflects historical participation of both sectors. In the analysis of these alternatives as well as Action 2 alternatives to set the ACT buffer, NMFS did take a hard look at the environmental impacts, explaining that a shift in allocation to the recreational sector is expected to have the most impact on red grouper discards because of how that sector operates. In sum, the alternatives addressed the purpose and need laid out in the final EIS and identified alternative ways of meeting the need, and NMFS analyzed the physical, biological, economic, social, and administrative impacts to the human environment of each alternative.

Comment 3: Because the comment period for the DEIS closed after the Council made its decision to take final action and approve Amendment 53, the Council was not able to review all of the comments submitted to NMFS before taking final action, and therefore, was not able to take those comments into consideration in making its decision.

Response: Although NMFS and the Council try to have the comment period on a DEIS close before the Council makes a decision to submit an action to NMFS, there is no legal requirement to do so. The environmental impact statement (EIS) for this action is incorporated into the Council's plan amendment but is prepared under the National Environmental Policy Act (NEPA), which requires that Federal agencies consider the environmental impacts of their actions in the decision-making process. NMFS is the Federal action agency for Amendment 53 and is responsible for complying with NEPA. NMFS used comments submitted on the DEIS to improve the final EIS and also used those comments to inform NMFS on the decision to approve, disapprove, or partially approve Amendment 53.

Consistent with the requirements of the Magnuson-Stevens Act, the Council held public hearings during the development of Amendment 53. These included discussion at several Council meetings, as well as at several separate public hearings that focused solely on this amendment. Therefore, stakeholders had numerous opportunities, both before and after the DEIS was made available in May 2021, to provide input to the Council before it made its decision to approve Amendment 53 at the June 2021 meeting.

Comment 4: NMFS improperly made changes to Amendment 53 after the Council voted to submit the amendment for review and implementation. These changes include post hoc justifications related to arguments made in the minority report after the Council approved the amendment, including the conclusion that closed seasons likely impose some negative impacts on the red grouper stock and the revised allocation might have no impact on discards because anglers may catch and discard the same amount of red grouper whether their season is open or closed.

Response: At its June 2021 meeting, the Council expressly authorized Council and NMFS staff to make any required editorial changes to the amendment after it was approved by the Council. Further, Amendment 53 is an integrated document that incorporates the requirements of the Magnuson-Stevens Act, as well as other applicable laws such as NEPA and the Regulatory Flexibility Act. As the Federal agency responsible for NEPA compliance, NMFS published a DEIS and responded to comments on the draft in the final EIS. As those responses indicate, NMFS used comments submitted on the DEIS to improve the final EIS. With respect to the assertion that any changes were post hoc justifications related to arguments made in the minority report after the Council approved the amendment, NMFS is responsible for approving or disapproving Amendment 53, and any changes to the document were made before that approval decision occurred.

The Bycatch Practicability Analysis (BPA) in Amendment 53 includes a discussion of closed seasons and concludes in part that ''[t]he benefits of the ACL reduction on red grouper bycatch may be partially offset by the regulatory discards that would occur by fishermen that target other species and catch red grouper should a closure occur for the recreational sector.'' (page 215). Although an earlier draft indicated that ''[c]losed season discards are not believed to be significant in the recreational red grouper sector,'' this was in reference to the February 1 through March 31 seasonal closure in waters beyond the 20-fathom contour. This closure would be in effect regardless of any action in Amendment 53 and would have no added effect on discards. The final version of Amendment 53 provided additional information in the BPA on closures noting general negative effects from regulatory discards. These effects are also noted in other sections of Amendment 53 (*e.g.,* Section 3.3; page 48 and Section 4.1.2; page 97).

Comment 5: Amendment 53 is inconsistent with Section 303(a)(15) of the Magnuson-Stevens Act and the National Standard (NS) 1 Guidelines because the ACLs include only landed fish, not both landed and discarded fish as required by the NS 1 Guidelines.

Response: Section 303(a)(15) requires the FMP to include ACLs and AMs, and the NS 1 Guidelines define catch as including both landed fish and dead discards (50 CFR 600.310(f)(3)(i)). However, the NS 1 Guidelines also state that the ABC, on which the ACLs are based, may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC. The ABCs recommended by the SSC were derived from SEDAR 61, which accounts for dead discards and other sources of mortality (*e.g.,* red tide).

Comment 6: The allocation adopted in Amendment 53 increases the risk of overfishing and does not allow the fishery to harvest the optimum yield (OY) because the high level of dead discards from the recreational sector reduces the ABC.

Response: The allocation adopted in Amendment 53 does not substantially increase the risk of overfishing or prevent achieving OY. The risk of overfishing is the same under all of the allocation alternatives considered by the Council. When the SSC recommended the alternative OFLs shown in in Table 1.1.3 in Amendment 53 (page 7), the SSC used the same probability of overfishing (P*) value of 0.5. A P* of 0.5 means that there is a 50 percent the chance of overfishing at that level of harvest. For setting the ABC, the SSC used a more conservative P* of 0.30, which corresponds to a 30 percent chance of overfishing. Harvest by the commercial sector is constrained by the IFQ program. The recreational harvest is constrained through bag limits, size limits, and seasonal closures. Additionally, as discussed in Section 1.1 of Amendment 53 (page 3), both in-season and post-season AMs are in place to help constrain the recreational harvest to its ACL and prevent overfishing. The recreational sector has exceeded its ACL only once in the past 10 years as shown in Table 2.1.3 (page 20).

As explained below in response to *Comment 15,* the projected ABC decreases as more fish are allocated to the recreational sector because this allocation shift is expected to result in more encounters with red grouper and higher overall discards, and is also expected to change the age-specific population structure of the stock. However, this reduction in the ABC and corresponding total ACL does not mean that the fishery is not achieving OY on a continuing basis. OY is the long-term average desired yield from a stock that provides ''the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities'' and is reduced from the maximum sustainable yield to take into account economic, social, and ecological factors (16 U.S.C. 1802(33); 50 CFR 600.310 (e)(3)(iii)(A)). ACLs represent the amount of fish available each year that is consistent with achieving the long-term OY and preventing overfishing (50 CFR 600.310(f)(4)(iv)). With respect to red grouper, Secretarial Amendment 1 defined the OY as yield at 75 percent of F_{MSY} where F means fishing mortality rate and MSY means maximum sustainable yield (*https://gulfcouncil.org/wp-content/uploads/Secretarial-Amendment-1-2004-including-SEIS-RIR-and-IRFA-1_508Compliant.pdf*). The SEDAR 61 results presented to the SSC in September 2019 assumed the status quo allocation, and included projected catch at OY of over 6.4 million lb (2.9 million kg). However, SEFSC staff cautioned the SSC that if the 2018 red tide event was

severe, there would be a high probability of overfishing if catch levels were set using the OY projections. The projections using OY and assuming a similar red tide event as occurred in 2005 would have resulted in catch levels slightly below the 4.90 million lb (2.22 million kg) ABC originally recommended by the SSC (Figure 5.7 of SEDAR 61). After the Council requested that the SSC review various alternative projection scenarios based on different allocations, the SEFSC did not include additional projections using OY because, as explained previously, the SSC determined that it was appropriate to use a P* of 0.3 (30 percent probability of overfishing) to set an ABC. However, similar to the projections using the SSC's desired approach, any projections using the OY would have changed with a change in the allocation. Thus, the sector allocation influences the total amount of fish available for harvest, but does not affect the goal of achieving OY (providing the greatest overall benefit to the Nation with respect to both food production and recreational opportunities) on a continuing basis.

The commercial and recreational sectors have different economic, social, and cultural goals and objectives. Participants in the commercial sector tend to seek to maximize harvest and efficiency while participants in the recreational sector tend to seek to maximize access and opportunities. These different goals and objectives impact fishing behavior, which generally results in more discards by the recreational sector. The results of SEDAR 61 and the catch level advice provide by the Council's SSC require a reduction in the total ACL. Amendment 53 reduces each sector's catch levels by approximately the same percentage, providing the greatest overall benefit to the Nation with respect to both food production and recreational opportunities. While the status quo allocation alternative (Action 1, Alternative 2) advocated for by the commercial sector may result in the largest stock ACL, it would not provide the greatest overall benefit to the Nation because it would require the recreational sector to carry the full burden of the reduction, resulting a in a much shorter recreational fishing season and a related reduction in recreational opportunities.

Comment 7: Amendment 53 is inconsistent with NS 2 because the revised allocation is based on MRIP–FES landing estimates, which have not been determined to be the best scientific available information, particularly by the Council's SSC. MRIP–FES does not provide realistic estimates of historical landings because the fishery has changed since 1986 and the MRIP–FES landings estimates of historical landings are highly uncertain. Any use of MRIP–FES data for allocation changes should be delayed until the accuracy of this survey is improved.

Response: NMFS has determined that Amendment 53 is consistent with NS 2 and that the MRIP–FES landings estimates represent the best scientific information available. This determination is supported by a September 8, 2021, memorandum from the SEFSC as well as the recommendations for the Council's SSC. The SEDAR 61 stock assessment incorporated landings data from the MRIP–FES survey, which is considered a better survey than the prior MRIP–CHTS survey (see *https://www.fisheries.noaa.gov/recreational-fishing-data/effort-survey-improvements*). In July 2020, the Council's SSC held a workshop on calibrating MRIP–FES and MRIP CHTS (*https://gulfcouncil.org/ssc/archive/*; July 2020). The SSC examined the differences in methodology and outcomes between the fishing effort estimates produced by the different surveys. At that time, the SSC recommended that the Council wait for a stock assessment before adopting a different data unit for quota monitoring, to better understand the effects of such a transition on the stock from all perspectives. The SEDAR 61 stock assessment was the first assessment to use the calibrated landings. As discussed in the Section 1.1 of Amendment 53 (pages 3–7), the SSC accepted SEDAR 61 as the best scientific information available, specifically acknowledging that it utilizes MRIP–FES recreational landings estimates.

Comment 8: Amendment 53 violates NS 4 because the revised allocation is not fair and equitable, it is not tied to an FMP objective, forces the commercial sector to subsidize dead discards in the recreational sector, and ignores catch limit overages by the recreational sector as well as factors that would have increased the commercial allocation. The revised allocation also fails to promote conservation by allowing for an increase in the number of dead discards from the recreational sector.

Response: NMFS has determined that Amendment 53 is consistent with NS 4. As noted in Section 1.3 of Amendment 53 (page 8), the overall goal of the FMP is to attain the greatest overall benefit to the Nation with particular reference to food production and recreational opportunities on the basis of the MSY as reduced by relevant ecological, economic, or social factors. The FMP objectives that support this goal and are tied to the revised allocation and catch limits include preventing overfishing and promoting stability in the fishery by allowing for enhanced fisher flexibility and increasing fishing opportunities to the extent practicable.

The commercial sector is not subsidizing dead discards from the recreational sector. Recreational fishing for red grouper (and many other species) typically involves higher levels of discards, but the Magnuson-Stevens Act includes recreational opportunities in its definition of OY. In pertinent part, the Magnuson-Stevens Act defines the optimum yield as the amount of fish which will provide the greatest overall benefit to the nation with respect to food production and recreational opportunities. The allocation implemented through this final rule does result in less total annual harvest by both sectors. However, as explained in response to *Comment 6,* the two sectors have different objectives, and operate differently to achieve those objectives. Participants in the commercial sector tend to seek to maximize harvest and efficiency while participants in the recreational sector tend to seek to maximize access and opportunities. These different goals and objectives impact fishing behavior, which generally results in more discards by the recreational sector. The Council and NMFS must consider and account for these differences when determining whether an allocation fairly and equitably allocates fishing privileges and provides the greatest overall benefit to the Nation with respect to both food production and recreational opportunities. In addition, as explained in response to *Comment 15,* the shift in allocation to the recreational sector impacts more than the discards assumed in the SEDAR 61 projections. It also changes the assumptions about the future population structure of the stock, which also impacts the projected allowable catch.

The revised allocation does not ignore catch level overages by the recreational sector or factors that would have increased the commercial allocation. As explained in the response to *Comment 24,* there was no commercial-recreational allocation for red grouper prior to Amendment 1 to the FMP, and the recreational sector did not have a catch limit until 2004 when a catch target of 1.25 million lb (0.57 million kg) was put in place. In addition, both sectors exceeded their catch limits in 2004 and 2005, which are the final 2 years used to set the original sector allocation and update the allocation in this amendment.

With respect to promoting conservation, the NS 4 Guidelines state that a conservation and management measure ''may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product.'' Consistent with section 303(a)(14) of the Magnuson-Stevens Act, the NS 4 Guidelines also state that to the extent that it is necessary to reduce the overall harvest in a fishery, any harvest restrictions must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery. The revised allocation promotes wise use by considering both the biological impacts to the red grouper stock, including preventing overfishing, and the economic and social impacts to fishery participants. The revised allocation maintains the balance between recreational access and commercial harvest. As explained in more detail in the responses to *Comments* 11 and 24, maintaining the current allocation would decrease the total ACL and recreational ACL, but increase the commercial ACL. This would increase net economic benefits in the commercial sector but would also decrease net economic benefits in the recreational sector by a significantly larger amount, and result in the largest decrease in net economic benefits to the Nation of all the alternatives considered. In contrast, the revised allocation reduces the commercial and recreational ACLs by similar percentages (approximately 20 percent and 18 percent, respectively) and is expected to result in the greatest net economic benefits to the Nation. With respect to dead discards, SEDAR 61 assumes that dead discards from the recreational sector increase as the allocation to that sector increases, but does not take into account discards that occur during a recreational season closure that NMFS must implement when the recreational ACL is projected to be met. NMFS expects the preferred allocation to allow the recreational season to remain open until mid-December, whereas maintaining the current allocation would require a closure in early August (Table 2.1.4 in Amendment 53). Thus, any decrease in bycatch and bycatch mortality that may result under the current allocation may be partially offset by an increase in regulatory discards that occur when a recreational closure is in effect (Appendix B of Amendment 53).

Comment 9: Amendment 53 violates NS 5 concerning efficiency because there is no conservation crisis that justifies reducing the quota available to the commercial sector, which more efficiently uses the resource.

Response: NMFS has determined that Amendment 53 is consistent with NS 5. NS 5 requires that conservation and management measures, ''where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.'' Neither NS 5 nor the NS 5 guidelines require a ''conservation crisis'' as a precursor for management action. The NS 5 Guidelines explain that ''given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable'' (50 CFR 600.330(b)). The preferred sector allocation alternative best reflects the historical participation by the commercial and recreational sectors, fairly and equitably distributes the needed reduction in catch between the sectors, and provides the greatest net economic benefits to the Nation. Therefore, Amendment 53 is consistent with the requirement to, where practicable, consider efficiency in the utilization of fishery resources.

Comment 10: Amendment 53 violates NS 8 because it fails to identify the fishing communities that may be adversely affected by the reduction in allowable harvest, it benefits some fishing communities at the expense of other fishing communities, and it would maximize adverse economic impacts to fishing communities associated with the commercial sector.

Response: NMFS disagrees that Amendment 53 is inconsistent with NS 8, which requires that conservation and management measures take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of those communities, and to the extent practicable, minimize adverse economic impacts on those communities. Fishing communities that are associated with commercial and recreational fishing and can be identified as having some relationship with red grouper harvest are identified in section 3.5 of Amendment 53 (pages 85–92). The communities associated with commercial fishing were identified using the regional quotient (RQ) for pounds of red grouper landed by county homeport. The RQ is the amount of red grouper landed within a particular geographical location out of all red grouper landed within the region. With respect to those communities associated with recreational fishing, NMFS does not have information about red grouper landed in a particular geographical location. Therefore, NMFS choose those communities because of their location and likely participation in the red grouper component of the reef fish fishery. Given the reduction in the total ACL and sector ACLs, most, if not all, communities are expected to be adversely affected, and because the allocation implemented through this final rule will result in a reduction in the commercial and recreational catch levels by approximately the same percentage, no fishing communities are benefiting at the expense of other fishing communities. Rather, as explained in response to *Comment 6,* this rule will provide the greatest overall benefit to the Nation with respect to both food production and recreational opportunities.

Preferred Alternative 3 in Action 1 would likely maximize adverse economic impacts to fishing communities associated with the commercial sector because the expected reduction in commercial gross revenue is the largest among the considered alternatives. However, the differences in the gross revenue reductions between Alternatives 4 and 5 and Preferred Alternative 3 are relatively small, and thus so would be the differences in economic impacts on these communities. While Alternatives 2 and 6 in Action 1 would either benefit or result in no economic impacts to fishing communities associated with the commercial sector, these alternatives would have the greatest adverse economic impacts to fishing communities associated with the recreational sector. The preferred allocation alternative is expected to provide for sustained participation of all of the identified fishing communities and, to the extent practicable, minimize adverse economic impacts on those communities by taking into account the different objectives of the commercial and recreational sectors, and fairly and equitable distributing the required reduction in the total allowable harvest.

Comment 11: Amendment 53 violates NS 9 because the revised allocation would increase bycatch and dead discards from the recreational sector.

Response: NS 9 requires that conservation and management measures, ''to the extent practicable: (1) Minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.'' Conservation and management measures must also be consistent with all of the other national standards and maximization of net benefits to the Nation. As the NS Guidelines explain, several factors should be considered when determining consistency with NS 9. These factors include population

effects for the bycatch species; changes in the economic, social, or cultural value of fishing activities, and non-consumptive uses of fishery resources; changes in the distribution of benefits and costs; and social effects (50 CFR 600.305(d)(3)). As explained in response to *Comment 6,* the impacts to the red grouper stock are similar under all of the allocation alternatives considered by the Council because the alternative OFLs are based on a fixed level of fishing mortality. As explained in response to *Comment 15,* when the inputs into the stock assessment model include more recreational harvest than previously assumed, this leads to lower OFL and ABC estimates at equilibrium. Therefore, the new allocation allows for less total harvest than the current allocation. However, based on the results of SEDAR 61, a reduction in the total ACL is required under any of the allocation alternatives and the new allocation more evenly distributes the adverse economic and social effects that are expected to result from the required reduction. As explained in Section 4.1.3 of Amendment 53 (pages 98–104), although Alternative 2 (retaining the current allocation) would increase net economic benefits in the commercial sector, it would also decrease net economic benefits in the recreational sector by a significantly larger amount, which would not only result in a decrease in net economic benefits to the Nation, but in fact the largest decrease of the alternatives considered. Thus, under Alternative 2 (as well as Alternative 6, which would retain the current commercial ACL), the adverse economic and social effects of the required reduction in the stock ACL would be borne entirely by the recreational sector. In contrast, the allocation implemented through this final rule will reduce net economic benefits for both sectors and results in the smallest reduction in net economic benefits to the Nation of the alternatives considered. Similarly, as discussed in Section 4.1.4 of Amendment 53 (pages 105–109), the recreational sector would experience negative social effects under Alternatives 2 or 6, while these alternatives would result in positive or neutral social effects for the commercial sector. The allocation implemented through this final rule will more evenly distribute the adverse economic and social effects that are expected to result from the required reduction in the total ACL.

The commercial and recreational sectors have different economic, social, and cultural goals and objectives, and NMFS must consider and account for these differences when determining compliance with the national standards, including whether Amendment 53 minimizes bycatch to the extent practicable. Given the numerous factors that the Council must consider in selecting the appropriate allocation, Amendment 53 does minimize bycatch and bycatch mortality to the extent practicable.

Comment 12: The FMP does not include a standardized bycatch reporting methodology (SBRM) for the recreational sector as required by the Magnuson-Stevens Act.

Response: NMFS and the Council recently completed a review of SBRMs for both Gulf and joint Gulf-South Atlantic FMPs. NMFS and the Council determined that the current SBRMs meet the purpose of section 303(a)(11) of the Magnuson-Stevens Act, as described in 50 CFR 600.1600, by specifying a SBRM to collect, record, and report bycatch data in a fishery that, in conjunction with other relevant sources of information, are used to assess the amount and type of bycatch occurring in the fishery and inform the development of conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality. NMFS and the Council further determined that the SBRMs met the four requirements under 50 CFR 600.1610(a)(2). The methodology (1) addresses information about the characteristics of the bycatch occurring in the fishery; (2) is feasible from cost, technical, and operational perspectives; (3) is designed so that the uncertainty associated with the resulting bycatch data can be described, quantitatively or qualitatively; and (4) addresses how the data resulting from the methodology are used to assess the amount and type of bycatch occurring in the fishery. The review describes the SBRMs currently used by NMFS and the Gulf states for the recreational sector of the reef fish fishery (see *https://www.fisheries.noaa.gov/southeast/bycatch/2022-standardized-bycatch-reduction-methodology-sbrm-five-year-review*). The review recognized that all recreational data sources have a high level of uncertainty because self-reported data are not generally considered overly reliable and not all recreational fishermen are surveyed, and the Council recommended evaluation and coordination with state and Federal partners to improve bycatch data collection in the future.

Comment 13: NMFS has not been forthcoming about how it converted the historical recreational landings estimates for red grouper used to develop sector allocation alternatives in Amendment 53. This violates Section 302(i)(6) of the Magnuson-Stevens Act, which requires in part that interested parties have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures. In particular, the conversion factor the agency used to convert MRIP–FES landing estimates to MRIP–CHTS landings observed during 2015–2017, cannot reliably convert MRFSS recreational landings estimates for red grouper over the base period of 1986–2005.

Response: The calibration methods used to convert recreational landings to MRIP–FES are described in Amendment 53 (see Section 1.1, subsection titled ''Red Grouper Recreational Data and Recalibration,'' pages 4–5). This description provides appropriate references and links to websites containing supporting documentation and peer review to assist the public looking for more information on how landing estimates from past years were converted to MRIP–FES. As noted previously, this peer review information has been publicly available since the reviews were completed in 2017 and 2018, and a publication titled ''Survey Design and Statistical Methods for Estimation of Recreational Fisheries Catch and Effort'' explains the different recreational fishing surveys and the time-series calibration methods and has been available since 2018 (*https://www.fisheries.noaa.gov/resource/document/survey-design-and-statistical-methods-estimation-recreational-fisheries-catch-and*). There is also information specific to red grouper recreational landings provided in Section 2.4 of the SEDAR 61 Assessment Process Report (*https://sedarweb.org/sedar-61;* pages 17–24) that is referenced in the Amendment 53 subsection cited above.

NMFS has been forthcoming and transparent about the conversion methodology, and summarizes the conversion methodology here. MRIP catch estimates are generated using information from two independent surveys: Numbers of angler fishing trips are estimated using the MRIP–FES and catch rates by species are estimated using the APAIS. Total catch for private boat and shore anglers is estimated as the product of both survey outputs. Separate and different calibration methods were developed to account for the extensive design changes made when the MRIP–FES replaced the previous MRIP–CHTS, including the data collection mode change from telephone to mail and the significant but less extensive improvements to the

APAIS design. A well-established mixed effects model small area estimation approach based on a 3-year benchmarking period (2015–2017) was developed to calibrate legacy MRIP–CHTS-based fishing effort estimates to account for the MRIP–CHTS to MRIP–FES design change effects, as well as deteriorating MRIP–CHTS response rates and survey frame coverage in later years. The calibration approach to address the APAIS design improvements employed a sample weight adjustment technique known as raking ratio estimation or iterative proportional fitting. This approach was selected in part because it did not require a bench marking period, which would not have been feasible given logistical and funding constraints associated with the APAIS.

Comment 14: Amendment 53 does not explain how NMFS estimated the status quo recreational ACL in MRIP–FES units (MRIP–FES equivalent) shown in Table 2.1.1.

Response: At the October 2019 Council meeting the SEFSC provided a presentation on SEDAR 61 (*https://gulfcouncil.org/wp-content/uploads/B-7b-SEDAR61-Council_with-MRIP-conversions.pdf*). In this presentation, 2017 recreational landings estimates in both MRIP–CHTS and MRIP–FES were provided. The 2019 emergency rule and subsequent framework set the recreational ACL in MRIP–CHTS units based on 2017 landings, as approved by the Council (84 FR 22389; May 17, 2019 and 84 FR 52036; October 1, 2019). These recreational landings were estimated to be 1.00 million lb (0.45 million kg) in MRIP–CHTS units and 2.10 million lb (0.95 million kg) in MRIP–FES units. The current recreational ACL is based on the estimated 2017 recreational landings of 1.00 million lb (0.45 million kg) in MRIP–CHTS units. Therefore, Table 2.1.1. also shows the MRIP–FES equivalent of 2.10 million lb (0.95 million kg) in MRIP–FES units.

Comment 15: Under Preferred Alternative 3 for the allocation action, the commercial sector loses 1,190,000 lb (539,775 kg) of quota compared to maintaining the existing allocations under Alternative 2 while the recreational sector only gains an increase of 550,000 lb (249,476 kg). This leaves the remaining 640,000 lb (290,299 kg) to cover increased dead discards from the recreational sector. In addition, it is not clear how the ABCs for the different allocations were derived and what methodology was used to estimate dead discards that went into these calculations.

Response: The comment reflects an incorrect assumption that the 640,000 lb (290,299 kg) difference noted in the comment is all dead discards from the recreational sector, as well as a misunderstanding of how projections are derived. Section 5 of the SEDAR 61 Stock Assessment Report (pages 147–151) and the presentation given by the SEFSC at the September 2019 SSC meeting (*gulfcouncil.org/scientific-and-statistical-meetings/archive/,* September 17–18, 2019 meeting, meeting materials part 1, Agenda item VIb) describe the standard projection approach and the model assumptions. The projections assume that fishing behavior will remain the same as the terminal year of the assessment (2017), including fleet-specific selectivity patterns, discard mortality, and retention. The stock dynamics (including numbers-at-age and biomass-at-age) are projected forward in time 100 years under these assumed conditions, and stock status and catch advice is derived using equilibrium conditions (*i.e.,* when the stock abundance levels off). The catch advice for each projection scenario considered in Action 1 (with the exception of Alternative 6), was specific to a set of assumptions, with the only difference being the allocation between the commercial and recreational sectors (presented to Council's SSC in January 2020; *gulfcouncil.org/scientific-and-statistical-meetings/archive/,* January 9, 2020 meeting, meeting materials, agenda item 08). As shown in Figures 4.28 and 4.29 of the SEDAR 61 assessment, the recreational sector selects for smaller and younger fish compared to the commercial sector. Therefore, an increase in allocation to the recreational fleet results in more encounters and higher overall discards (of which 11.6 percent will die). However, shifts in allocations also ultimately change the age-specific population structure of the stock. Harvest of larger numbers of smaller, younger fish result in a smaller overall population at equilibrium. Therefore, when the inputs into the assessment model include more recreational harvest than previously assumed, this leads to lower OFL and ABC estimates at equilibrium. The OFL and ABC for Alternative 6 were obtained after determining the allocation which would maintain the commercial ACL at 3.16 million lb (1.43 million kg) as described in Amendment 53 (page 17). After the allocation percentages were obtained for this scenario (68.7 percent commercial and 31.3 percent recreational), the SEDAR 61 assessment model was projected again to confirm that the allocation was maintained as expected, and used to obtain the corresponding OFL and ABC.

Comment 16: Amendment 53 cites the SEFSC ACL Monitoring Datasets as the source of landings estimates used to calculate allocation percentages. These datasets are not directly available to the public, yet they are the basis for reallocation, and have errors and inconsistencies that call them into question. It is difficult to assess how NMFS determined which dataset is the best available science.

Response: The ACL Monitoring Datasets are included in an internal data file that is produced by the SEFSC and shared with the NMFS Southeast Regional Office. This data file is not publicly available because the file contains confidential data, such as Southeast Region Headboat Survey estimates. Recreational data for the most recent SEDAR 61 stock assessment (terminal year of 2017) were provided for the assessment in November 2018 and June 2019, and included recreational landings in weights according to SEFSC weight estimation methodology. NMFS would not expect these data to be a perfect match to the ACL Monitoring Datasets because of quality assurance and quality control checks and other improvements in methodology that have been made since SEDAR 61, such as revising the sample size for SEFSC weight estimation (Dettloff and Matter 2019). Starting in 2019, NMFS made substantial improvements to the automation and streamlining of recreational data sources as can be seen in standard recreational working papers in more recent stock assessments (*e.g., http://sedarweb.org/sedar-68-scamp-data-process*).

The MRIP data in weights that are available on the public NMFS MRIP website are not the weight estimates that are used for stock assessments or ACL monitoring in the Southeast US. The SEFSC has a custom procedure for weight estimation (Dettloff and Matter 2019), which has also been described in detail at past public meetings, including the SSC workshop on calibrating MRIP–FES and MRIP CHTS (*https://gulfcouncil.org/ssc/archive/; July 2020*) and the April 2021 Council meeting.

Commercial landing estimates vary over time as estimates are revised to account for new information; however, they generally only vary by a few percentage points. Accounting for the exact cause for the differences in estimates would require a forensic analysis which would be overly time consuming and prohibitively expensive to NMFS. However, total landings from SEDAR 12, which were used for the current allocation, and the ACL

Monitoring Datasets are very similar, as shown in Table 2.1.2 of Amendment 53 (pages 19–20).

Comment 17: Amendment 53 states the recreational ACL has only been exceeded in 2013; however, the revised MRIP–FES-based landings indicate that the recreational sector exceeded its catch limits for at least 2 years in the base period, 2004 and 2005.

Response: It is inappropriate to compare the MRIP–FES calibrated landings to past ACLs because those ACLs are in MRFSS or MRIP–CHTS units. Further, the recreational ACL was not established until 2009 in Amendment 30B (73 FR 68390; November 18, 2008). Prior to Amendment 30B, there was a recreational catch target of 1.25 million lb (0.57 million kg) put in place in 2004, and Table 2.1.2 in Amendment 53 (pages 19–20) shows that recreational landings in 2004 and 2005 did exceed that target (69 FR 33315; June 15, 2004). In response to that overage, the Council developed several management measures such as bag limit reductions, closed seasons, and the prohibition of a bag limit for for-hire captain and crew to constrain the recreational harvest to its catch target. These measures were implemented by NMFS in 2006 (71 FR 3018; January 19, 2006; 71 FR 34534; June 15, 2006 and 71 FR 66878; November 17, 2006) and are described in Section 1.4 of Amendment 53 (pages 9–13).

Comment 18: The red grouper fishery is improving because fishermen are encountering more small sized red grouper that are entering the fishery.

Response: NMFS agrees that the red grouper stock appears to be improving. However, when the Council began work on Amendment 53 in October 2019, the results of SEDAR 61 indicated that red grouper catch levels need to be reduced. The Council took final action to submit Amendment 53 for review and implementation during its June 2021 meeting. At that same meeting, the Council recognized that it would be informative to have the SSC review the results of an interim analysis conducted by the SEFSC that was expected to be completed in August 2021 and incorporated more recent information. Therefore, the Council directed staff to begin work on a new framework action to modify red grouper catch limits as appropriate after the SSC's review on the interim analysis in August 2021. This is consistent with the NS 2 Guidelines, which recognize that new information often becomes available between the amendment initial drafting and submission for final review, and suggests that that new information be incorporated where practicable, but note that it is not always necessary to start the amendment process over again. In this circumstance, the Council has already acted to address new information through the new framework action that would increase the catch limits implemented through this final rule. The Council took final action on this framework action at their October 2021 meeting.

Comment 19: The Council failed to recalculate historical ACLs for red grouper as was done for other species, like king mackerel.

Response: The Council was not required to request an analysis that recalculated the historical ACLs for red grouper. One Council member did make this request at the June 2021 Council meeting. However, this was the meeting at which the Council was reviewing the final draft of Amendment 53 and the Council determined that it was appropriate to submit the amendment for review and implementation without waiting for any additional analysis. NMFS has reviewed Amendment 53 as submitted by the Council and determined that it is consistent with the Magnuson-Stevens Act and other applicable law.

Comment 20: Why was the Florida Fish and Wildlife Conservation Commission's (FWC) Gulf Reef Fish Survey (GRFS) not used for the allocation decision.

Response: The Council did look at GRFS landings at its June 2020 meeting. Although discussed in Amendment 53, this survey was not used to revise the allocation because it was not provided for consideration in the SEDAR 61 assessment that generated the current OFL and ABC recommendations.

Comment 21: The red grouper stock seems healthy and, therefore, this action is not needed.

Response: SEDAR 61 was completed in September 2019 and used updated recreational catch and effort data from MRIP–APAIS and FES, which collectively estimated larger catch and effort data than previously calculated for the recreational sector. The assessment concluded that red grouper in the Gulf is not overfished and overfishing is not occurring, but the stock remained below the SSB at 30 percent of the SPR in 2017. After reviewing SEDAR 61 at its September 2019 meeting, the SSC decided to treat the 2018 red tide event as similar to the red tide event observed in 2005 for the purpose of OFL and ABC projections. These projections recommended by the SSC form the basis for the allocation alternatives in Amendment 53 and indicate that the stock, while not overfished, is below the long-term average target biomass level that results from harvesting at the MSY proxy.

Comment 22: Amendment 53 arbitrarily applies an ACT buffer to the commercial sector but not the recreational sector, and the commercial sector is subject to an in-season ACT while the recreational sector has a post-season ACT.

Response: This comment mistakenly refers to the commercial ACT (quota) as an AM for the commercial sector. The commercial AM is the Grouper/Tilefish IFQ program put in place through Amendment 29 to the FMP (74 FR 44732; August 31, 2009 and 75 FR 9116; March 1, 2010). As mentioned in the Background information in this final rule, the red grouper commercial ACT (quota) is the amount of fish distributed to IFQ shareholders at the beginning of the fishing year and is used to calculate gag multi-use allocation. Multi-use allocation allows fishermen to use a small portion of their allocation for one species (either red grouper or gag) to harvest another species (either gag or red grouper). Multi-use allocation is intended to reduce commercial discards and is derived at the beginning of each year by converting a portion of the pounds of allocation available for red grouper and gag to allocation that can be used for either species. The formula for gag and red grouper multiuse allocation shown below uses both the ACT (quota) and ACL.

$$Red\ grouper\ multiuse\ allocation = 100 * \frac{(Gag\ ACL - Gag\ Commercial\ Quota)}{Red\ Grouper\ Commercial\ Quota}$$

$$Gag\ multiuse\ allocation$$

$$= 100 * \frac{(Red\ Grouper\ ACL - Red\ Grouper\ Commercial\ Quota)}{Gag\ Commercial\ Quota}$$

The 9 percent buffer between the ACL and the ACT for the recreational sector is based on the application of the Council's ACL/ACT Control Rule and is explained in Amendment 53 (pages 23–28). The purpose of this control rule is to account for management uncertainty. The recreational ACL for red grouper is used for an in-season AM that closes the recreational sector if NMFS determines that the ACL would be met or projected to be met during the fishing year. The ACT is used as a post-season AM. If the recreational ACL is exceeded in a fishing year, then the ACT is used to limit recreational harvest in the subsequent fishing year.

Comment 23: Recreational fishermen may not understand that the proposed recreational catch limits, although an increase from the current catch levels, are really a reduction. They may mistakenly anticipate a longer red grouper season.

Response: Amendment 53 includes a recreational season closure analysis and includes tables with estimated season lengths as well as the degree of uncertainty in the estimates indicated through 95 percent confidence intervals for Action 1 allocation alternatives (see Table 2.1.4; page 21) and for each alternative combination between Actions 1 and 2 (see Table 2.2.4; page 26). For the revised allocation and ACL implemented through this final rule, the predicted season closure date is December 19, but the 95 percent confidence limits suggest a season closure could occur as early as August 15 or not at all as a result of reaching the recreational ACL.

Comment 24: The premise for Gulf red grouper sector reallocation is flawed and would reward recreational overharvesting because it would credit the recreational sector for revised annual landing estimates based on MRIP–FES landing estimates and ignore the fact that the recreational sector was likely exceeding its allocation during the base time period (1986–2005).

Response: The current sector allocation is based in part on estimates of historical recreational landings that the best scientific information available now indicates are incorrect. These historical landings were updated to the MRIP–FES units in the SEDAR 61 stock assessment, the most recent red grouper stock assessment. That assessment is the basis for the catch level advice recommended by the Council's SSC. SEDAR 61 and the SSC's ABC recommendations require a reduction in the total ACL when compared to the status quo in MRIP–FES units. The revised allocation implemented through this final rule accounts for the new information about historical recreational landings by modifying the allocation percentages based on the same 1986–2005 time series as the original allocation. Retaining the current allocation of 76 percent commercial and 24 percent recreational would result in a shift of the ACL to the commercial sector because MRIP–FES generally estimates higher recreational landings than the MRFSS, which was the survey used to generate the recreational landings used for the current allocation (Table 2.1.2; pages 19–20). This shift to the commercial sector is reflected in Alternative 2 of Action 1, which retains the current allocation percentage but updates catch limits based on the new assessment. When using the same MRIP–FES units for comparison, that alternative would increase the commercial ACL (approximately 18 percent) while significantly decreasing the recreational ACL (approximately 44 percent). In contrast, under the Council's preferred alternative, both the commercial and recreational ACLs would be reduced by approximately the same percentage (approximately 20 percent and 18 percent, respectively).

Further, during the 1986–2004 period there was no commercial-recreational allocation for red grouper. In 1990, NMFS implemented Amendment 1 to the FMP, which set a 10-year rebuilding plan for red grouper and established a framework procedure for setting allocations when setting the total allowable catch (TAC) (55 FR 2078; January 22, 1990). The framework procedure stated that allocations should be based on historical percentages harvested by users among each sector during the base period of 1979–1987. Because commercial grouper landings were not identified by species until 1986, the ratio for all groupers based on historical percentages harvested by each sector during the base period of 1979–87 was 65 percent commercial and 35 percent recreational.

As explained in Section 1.4 of Amendment 53 (pages 9–13), the commercial harvest of red grouper was first subject to a quota with the implementation of Amendment 1, but at that time red grouper was part of the shallow-water grouper complex, which had an overall commercial quota of 9.2 million lb (4.2 million kg). The commercial shallow-water grouper quota was subsequently increased for the 1991 and 1992 fishing years. In 1993, the shallow-water grouper TAC, which previously had only been specified as a commercial quota, was specified as a total harvest of 15.1 million lb (6.8 million kg) with 9.8 million lb (4.4 million kg) allocated to the commercial quota. The remaining 5.3 million lb (2.4 million kg) was available to the recreational sector. Recreational landings of red grouper in MRIP–FES units during that time did not exceed 4.3 million lb (2.0 million kg) (see Table 2.1.1 in Amendment 53; page 15). In 2004, with the final rule for Secretarial Amendment 1, NMFS put into place a rebuilding plan for red grouper that established a specific commercial quota and a recreational catch target for red grouper of 5.31 million lb (2.41 million kg) and 1.25 million lb (0.57 million kg), respectively (69 FR 33315; June 15, 2004). However, this was not considered an allocation, but instead a reflection of current fishing activities and a strong red grouper year-class entering the fishery. NMFS predicted the ratio would change to a greater recreational harvest as the strong year-class moved out of the fishery through aging. As shown in

Table 2.1.2 of Amendment 53 (pages 19–20), both sectors exceeded their catch limits in 2004 and 2005.

Comment 25: Amendment 53 does not reallocate to the recreational sector, but is a technical correction to the current allocation to account for historical landings that were underestimated by past recreational surveys.

Response: The revised allocation does shift some of the allowable harvest from the commercial sector to the recreational sector. However, because SEDAR 61 incorporates the new MRIP–FES recreational landings estimates and the revised recreational catch limits will be in MRIP–FES units, maintaining the current allocation of 76 percent commercial and 24 percent recreational would result in a reallocation to the commercial sector. This would increase the commercial ACL (approximately 18 percent) and decrease the recreational ACL in MRIP–FES units (approximately 44 percent). The revised allocation implemented through this final rule incorporates the change in recreational landings estimates over the same period used to calculate the current allocation. This results in an allocation of approximately 60 percent commercial and 40 percent recreational, and reduction in both the commercial and MRIP–FES adjusted recreational ACLs by approximately the same percentage.

Comment 26: The proposed sector allocation is not fair because the Council is unbalanced and biased toward the recreational sector, and this bias is evident in the revised allocation selected by the Council.

Response: Council members are trustees of the Nation's fishery resources and each Council member must take an oath of office in which they ''promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation'' (50 CFR 600.220). Council members must also adhere to high standards of ethical conduct (50 CFR 600.225). Therefore, NMFS expects Council members take to make decisions that are best for the fishery resources as a whole versus for a particular sector. Further, regardless of who sits on the Council, NMFS must determine whether Amendment 53 is consistent with the Magnuson-Stevens Act and other applicable law, and NMFS has determined that the revised allocation is fair. As explained in *Comment 24,* the Council selected the preferred allocation alternative because it best represents the historical landings for the years originally used to establish the allocation while also accounting for the change in the estimation of recreational harvest from MRFSS data to MRIP–FES. In addition, the preferred alternative more evenly distributes the reduction in the total ACL required by the results of SEDAR 61 and the ABC recommendations from the SSC, reducing the commercial and recreational ACLs by similar percentages (approximately 20 percent and 18 percent, respectively).

Comment 27: The revised allocation takes commercial quota from commercial fishermen without compensation.

Response: Neither the commercial sector, nor any individual person has a vested property interest in the commercial sector's red grouper ACT (commercial quota). Therefore, no person or group of persons is entitled to receive compensation as part of the revised allocation.

Comment 28: Commercial fishing businesses that buy red grouper annual allocation will be hurt by Amendment 53 because the supply of annual allocation is being reduced, which will increase the price of annual allocation. Some individuals reported they had seen a two- to three-fold increase in the price of annual allocation. Different commenters noted that either this effect was not discussed in the economic analysis of Amendment 53 or that this effect was discussed, but projections of the expected increase were not provided.

Response: The economic analysis in Amendment 53 does indicate the price of annual allocation for red grouper is expected to increase because of the reduced commercial quota. However, the magnitude of that increase was not projected because there are effectively only eight data points representing different average annual allocation prices at different commercial quota levels that could be used as a basis for a projection, which is insufficient to generate a statistically valid estimate. Further, the revised commercial quota of 2.40 million lb (1.09 million kg) is outside the bounds of the existing data points, which would further decrease the validity of any estimate that might be generated based on the existing data. New annual allocation price data for red grouper do indicate that the price has increased since the Council decided to submit Amendment 53 for review and implementation. However, this information was not available to the Council prior to its decision. In addition, while an increase in the annual allocation price would be expected to increase costs and decrease profits for commercial fishing businesses that buy red grouper annual allocation, it would simultaneously and equivalently benefit those businesses that sell red grouper annual allocation by increasing their revenues and profits. The opposite effects occurred when the commercial red grouper quota was increased significantly from 5.72 to 7.78 million lb (2.59 to 3.53 million kg) in late 2016 (81 FR 70365; October 12, 2016). Changes in the annual allocation price only result in the transfer of economic benefits and costs between buyers and sellers and therefore do not affect the estimate of net economic benefits to the Nation.

Comment 29: Commercial fishing operations targeting red grouper will not be able to mitigate the adverse economic effects from the implementation of Amendment 53 because they cannot switch to other species.

Response: As discussed on pages 55–63 of Amendment 53, the businesses that possess Gulf red grouper shares and annual allocation also possess shares and annual allocation for other species or species groups managed by IFQs in the Gulf, most notably for red snapper, which makes up the largest part of their share and annual allocation portfolios. Further, most of these businesses also have a Federal Gulf of Mexico reef fish permit that can be used to harvest non-IFQ reef fish species, and many also possess permits for non-reef fish species. The fact that businesses engaged in the commercial harvest of Gulf red grouper also harvest other species is illustrated in Table 3.4.1.20 of Amendment 53 (page 64). Further, any businesses that do not possess shares and annual allocation for other IFQ species have the option to purchase them through the markets for shares and allocation, which is a fundamental purpose of the market-based IFQ programs the Council implemented.

Comment 30: Amendment 53 did not provide estimates of the economic impacts (*e.g.,* employment, income, value-added, and output) for the Gulf red grouper commercial sector and did not demonstrate that the reduction in the commercial sector's economic impacts exceeds the reductions in the recreational sector's economic impacts.

Response: The economic impact estimates referred to in the comment are provided in the discussion of the commercial sector's economic impacts on pages 72–74 of Amendment 53 based on average values from 2014–2018. Some of the comments received also provided estimates of the commercial sector's economic impacts based on more recent data provided by industry for 2021, but did not provide 2021 economic impact estimates for the recreational sector, and then compared those to the average economic impacts

for the recreational sector from 2014–2018 provided in the amendment. The NS 2 Guidelines require that FMPs take into account the best scientific information available at the time of preparation (50 CFR 600.315(e)). The Guidelines recognize that new information may become available between initial drafting of an FMP and its submission for final review, and suggest incorporating that new information as practicable; but that it is unnecessary to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures. Here, the 2021 estimates were not available before the Council took final action on Amendment 53, and comparing economic impacts between the sectors from different time periods is not appropriate. The reduction in economic impacts in the commercial sector due to the actions in Amendment 53 are provided on page 156 of Amendment 53, while the reduction in economic impacts in the recreational sector is discussed on pages 157–158 (based on whether the recreational sector is managed to its ACL or ACT). These estimates do show that the reduction in economic impacts in the commercial sector are higher than in the recreational sector.

Comment 31: The analysis in Amendment 53 underestimated the reduction in net economic benefits to the commercial sector because indirect and induced economic impacts estimated by an economic impacts model such as IMPLAN were not included in that estimate.

Response: Indirect and induced economic impacts (*i.e.,* employment, income, output, and value-added) to a particular state or the Nation and changes to those impacts as estimated by an economic impacts model do not measure net economic benefits. The commenters confuse the results from an economic impact analysis with net economic benefits. Economic impact models are intended to describe the flow of resources through an economy and are not estimates of welfare as reflected in the calculation of net economic benefits. Net economic benefits are measured by the combination of consumer and producer surplus in each of the affected sectors. Therefore, indirect and induced impacts are not germane to the determination of net economic benefits to the Nation and thus are not considered in the benefit-cost analysis.

Comment 32: The analysis underestimated the reduction in gross revenue to the commercial sector. Specifically, the commercial sector would lose 1.19 million lb (0.54 million kg) in red grouper landings and each pound lost would have an ex-vessel price of $4.83/lb ($10.65/kg).

Response: The loss in commercial landings is actually 600,000 lb (272,155 kg) when comparing the status quo commercial ACT (quota) of 3.00 million lb (1.36 million kg) to the commercial ACT (quota) of 2.40 million lb (1.09 million kg) implemented through this final rule. The quota actually received and available to the commercial sector for landing purposes is the ACT, not the ACL. A sector cannot lose what is never received. In addition, the commenters compared the commercial ACL under Preferred Alternative 3 for Action 1 to the commercial ACL under Alternative 2 rather than the status quo commercial ACL, which is not the appropriate comparison. Further, the analysis also indicates that the ex-vessel price is expected to increase by $0.51/lb ($1.14/kg) from $4.83/lb ($10.65/kg) to $5.34/lb ($11.77/kg) because of the decrease in landings, thereby partially mitigating the loss in landings.

Comment 33: The expected increase in the ex-vessel price for red grouper will be passed along to consumers, causing economic harm to those consumers.

Response: This comment assumes that relative supply and demand conditions are the same at the ex-vessel and retail levels, which is unlikely. Although it is possible that some of the ex-vessel price increase may be passed along to consumers, it is highly unlikely that all or even most of it would be passed along to consumers because the number of good substitutes available to buyers increases as product moves further up the distribution chain. For example, if Gulf red grouper has become relatively more expensive by the time it reaches the retail level, many consumers will simply switch to other substitute products as they would have become relatively cheaper compared to Gulf red grouper (*e.g.,* other Gulf groupers, red grouper and other groupers from the Atlantic, various snapper species from the Gulf and Atlantic, imports of grouper or snapper, other types of seafood and protein sources, *etc.*). Several other comments from buyers up the distribution chain indicate these substitution effects are likely. As a result of these substitution effects, NMFS expects a fairly strong demand response for Gulf red grouper at the retail level, thereby keeping the price from increasing much if at all.

Comment 34: The economic analysis in Amendment 53 either did not provide an estimate of the expected loss in consumer surplus to the commercial sector, the loss in consumer surplus was underestimated, or the approach used to estimate the loss in consumer surplus was invalid.

Response: Amendment 53 includes an analysis of the expected change in consumer surplus to the commercial sector in the discussion of direct and indirect economic effects on pages 98–99. This analysis is based on an Inverse Almost Ideal Demand System model provided by Keithly and Tabarestani (2018) that was included in the 5-year review of the grouper-tilefish IFQ program. The Council's SSC reviewed this study at their March 2017 meeting and raised no concerns regarding its validity. Inverse demand models that make use of ex-vessel rather than retail level data are often used when retail level data are not available, as was the case in this instance. These models generate estimates of either demand elasticity or flexibility, which can then be used to estimate expected changes in ex-vessel price and thus changes in consumer surplus when landings are expected to change. The use of indirect demand models is not novel (see *https://spo.nmfs.noaa.gov/sites/default/files/TM111.pdf*), and in fact their use has been subject to peer review in other cases (see *https://www.mafmc.org/s/scup_allocation_review_panel_report_FINAL.pdf*). Further, as noted in the amendment, the estimated loss in consumer surplus should be considered a maximum estimate because the flexibility estimate is not compensated for income. In fact, because ex-vessel level data were used rather than retail level data and demand flexibility would likely be less at the retail level than at the ex-vessel level for reasons noted above, NMFS' estimate of the loss in consumer surplus is likely an overestimate of the actual change in consumer surplus. But it is still the best estimate given available data.

Comment 35: The economic analysis in Amendment 53 ignored changes in producer surplus in the commercial sector beyond the harvesting sector, or available estimates on mark-ups should have been used to generate such estimates.

Response: These issues are addressed in the description of the economic environment on page 70 of Amendment 53. On average, purchases of Gulf red grouper represented approximately 17 percent of all seafood purchases by Gulf red grouper dealers between 2014 and 2018. While this suggests these dealers have some dependency on purchases of Gulf red grouper, it is far less than the percentage of revenue that Gulf red

grouper represents for commercial vessels (46 percent). In addition, these dealers' dependency on Gulf red grouper purchases steadily declined from 2014 through 2018, as they accounted for 22 percent of their total seafood purchases in 2014 but only 12 percent of their total seafood purchases in 2018. Also, the ability of federally permitted seafood dealers to change which species they purchase is greater than commercial vessels' ability to change which species they harvest. Unlike commercial vessel permits, dealer permits do not restrict which species dealers can purchase. Further, although Keithly and Wang (2018) estimate the mark-ups between the ex-vessel price and dealer sales price for Gulf red grouper and certain other grouper and tilefish species, those estimates are insufficient to estimate producer surplus for Gulf red grouper dealers, or changes to producer surplus as a result of regulatory changes. This is in part because costs other than the raw fish costs (which are equivalent to the ex-vessel value) are not taken into account. NMFS does not have estimates of those other costs for Gulf red grouper dealers, or seafood dealers more broadly, and thus does not have estimates of net cash flow or net revenue from operations for Gulf red grouper dealers comparable to those in the commercial harvesting sector. Thus, while it is likely that the harvest of Gulf red grouper generates some producer surplus for Gulf red grouper dealers, NMFS does not possess the data to estimate that producer surplus. Further, because these dealers have the ability to switch to purchasing other species, changes to those values as a result of the management measures considered in Amendment 53 are likely to be relatively small. Similarly, any additional producer surplus generated from Gulf red grouper sales further up the distribution chain to wholesalers/distributors, grocers, and restaurants is likely minimal, given the vast number of seafood and other products they sell and their even greater ability to shift to purchasing other substitute products should the availability of Gulf red grouper decrease and/or its price increase.

Comment 36: The harvest of recreationally harvested fish does not generate net economic benefits to the Nation or positive economic impacts, and retaining the current allocation in Alternative 2 of Action 1 would not have any discernible adverse economic effects on recreational anglers or for-hire operations.

Response: NMFS disagrees with these comments. The description of the economic environment explains how the recreational sector generates economic value (net economic benefits) to the Nation on pp. 82–83, while the discussion on pp. 83–85 illustrates the positive economic impacts generated by the recreational sector. Further, the analysis on pages 101–104 of Amendment 53 demonstrates the adverse effects that retaining the current sector allocation would have on recreational anglers and for-hire operations.

Comment 37: The revised sector allocation increases economic value (net economic benefits) to the recreational sector relative to the status quo, or leads to a disproportionately higher reduction in net economic benefits to the commercial sector relative to the recreational sector.

Response: Tables 4.1.3.3 (page 101) and 4.1.3.7 (page 104) in Amendment 53 demonstrate that net economic benefits to the commercial sector are expected to decrease by about 9.1 percent while net economic benefits to the recreational sector are expected to decrease by about 15.5 percent, assuming recreational harvest is limited to its ACL. The percentage reduction to the recreational sector would be even higher if recreational harvest is limited to the ACT. Thus, the net economic benefits to the recreational sector are expected to be reduced under the revised sector allocation relative to the status quo and the reduction to the recreational sector is proportionally higher than in the commercial sector.

Comment 38: The willingness to pay estimate of $110 per fish (2019 dollars) for Gulf red grouper harvested by recreational anglers used to generate the economic value (consumer surplus) estimates in Amendment 53 does not represent the best scientific information available and, more generally, the use of stated preference models to generate willingness to pay estimates for recreationally harvested fish is not scientifically valid. Therefore, use of that estimate is inconsistent with NS 2 concerning scientific information. Further, the willingness to pay estimate used in Amendment 53 is too high, which in turn leads to a significant overestimate of the net economic benefits resulting from recreational harvest and invalid estimates of the net economic benefits associated with each sector allocation alternative considered in Amendment 53.

Response: The inflation-adjusted willingness to pay estimate in Amendment 53 comes from a peer-reviewed article published in the North American Journal of Fisheries Management (Carter and Liese 2012). This estimate is specific to grouper and the study included species that recreational anglers would consider good substitutes for Gulf red grouper. In contrast, the Environmental Protection Agency's (EPA) estimates of economic value per recreationally harvested fish referenced in the comments are from very old studies. Specifically, although the comments suggest the EPA estimates are from 2014 (*https://www.epa.gov/sites/default/files/2015-05/documents/cooling-water_phase-4_benefits_2014.pdf*) and thus more recent than the estimate used in the amendment, the EPA's meta-analysis was actually conducted in 2006 (*https://www.epa.gov/sites/default/files/2015-04/documents/cooling-water_phase-3_regional-benefits_2006.pdf*). Further, a review of the 2006 meta-analysis reveals that it was based on 48 studies that were published between 1982 and 2004 founded on survey data collected between 1977 and 2001. In addition, the meta-analysis included 21 studies based on random utility models, 11 based on travel cost models, and 20 studies that were based on stated preference models. Also, only two studies in the EPA analysis were specific to the Gulf, and one of those was limited to ''small game'' species that are not comparable to red grouper. As the EPA estimates are not comparable to grouper, they are not appropriate for use in Amendment 53. The estimate from Carter and Liese (2012) is specific to grouper and also more recent than the EPA estimates.

Some of these comments also suggest that use of the estimate from Carter and Liese (2012) in Amendment 53 was inconsistent with NS 2 because the uncertainty around the point estimate of $110 per recreationally harvested fish was not specifically provided in Amendment 53. Carter and Liese (2012) do provide an estimate of the confidence interval (*i.e.,* 8 percent) reflecting the uncertainty around the point estimate. Given this estimate of uncertainty, the lower and upper bounds for the point estimate are $101.20 and $118.80, respectively. Importantly, use of the lower and upper bounds would not affect the relative estimates of net economic benefits across the alternatives considered under Action 1 in Amendment 53. Some of these comments also reference more recent analyses in Carter, Liese, and Lovell (2022) and Carter, Lovell and Liese (2020), to support the assertion that the estimate from 2012 Carter and Liese study is too high. Both of the more recent papers look at differences in economic value associated with different bag limits (*i.e.,* option prices).

However, the 2022 paper was not available at the time the analysis for Amendment 53 was conducted. The 2020 paper provides option prices for different recreational bag limits rather than an economic value per fish given a change in expected harvest. The analysis in Amendment 53 requires an estimate of the latter. Therefore, consistent with NS 2, estimates of consumer surplus and expected changes to consumer surplus in the recreational sector under the different alternatives are based on the best available science at the time the analysis for Amendment 53 was conducted.

Comment 39: The economic analysis of net economic benefits should have included differences in the carbon footprints and resulting costs associated with commercially harvested fish versus recreationally harvested fish. A ''back of the envelope'' approach for how to look at those differences was provided.

Response: No guidance is currently available to Federal agencies regarding a preferred or acceptable approach to look at the issue of carbon footprints in the context of fisheries. Further, the commenter's suggested approach has not undergone any type of review and NMFS has concerns with the suggested approach. For example, it is inappropriate to compare fuel use for commercial and recreational sectors because the objective functions for commercial and recreational fishing are completely different. Commercial fuel use is a cost to vessel owners so vessel operators have an incentive to minimize fuel consumption to maximize their share of the profit. Commercial fuel use should be based on time rather than landings; otherwise, high catch per unit (CPUE) fisheries will appear to be more fuel efficient than lower CPUE fisheries. Recreational trips maximize utility from the experience, and the motivation for recreational fishing is not just about catching or keeping fish. Further, recreationally harvested fish that are caught, but not landed, are not considered in the estimates. The commenter's estimate of fuel expense comes from studies from 2005 and 2009, and thus is based on outdated data for this purpose, particularly as more recent and more consistent information is reported in Lovell *et al.* (2020). Moreover, applying a recent fuel price to back-calculate fuel consumption from data collected in a particular year is incorrect because fuel consumption by either commercial or recreational fishermen is not independent of the price of fuel. Recreational trip expenditures depend on fuel prices at the time the expense is incurred. Thus, the fuel price in the year the data were collected is necessary. Observer data from commercial fisheries show that trip duration goes down as fuel prices increase. Expecting that recreational trip duration and the number of trips would also respond to changes in the fuel price is reasonable.

Comment 40: The economic analysis of net economic benefits in Amendment 53 did not follow the same approach as in Amendment 28 to the FMP, and the estimated loss in producer surplus to the commercial harvesting sector was based on an unpublished paper.

Response: As explained in the NS 2 Guidelines, an ''FMP must take into account the best scientific information available at the time of preparation'' (50 CFR 600.315(e)(1)). As new information becomes available, that will often lead to modifications in the analytical approach. For example, when the Council was preparing Amendment 28 in 2015, NMFS did not have direct estimates of net cash flow or net operating revenue that could be used to more directly and accurately estimate changes in producer surplus and profit in the commercial harvesting sector. Therefore, Amendment 28 used the average annual allocation price as a proxy for these values. Where appropriate and necessary, Amendment 53 continues to explain that ''economic theory suggests that annual allocation (quota) prices should reflect expected annual economic profits, which allows economic profits to be estimated indirectly. It is always preferable to use direct estimates when they are available rather than proxies. According to information provided on pages 65–68 of Amendment 53, estimates of net cash flow and net operating revenue in the commercial harvesting sector were available from Overstreet and Liese (2018b), and therefore were used in the economic analysis of Amendment 53. NMFS had estimates of trip net cash flow and trip net revenue for for-hire trips that were used in Amendment 53 to estimate expected changes in producer surplus and profits in the for-hire sector, but such information was unavailable when Amendment 28 was being considered.

Comment 41: The general approach taken in the analysis of net economic benefits in Amendment 53 is invalid for the same reasons the approach taken in Amendment 28 was invalid, or it is invalid because the Council's SSC did not review it.

Response: Absent a request from the Council, the SSC is not required to review economic or other specific analyses in an FMP amendment. With respect the analysis in Amendment 53, these comments essentially assert that net economic benefits or changes to net economic benefits cannot be estimated because harvest privileges have not been assigned in the recreational sector as they have been in the commercial sector. This assertion is based on a misunderstanding of statements in Amendment 28 as well as in the referenced literature. Specifically, because fishing privileges have not been assigned in the recreational sector, economic theory does suggest that it is not possible to maximize net economic benefits to the Nation because resources are not being efficiently allocated in that sector. As a result, it is not possible to maximize net economic benefits to the Nation from the fishery as a whole regardless of which sector allocation is selected. However, the economic analysis in Amendment 53 does not suggest that the selected sector allocation maximizes net economic benefits to the Nation, or what sector allocation would maximize net economic benefits to the Nation. It only demonstrates that the selected sector allocation in conjunction with the resulting ACLs is expected to generate relatively greater net economic benefits to the Nation compared to the other alternatives that were considered. Therefore, the economic analysis in Amendment 53 does not conflict with the analysis in Amendment 28 or the referenced literature, and NMFS believes it is not invalid as suggested by the commenter.

Comment 42: Amendment 53 could lead to a significant increase in imports of grouper because of the reduction in commercial harvest of Gulf red grouper.

Response: It is possible that imports of grouper and snapper products that directly compete with Gulf red grouper could increase in response to the decrease in Gulf red grouper landings. However, given that landings are expected to decrease by 600,000 lb (272,155 kg), even if all of that production was replaced by imports, that would only lead to about a 1 percent increase in imports, since total imports of grouper and snapper were about 62.1 million lb (28.2 million kg) in 2018 (see page 71 of Amendment 53).

Comment 43: The Initial Regulatory Flexibility Act is faulty because it does not address adverse effects on restaurants and seafood dealers, and all such businesses should be considered small businesses.

Response: The comment does not provide any information to support the conclusion that all seafood dealers and restaurants are small under the Small Business Administration's definitions for businesses in those industries. Further, the Regulatory Flexibility Act

requires an analysis of effects on entities that are expected to be directly regulated by the rule. The rule for Amendment 53 would directly regulate commercial fishing businesses that possess red grouper shares and for-hire fishing businesses that target red grouper, not seafood dealers or restaurants. Potential indirect economic effects on dealers are discussed on page 70 and in section 4.2.3 of Amendment 53 (pages 111–123).

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 53, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS' responses to public comments regarding the IRFA and the Executive Order 12866 analysis are in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The objective of this final rule is to use the best scientific information available to establish Gulf red grouper sector allocations, ACLs, and ACTs, thereby ensuring that the sector ACLs accurately reflect the commercial and recreational sectors' historical participation and that the recreational ACL is consistent with data used to monitor recreational landings and trigger AMs. All monetary estimates in the following analysis are in 2019 dollars.

Amendment 53 revises the sector allocations of the total ACL for Gulf red grouper from 76 percent for the commercial sector and 24 percent for the recreational sector to 59.3 percent for the commercial sector and 40.7 percent for the recreational sector. The current OFL, ABC, and total ACL are 14.16 million lb (6.42 million kg), 13.92 million lb (6.31 million kg), and 4.16 million lb (1.89 million kg), respectively. The recreational portion of these values are based on MRIP–CHTS data. Amendment 53 changes the OFL and ABC to 4.66 million lb (2.11 million kg) and 4.26 million lb (1.93 million kg), consistent with the results of the most recent stock assessment and the recommendations of the Council's SSC, and sets the total ACL equal to the ABC of 4.26 million lb (1.93 million kg). The recreational portion of these values are based on MRIP-FES data. Applying the new sector allocations reduces the commercial ACL from 3.16 million lb (1.43 million kg) to 2.53 million lb (1.15 million kg). The new sector allocations also reduces the recreational ACL from 2.10 million lb (0.95 million kg) in MRIP–FES units or 1.00 million lb (0.45 million kg) in MRIP–CHTS units, to 1.73 million lb (0.78 million kg) in MRIP–FES units. This final rule and Amendment 53 retain the current 5 percent buffer between the commercial ACL and ACT (quota), which results in a reduction of the commercial ACT (quota) from 3.00 million lb (1.36 million kg) to 2.40 million lb (1.09 million kg). However, it increases the buffer between the recreational ACL and ACT from 8 percent to 9 percent, and thereby reduces the recreational ACT from 1.59 million lb (0.72 million kg) to 1.57 million lb (0.71 million kg), given the reduction in the recreational ACL. As a result, this final rule is expected to directly regulate commercial fishing businesses that possess Gulf red grouper shares in the grouper-tilefish IFQ program and for-hire fishing businesses that target red grouper.

The commercial red grouper quota is allocated annually based on the percentage of red grouper shares in each IFQ account (*e.g.,* if an account possesses 1 percent of the red grouper shares and the commercial quota is 1.00 million lb (0.45 million kg), then that account would receive 10,000 lb (4,536 kg) of commercial red grouper quota). Although it is common for a single IFQ account with red grouper shares to be held by a single business, some businesses have multiple IFQ accounts with red grouper shares. As of February 19, 2020, 495 IFQ accounts held red grouper shares. These accounts and red grouper shares were owned by 436 businesses. Thus, NMFS assumes this final rule directly regulates 436 commercial fishing businesses.

A valid Federal charter vessel/headboat (for-hire) permit for Gulf reef fish is required to legally harvest red grouper in the Gulf. NMFS does not possess complete ownership data regarding for-hire businesses that hold these permits, and thus potentially harvest red grouper. Therefore, it is not currently feasible to accurately determine affiliations between vessels and the businesses that own them. As a result, for purposes of this analysis, NMFS assumes each for-hire vessel is independently owned by a single business, which is likely to result in an overestimate of the actual number of for-hire fishing businesses directly regulated by this final rule.

NMFS also does not have data indicating how many for-hire vessels actually harvest Gulf red grouper in a given year. However, in 2019, there were 1,277 vessels with valid Federal charter vessel/headboat permits for Gulf reef fish. Of these 1,277 vessels, 90 vessels are used primarily for commercial fishing purposes and thus are not considered for-hire fishing businesses in this analysis. Further, Gulf red grouper is only targeted and almost entirely harvested in waters off the west coast of Florida. Of the 1,277 vessels with valid Federal charter vessel/headboat permits for Gulf reef fish, 799 were homeported in Florida. Of these permitted vessels, 60 are primarily used for commercial fishing rather than for-hire fishing purposes and thus are not considered for-hire fishing businesses. In addition, 48 of these permitted vessels are considered headboats. Compared to charter vessels, headboats take a larger group of anglers to harvest a diverse range of species on a trip, and therefore do not typically target a particular species. Therefore, NMFS assumes that no headboats would be directly affected as a result of this final rule. However, charter vessels often target red grouper. Of the 799 vessels with valid Federal charter vessel/headboat permits for Gulf reef fish that are homeported in Florida, 691 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with valid Federal charter vessel/headboat permits for Gulf reef fish were active in the Gulf during 2017 (*i.e.,* 24 percent were not fishing). A charter vessel would only be directly affected by this final rule if it is fishing. Given this information, our best estimate of the number of charter vessels that are likely to harvest Gulf red grouper in a given year is 525, and thus this final rule is estimated to directly affect 525 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry 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 its combined annual

receipts (revenue) are not in excess of $11 million for all of its affiliated operations worldwide. NMFS does not collect revenue data specific to commercial fishing businesses that have IFQ accounts; rather, revenue data are collected for commercial fishing vessels in general. It is not possible to assign revenues earned by commercial fishing vessels back to specific IFQ accounts and the businesses that possess them because quota is often transferred across many IFQ accounts before it is used by a vessel for harvesting purposes, and specific units of quota cannot be tracked. However, from 2014 through 2018, the maximum annual gross revenue earned by a single vessel was about $2.39 million, which occurred in 2015. The average gross revenue per vessel was about $143,000 in that year. By 2018, the maximum and average gross revenue per vessel had decreased to about $1.04 million and $96,000, respectively. Based on this information, all commercial fishing businesses directly regulated by this final rule are determined to be small entities for the purpose of this analysis.

For other industries, the Small Business Administration has established size standards for all major industry sectors in the U.S., including for-hire businesses (NAICS code 487210). A business primarily involved in for-hire fishing 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 annual receipts (revenue) not in excess of $8 million for all its affiliated operations worldwide. The maximum annual gross revenue for a single headboat in the Gulf was about $1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses that own headboats. Based on this information, all for-hire fishing businesses directly regulated by this final rule are determined to be small businesses for the purpose of this analysis.

If implemented, NMFS expects this final rule to directly regulate 436 of the 532 businesses with IFQ accounts, or approximately 82 percent of those commercial fishing businesses. Further, NMFS expects this final rule to directly regulate 525 of the 1,187 for-hire fishing businesses with valid Federal charter vessel/headboat permits in the Gulf reef fish fishery, or approximately 44 percent of those for-hire fishing businesses. NMFS has determined that, for the purpose of this analysis, all directly regulated commercial and for-hire fishing businesses are small entities. Based on this information, NMFS expects the final rule to affect a substantial number of small entities.

Because revenue and cost data are not collected for the commercial fishing businesses that are expected to be directly regulated by this final rule, direct estimates of their economic profits are not available. However, economic theory suggests that annual allocation (quota) prices should reflect expected annual economic profits, which allows economic profits to be estimated indirectly.

Further, the 436 commercial fishing businesses that own red grouper shares, and therefore receive red grouper quota at the beginning of each calendar year, also own shares and receive quota in the other IFQ share categories, *i.e.,* red snapper, gag, shallow-water grouper, deep-water grouper, and tilefish. These businesses earn economic profits because of their ownership of these shares as well as their red grouper shares. However, economic profits are only realized if the allocated quota is actually used for harvesting purposes (*i.e.,* no economic profits will accrue unless the quota results in the production and sale of seafood). Because the average annual commercial landings of red grouper from 2014–2018 and the red grouper commercial quota are almost identical, NMFS assumes that all of the red grouper commercial quota will be harvested in the foreseeable future. Similarly, because practically all of the commercial red snapper quota has been used for harvesting in recent years, NMFS assumes that all of the commercial red snapper quota allocated to these businesses will be harvested in the foreseeable future. However, based on 2015–2019 data, NMFS expects that only 84 percent of the deep-water grouper commercial quota, 50 percent of the gag commercial quota, 35 percent of the shallow-water grouper commercial quota, and 78 percent of the tilefish commercial quota allocated to these businesses will be used for harvesting in the foreseeable future. Given these quota utilization rates in combination with average annual allocation prices in 2019 and annual commercial quotas in 2020 by share category, total economic profits for commercial fishing businesses with red grouper shares are estimated to be at least $18.61 million. This estimate does not account for any economic profits that may accrue to commercial fishing businesses that own red grouper shares from the harvest of non-IFQ species. Such profits are likely to be small because harvest of IFQ species accounts for around 85 percent of commercial IFQ vessels' average annual gross revenue, and economic profits from the harvest of non-IFQ species tend to be much smaller than those from IFQ species. Given that there are 436 commercial fishing businesses that own red grouper shares, the average annual expected economic profit per commercial fishing business is at least $42,700.

However, most of these economic profits (82 percent) are the result of owning red snapper shares. Only approximately $1.77 million (or 9.5 percent) of their economic profits are due to the ownership of red grouper shares. This final rule is only expected to affect economic profits from the ownership of red grouper shares. Specifically, the action that reduces the OFL, ABC, total ACL, and the commercial sector allocation of the total ACL results in a reduction of the red grouper commercial ACL from 3.16 million lb (1.43 million kg) to 2.53 million lb (1.15 million kg) and the commercial red grouper ACT (quota) from 3.00 million lb (1.36 million kg) to 2.40 million lb (1.09 million kg). Given an annual allocation price of $0.59 per lb ($1.30 per kg) in 2019 for red grouper, this reduction in the commercial red grouper quota is expected to reduce economic profits to these commercial fishing businesses by $354,000, or about $812 per business. Thus, economic profit is expected to be reduced by no more than 1.9 percent on average per commercial fishing business.

Based on the most recent information available, average annual profit is $26,514 per charter vessel. The action that modifies the sector allocations, OFL, ABC, and total ACL results in a reduction of the red grouper recreational ACL from 2.10 million lb (0.95 million kg) in MRIP–FES units to 1.73 million lb (0.78 million kg) in MRIP–FES units. The ACL reduction is expected to reduce the recreational season length by 12 days, and thereby cause the number of trips targeting red grouper on charter vessels to decrease by 665 angler trips. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of profit per angler trip by charter vessels. CFpA on charter vessels is estimated to be $141 per angler trip. Thus, NMFS expects the estimated reduction in charter vessel profits from this action to be $93,723, or $179 per vessel.

The action that increases the buffer between the recreational ACL and recreational ACT from 8 percent to 9 percent decreases the recreational ACT from 1.59 million lb (0.72 million kg) to 1.57 million lb (0.71 million kg). The ACT reduction is only germane if the

recreational sector exceeds its ACL in the future, as that would trigger the post-season AM, causing the recreational sector to be constrained to the recreational ACT rather than the recreational ACL. Average annual landings in the recreational sector from 2016 through 2019 are greater than the recreational ACL, and so it is possible that the post-season AM may be triggered, causing the recreational sector, including the for-hire component, to be constrained to the ACT. If the post-season AM is triggered, the additional reduction in the recreational season length caused by this action is estimated to be 4 days, which NMFS expects to cause the number of trips targeting red grouper on charter vessels to decrease by an additional 204 angler trips. Thus, if the post-season AM is triggered, NMFS estimates that the reduction in charter vessel profits would be $28,764, or $55 per vessel.

Based on the above, NMFS expects the total reduction in profits for charter vessels from this final rule to be no more than $122,487, or $234 per charter vessel. Thus, profit would potentially be reduced by approximately 0.9 percent on average per for-hire fishing business.

Five alternatives, including the status quo, were considered for the action to set the sector allocations for red grouper at 59.3 percent for the commercial sector and 40.7 percent for the recreational sector, and set the OFL, ABC, total ACL, commercial ACL, and recreational ACL at 4.66 million lb (2.11 million kg), 4.26 million lb (1.93 million kg), 4.26 million lb (1.93 million kg), 2.53 million lb (1.15 million kg), and 1.73 million lb (0.78 million kg) in MRIP–FES units, respectively. The status quo alternative would have maintained the current sector allocations for red grouper at 76 percent for the commercial sector and 24 percent for the recreational sector, and maintained the OFL, ABC, total ACL, commercial ACL, and recreational ACL of 14.16 million lb (6.42 million kg), 13.92 million lb (6.31 million kg), 4.16 million lb (1.89 million kg), 3.16 million lb (1.43 million kg), and 1.00 million lb (0.45 million kg) in MRIP–CHTS units, respectively. In general, the status quo alternative was not selected because it is not based on the best scientific information available. More specifically, the status quo alternative would continue to use estimates based on MRIP–CHTS data rather than MRIP–FES data for the recreational sector, even though MRIP–FES data have been determined to be the best scientific information available for estimating and monitoring landings and effort in the recreational sector. The status quo alternative would have also set OFL and ABC above the values produced by the most recent stock assessment and recommended by the Council's SSC.

A second alternative would have maintained the current sector allocations for red grouper at 76 percent for the commercial sector and 24 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 5.35 million lb (2.43 million kg), 4.90 million lb (2.22 million kg), 4.90 million lb (2.22 million kg), 3.72 million lb (1.69 million kg), and 1.18 million lb (0.54 million kg) in MRIP–FES units, respectively. This alternative was not selected as it would have resulted in considerably lower net economic benefits to the Nation compared to the action in the final rule. In addition, because of the conversion from MRIP–CHTS to MRIP–FES, the second alternative would have also effectively resulted in a significant reallocation of the total ACL from the recreational sector to the commercial sector. As a result, this alternative would have caused a disproportionately larger adverse effect on the recreational sector relative to the commercial sector in comparison to the action in the final rule, which was not considered to be fair and equitable.

A third alternative would have set the sector allocations for red grouper at 68.7 percent for the commercial sector and 31.3 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 5.03 million lb (2.28 million kg), 4.60 million lb (2.09 million kg), 4.60 million lb (2.09 million kg), 3.16 million lb (1.43 million kg), and 1.44 million lb (0.65 million kg) in MRIP–FES units, respectively. Similar to the second alternative, the third alternative was not selected as it would have resulted in considerably lower net economic benefits to the Nation compared to the action in the final rule. Further, the third alternative would have maintained the current commercial ACL despite the required reduction in the total ACL. While this would have resulted in no effects on the commercial sector, it would have also resulted in a reallocation of the total ACL from the recreational sector to the commercial sector and thereby caused large adverse effects on the recreational sector compared to the action in the final rule, which was not considered to be fair and equitable.

A fourth alternative would have set the sector allocations for red grouper at 60.5 percent for the commercial sector and 39.5 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 4.70 million lb (2.13 million kg), 4.30 million lb (1.95 million kg), 4.30 million lb (1.95 million kg), 2.60 million lb (1.18 million kg), and 1.70 million lb (0.77 million kg) in MRIP–FES units, respectively. A fifth alternative would have set the sector allocations for red grouper at 59.7 percent for the commercial sector and 40.3 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 4.67 million lb (2.12 million kg), 4.28 million lb (1.94 million kg), 4.28 million lb (1.94 million kg), 2.56 million lb (1.16 million kg), and 1.72 million lb (0.78 million kg) in MRIP–FES units, respectively. The fourth and fifth alternatives were not selected because they did not use the same time series of years as the original sector allocation and therefore would not as accurately reflect the historical participation of the commercial and recreational sectors in the fishery, which is contrary to the Council's objectives. These alternatives were also not selected as they resulted in slightly lower net economic benefits to the Nation compared to the action in the final rule.

Two alternatives, including the status quo, were considered for the action to maintain the buffer between the commercial ACL and commercial ACT of 5 percent and increase the buffer between the recreational ACL and recreational ACT from 8 percent to 9 percent. The status quo alternative would have maintained the buffer between the commercial ACL and commercial ACT of 5 percent and maintained the buffer between the recreational ACL and recreational ACT of 8 percent. The status quo alternative was not selected because the current recreational buffer is based on MRFSS data, which are no longer used for quota monitoring because they are no longer the best scientific information available.

The second alternative would have reduced the commercial buffer from 5 percent to 0 percent and increased the recreational buffer from 8 percent to 9 percent. Both the red grouper and gag share categories in the commercial grouper-tilefish IFQ program have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag allocation, and a portion of the gag quota to be harvested under the red grouper allocation. Each year, the program assigns a portion of each shareholder's red grouper and gag's allocations to the multi-use allocation category. The intent of the multi-use provision is to provide for allocation if either gag or red grouper

are landed as incidental catch. The second alternative was not selected because, based on recent data, the gag multi-use allocation would be zero. As a result, red grouper could not be landed with gag allocation, which is contrary to the purpose of the multi-use provision in the grouper-tilefish IFQ program.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. Copies of this final rule are available from the Southeast Regional Office, and the guide, *i.e.,* fishery bulletin, will be sent to all known industry contacts in the Gulf reef fish fishery and be posted at: *https://www.fisheries.noaa.gov/tags/small-entity-compliance-guide?title=&field_species_vocab_target_id=&field_region_vocab_target_id%5B1000001121%5D=1000001121&sort_by=created.* The guide and this final rule will be available upon request.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

References

Carter, D.W. and C. Liese. 2012. The Economic Value of Catching and Keeping or Releasing Saltwater Sport Fish in the Southeast USA. North American Journal of Fisheries Management, 32:4, pages 613–625. *http://dx.doi.org/10.1080/02755947.2012.675943.*

Carter, D.W., S.J. Lovell and C. Liese. 2020. Does angler willingness-to-pay for changes in harvest regulations vary by state? Results from a choice experiment in the Gulf of Mexico. Marine Policy, 121, page 104196.

Carter, D.W., C. Liese and S.J. Lovell. 2022. The option price of recreational bag limits and the value of harvest. Marine Resource Economics, 37(1), pages 35–52.

Dettloff, K. and V. Matter. 2019. Sample size sensitivity analysis for calculating MRIP weight estimates. SEDAR67–WP–06. SEDAR, North Charleston, SC. 6 pages.

Keithly W.R., Jr. and M. Tabarestani. 2018. The Gulf of Mexico grouper/tilefish fishery after introduction of an individual fishing quota program: The impact on ex-vessel prices. *https://gulfcouncil.org/wp-content/uploads/Demand-Analysis.pdf.*

Keithly W.R., Jr. and H. Wang. 2018. Results from the National Marine Fisheries Service 2016 Gulf of Mexico Grouper Tilefish IFQ Survey. 50 pages. *https://gulfcouncil.org/wp-content/uploads/Dealer-Survey.pdf.*

Lovell, S., J. Hilger, E. Rollins, N.A. Olsen, and S. Steinback. 2020. The Economic Contribution of Marine Angler Expenditures on Fishing Trips in the United States, 2017. U.S. Dep. Commerce, NOAA Tech. Memo. NMFS–F/SPO–201, 80 pages.

Overstreet, E. and C. Liese. 2018b. Economics of the Gulf of Mexico Reef Fish Fishery, 2016. NOAA Technical Memorandum NMFS–SEFSC–725. 116 pages.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gulf, Red grouper, Reef fish.

Dated: April 26, 2022.

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 amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.39, revise paragraph (a)(1)(iii)(C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper*—2.40 million lb (1.09 million kg).

* * * * *

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

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

* * * * *

(e) * * *

(1) * * * The commercial ACL for red grouper, in gutted weight, is 2.53 million lb (1.15 million kg).

(2) * * *

(iv) The recreational ACL for red grouper, in gutted weight, is 1.73 million lb (0.78 million kg). The recreational ACT for red grouper, in gutted weight, is 1.57 million lb (0.71 million kg).

* * * * *

[FR Doc. 2022–09300 Filed 4–29–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 220425–0105]

RIN 0648–BK79

Pacific Island Fisheries; Rebuilding Plan for the American Samoa Bottomfish Fishery

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

ACTION: Final rule.

SUMMARY: This final rule implements a rebuilding plan that includes annual catch limits (ACL) and accountability measures (AM) for the overfished bottomfish stock complex in American Samoa. This action is necessary to rebuild the overfished stock consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final rule is effective June 1, 2022.

ADDRESSES: Copies of Amendment 5, including an Environmental Assessment and Regulatory Impact Review, and other supporting documents for this action are available at *https://www.regulations.gov/document/NOAA-NMFS-2022-0023-0006.*

FOR FURTHER INFORMATION CONTACT: Heather Cronin, NMFS PIR Sustainable Fisheries, 808–725–5179.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage the American Samoa bottomfish fishery under the American Samoa Fishery Ecosystem Plan (FEP) and implementing regulations. The fishery primarily targets and harvests a complex of 11 bottomfish management unit species (BMUS), which includes emperors, snappers, groupers, and jacks. Bottomfish are typically harvested in deep waters, though some species are caught over reefs at shallower depths. Most (85 percent) bottomfish habitat is in territorial waters (generally from the shoreline to 3 nautical miles (5.6 km) offshore), with the rest in Federal waters