

**§ 219.13 [Removed and Reserved]**

- 3. Remove and reserve § 219.13.
- 4. Revise § 219.17 to read as follows:

**§ 219.17 Construction.**

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under sections 20107, 20108, 20111, and 20112 of title 49, United States Code;

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part; or

(c) Impacts provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

- 5. Amend § 219.211 by revising paragraph (a), the first sentence of paragraph (b), and paragraph (f)(2) to read as follows:

**§ 219.211 Analysis and follow-up.**

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Specimens are analyzed for alcohol, controlled substances, and non-controlled substances specified by FRA under protocols specified by FRA. These substances may be tested for in any form, whether naturally or synthetically derived. Specimens may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing for controlled substances conducted under this subpart are reported to the railroad's Medical Review Officer and the employee. \* \* \*

\* \* \*

(f) \* \* \*

(2) With the exception of post-accident test results for non-controlled substances, the toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of 49 U.S.C. 20903 (prohibiting use of the report for any purpose in a civil action for damages resulting from a matter mentioned in the report).

\* \* \*

- 6. Revise Appendix B to part 219 to read as follows:

**Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing**

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part: Quest Diagnostics, 1777 Montreal Circle, Tucker, GA 30084, Telephone: (800) 729-6432.

Issued in Washington, DC, on February 26, 2013.

**Joseph C. Szabo,**

*Administrator.*

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

[Docket No. 120417412-2412-01]

**RIN 0648-XC510**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Reef Fish Fishery; 2013 Accountability Measure for Gulf of Mexico Commercial Gray Triggerfish**

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

**ACTION:** Temporary rule; accountability measures.

**SUMMARY:** NMFS implements an accountability measure (AM) for commercial gray triggerfish in the Gulf of Mexico (Gulf) reef fish fishery for the 2013 fishing year through this temporary final rule. This temporary rule reduces the Gulf gray triggerfish 2013 commercial annual catch target (ACT) (equal to the commercial quota) to 51,602 lb (23,406 kg), based on the 2012 commercial annual catch limit (ACL) overage. This action is necessary to reduce overfishing of the gray triggerfish resource in the Gulf of Mexico.

**DATES:** This rule is effective March 5, 2013, through December 31, 2013.

**ADDRESSES:** Electronic copies of the final rule for Amendment 30A, the temporary rule and associated environmental assessment (EA) for gray triggerfish interim measures, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, telephone: 727-824-5305, or email: [Rich.Malinowski@noaa.gov](mailto:Rich.Malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf (FMP). The FMP was prepared by the Gulf Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All gray triggerfish weights discussed in this temporary rule are in round weight.

**Background**

The reauthorization of the Magnuson-Stevens Act implemented new requirements that ACLs and AMs be established to end overfishing and prevent overfishing from occurring. Accountability measures are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP. In part, Amendment 30A established commercial ACLs, commercial quotas (which were set lower than the ACLs to account for management uncertainty) and commercial AMs that would go into effect if the commercial quotas for gray triggerfish are reached or the ACLs are exceeded. In accordance with regulations at 50 CFR 622.49(a)(2)(i), when the applicable quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the sector for the remainder of the fishing year. If despite such closure, landings exceed the ACL, the AA will reduce the quota the year following an overage by the amount of the ACL overage of the prior fishing year.

The Council requested and NMFS implemented a temporary rule to, in part, reduce the gray triggerfish commercial ACLs and ACTs (equal to the commercial quotas) (77 FR 28308, May 14, 2012). The gray triggerfish commercial sector AMs state that, in accordance with regulations at 50 CFR 622.49(a)(17)(i), when the applicable commercial ACT (commercial quota) is reached, or projected to be reached, the AA will file a notification with the Office of the Federal Register to close

the sector for the remainder of the fishing year. If despite such closure, landings exceed the ACL, the AA will reduce the commercial ACT (commercial quota) the year following an overage by the amount of the ACL overage of the prior fishing year. These interim measures were extended through May 15, 2013, to allow for the development and implementation of permanent measures through Amendment 37 to the FMP (77 FR 67303, November 9, 2012).

### Management Measures Contained in This Temporary Rule

In 2012, the commercial sector for gray triggerfish exceeded the 64,100 lb (28,845 kg) commercial ACL by 9,298 lb (4,218 kg). Therefore, NMFS reduces the 2013 commercial ACT (commercial quota) for gray triggerfish through this temporary rule. The 2013 commercial ACT is set at 51,602 lb (23,406 kg).

### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Gulf gray triggerfish component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

An EA was prepared for the interim measures contained in the May 14, 2012, final temporary rule (77 FR 28308). The EA analyzed the impacts of reduced gray triggerfish harvest through the 2012 fishing year, including the impacts related to the interim rule extension (77 FR 28308, November 12, 2012). Copies of the EA are available from NMFS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs (established by Amendment 30A), and the commercial ACT and commercial ACL (implemented by the temporary rule for interim measures), all located at 50 CFR 622.49(a), authorize the AA to file a notification with the Office of the Federal Register to reduce the commercial ACT (commercial quota) the following fishing year if a commercial ACL overage occurs. The final rule for

Amendment 30A and the temporary rule for interim measures were already subject to notice and comment. Therefore, all that remains is to notify the public of the reduced 2013 commercial ACT (commercial quota) for Gulf gray triggerfish.

Additionally, prior notice and opportunity for public comment would be contrary to the public interest. Given the ability of the commercial sector to rapidly harvest fishery resources, there is a need to immediately implement the reduced commercial ACT (commercial quota) for the 2013 fishing year. Taking time to provide prior notice and opportunity for public comment creates a higher likelihood of the reduced commercial ACT (commercial quota) and the commercial ACL being exceeded.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

**Dated:** February 28, 2013.

**Kara Meckley,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120813331-3122-02]

RIN 0648-XC164

### Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Sector Exemptions; Final Rule Implementing a Targeted Acadian Redfish Fishery for Sector Vessels

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

**ACTION:** Final rule.

**SUMMARY:** This action expands on a previously approved sector exemption by allowing groundfish sector trawl vessels to harvest redfish using nets with codend mesh as small as 4.5 inches (11.4 cm). In addition, this action allows sectors to develop an industry-funded at-sea monitoring program for sector trips targeting redfish with trawl nets with mesh sizes that are less than the regulated mesh size requirement. This action is necessary to expand an

exemption from current regulations and is intended to allow sector vessels the opportunity to increase redfish harvest and subsequent profitability, above what is already being harvested.

**DATES:** Effective February 28, 2013, until April 30, 2013.

**ADDRESSES:** A copy of the accompanying environmental assessment (EA) and supplement and the draft of Component 2 of the REDNET project are available from the NMFS Northeast Regional Office: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst, phone (978) 281-9182, fax (978) 281-9135.

### SUPPLEMENTARY INFORMATION:

#### Background

Regulations from Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) allow a groundfish sector to request exemptions from Federal fishing regulations through its annual operations plan. Based on catch data from a collaborative research project, referred to as REDNET, several NE multispecies sectors submitted a regulatory exemption request to fish with 4.5-inch (11.4-cm) codend mesh when targeting Acadian redfish (*Sebastes fasciatus*) in a portion of the Gulf of Maine, east of the year-round Western Gulf of Maine Closure Area. A detailed explanation of the REDNET research project, sector exemption requests to target redfish, and the development of this particular exemption request can be found in the proposed rule for this action (77 FR 66947; November 8, 2012). Those details are not repeated here.

Regulatory exemption requests are normally proposed, reviewed, and approved through the final rule implementing the annual sector operations plans. However, sectors can request exemptions at any time within the fishing year (for a more detailed explanation of the sector exemption request process and current sector exemptions, see 77 FR 8780; February 15, 2012). The New England Fishery Management Council (Council) has requested that we pursue exemptions allowing sector vessels to more efficiently target redfish, and the Council's Research Steering Committee has endorsed the approval of a 4.5-inch (11.4-cm) mesh exemption. Because of this, we proposed a 4.5-inch (11.4-cm)