

## APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES—Continued

	Section	Violation	Willful
	(b) Member of roadway work group fouling a track without authority of employee in charge .....		2,000
	(c) Failure to provide train approach warning or working limits on adjacent track where required .....	3,000	5,000
214.337	On-track safety procedures for lone workers:		
	(b) Failure by employer to permit individual discretion in use of individual train detection .....	5,000	10,000
	(c)(1) Individual train detection used by non-qualified employee .....	2,000	4,000
	(c)(2) Use of individual train detection while engaged in heavy or distracting work .....		2,000
	(c)(3) Use of individual train detection in controlled point or manual interlocking .....		2,000
	(c)(4) Use of individual train detection with insufficient visibility .....		2,000
	(c)(5) Use of individual train detection with interfering noise .....		2,000
	(c)(6) Use of individual train detection while a train is passing .....		3,000
	(d) Failure to maintain access to place of safety clear of live tracks .....		2,000
	(e) Lone worker unable to maintain vigilant lookout .....		2,000
	(f)(1) Failure to prepare written statement of on-track safety .....		1,500
	(f)(2) Incomplete written statement of on-track safety .....		1,000
	(f)(3) Failure to produce written statement of on-track safety to FRA .....		1,500
214.339	Audible warning from trains:		
	(a) Failure to require audible warning from trains .....	2,000	4,000
	(b) Failure of train to give audible warning where required .....	1,000	3,000
214.341	Roadway maintenance machines:		
	(a) Failure of on-track safety program to include provisions for safety near roadway maintenance machines ....	3,000	5,000
	(b) Failure to provide operating instructions .....	2,000	4,000
	(b)(1) Assignment of non-qualified employee to operate machine .....	2,000	5,000
	(b)(2) Operator unfamiliar with safety instructions for machine .....	2,000	5,000
	(b)(3) Roadway worker working with unfamiliar machine .....	2,000	5,000
	(c) Roadway maintenance machine not clear of passing trains .....	3,000	6,000
214.343	Training and qualification, general:		
	(a)(1) Failure of railroad program to include training provisions .....	5,000	10,000
	(a)(2) Failure to provide initial training .....	3,000	6,000
	(b) Failure to provide annual training .....	2,500	5,000
	(c) Assignment of non-qualified railroad employees to provide on-track safety .....	4,000	8,000
	(d)(1) Failure to maintain records of qualifications .....	2,000	4,000
	(d)(2) Incomplete records of qualifications .....	1,000	3,000
	(d)(3) Failure to provide records of qualifications to FRA .....	2,000	4,000
214.345	Training for all roadway workers		
214.347	Training and qualification for lone workers		
214.349	Training and qualification of watchmen/lookouts		
214.351	Training and qualification of flagmen		
214.353	Training and qualification of roadway workers who provide on-track safety for roadway work groups		
214.355	Training and qualification in on-track safety for operators of roadway maintenance machines		

Issued this 6th day of December, 1996  
 Jolene M. Molitoris,  
*Administrator, Federal Railroad  
 Administration.*  
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## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric  
Administration

## 50 CFR Part 622

[Docket No. 950810206-6288-06; I.D.  
070296D]

RIN 0648-AG29

**Fisheries of the Caribbean, Gulf of  
 Mexico, and South Atlantic; Reef Fish  
 Fishery of the Gulf of Mexico;  
 Amendment 12**

**AGENCY:** National Marine Fisheries  
 Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA),  
 Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved measures of Amendment 12 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These measures reduce the bag limit for greater amberjack to one fish and establish a 20-fish aggregate bag limit for reef fish species for which there are no other bag limits. The intended effects of this rule are to provide additional protection for greater amberjack, conserve reef fish, and enhance enforcement.

**EFFECTIVE DATE:** January 15, 1997.

**FOR FURTHER INFORMATION CONTACT:**  
 Robert Sadler, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is

implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Based on a preliminary evaluation of Amendment 12 at the beginning of formal agency review, NMFS disapproved measures in Amendment 12 that would have reduced the minimum size limit for red snapper harvested in the commercial fishery. On August 21, 1996, NMFS published a proposed rule to implement the remaining measures of Amendment 12 (61 FR 43215). The Council's rationale for the remaining measures in Amendment 12, as well as the reasons for NMFS' disapproval of the proposed measures to reduce the minimum size limit for red snapper, are contained in the preamble of the proposed rule and are not repeated here.

## Comments and Responses

A total of 354 entities, including the Florida Marine Fisheries Commission

(FMFC), submitted comments on Amendment 12 and/or on the proposed rule. Of these commenters, 224 opposed both the proposed 1-fish aggregate bag limit for greater amberjack, lesser amberjack, and banded rudderfish, and the proposed 28-inch (71.1-cm) fork-length recreational size limit for lesser amberjack and banded rudderfish in the Gulf of Mexico. A total of 131 commenters opposed the proposed 20-fish aggregate bag limit. Several of the commenters addressed the proposed measures but also discussed reef fish management issues and alternative management measures beyond the scope of the proposed rule. In addition, the U.S. Fish and Wildlife Service indicated that it reviewed Amendment 12 but had no comments at this time.

#### Banded Rudderfish and Lesser Amberjack Size and Bag Limits

*Comment:* FMFC opposed the proposed 28-inch (71.1-cm) fork-length recreational size limit and 1-fish per person aggregate bag limit for greater amberjack, lesser amberjack, and banded rudderfish. FMFC believes that the expected adverse effects of the measures on recreational fisheries for banded rudderfish and lesser amberjack, particularly for-hire recreational fisheries, would be greater than had been anticipated by the Council. FMFC also is concerned that the proposed minimum size regulation would unfairly shift the banded rudderfish and lesser amberjack resources from a mixed recreational-commercial fishery to a solely commercial fishery.

FMFC indicated that it was only after the Council had adopted the 28-inch (71.1-cm) minimum size limit, and the 1-fish bag limit for the three species combined, that public comment provided evidence of the importance of banded rudderfish and lesser amberjack to the recreational fisheries in Florida. In addition, FMFC stated that these measures would be unfair since the recreational for-hire industry, particularly in the eastern Gulf of Mexico, has been traditionally dependent on the harvest of banded rudderfish and lesser amberjack while the commercial fishery has not. One of the commenters noted that banded rudderfish and lesser amberjack currently harvested in the recreational sector would remain susceptible to commercial harvest without size limits.

FMFC also noted that banded rudderfish and lesser amberjack rarely reach the proposed 28-inch (71.1-cm) recreational minimum size and, thus, would rarely occur in the recreational harvest. FMFC stated that, as a result, significant quantities of banded

rudderfish and lesser amberjack, historically harvested in the recreational fishery, would remain susceptible to unlimited commercial harvest (i.e., without size limits or quotas).

*Response:* NMFS acknowledges that information provided by FMFC and other public comments document a previously unrecognized and economically significant catch of banded rudderfish and lesser amberjack by the recreational for-hire sector. The Council's consideration of the effects of these provisions was limited because, as stated in Amendment 12, the extent of the reduction in harvest was unknown at that time. As a result, the Council may not have been able to adequately judge the magnitude of the impacts of these measures prior to taking final action on Amendment 12. NMFS further acknowledges that the proposed minimum size and bag limit measures for banded rudderfish and lesser amberjack would shift essentially all harvest of those species from the recreational fishery to the commercial fishery. These species rarely reach the proposed recreational size limit and thus would be retained almost exclusively in the commercial fishery where no size or bag limit applies.

Although the Council did not structure or present this aspect of the measure as a deliberate, direct allocation, the allocative effects of the measure of moving fish from one discrete user group to another are as significant as the effects of any direct allocation measure. Information from FMFC and voluminous public comments underscore this point. Therefore, this aspect of the measure operates as the functional equivalent of such a direct allocation, and NMFS considers these allocative effects unfair and inequitable. Accordingly, NMFS disapproved these measures because they are inconsistent with National Standard 4 of the Magnuson-Stevens Act, which requires that allocations of fishing privilege be fair and equitable to all fishermen.

#### Reduction in Greater Amberjack Bag Limit

*Comment:* A total of 224 commenters objected to the reduction in the greater amberjack bag limit from three fish to one fish as inappropriate and burdensome, especially for charter vessels and overnight headboat customers. These commenters indicated that a 1-fish bag limit would adversely affect their for-hire business, as many anglers would not make a trip for one greater amberjack (or two greater amberjack on overnight headboat and charter vessel trips).

*Response:* NMFS approved the reduction in the greater amberjack bag limit based on data that indicate substantial declines in recreational landings and other reports of a significant decline in the status of the resource. NMFS believes that the 1-fish bag limit will provide conservation benefits for the greater amberjack resource. NMFS acknowledges that the for-hire sector may experience a minor decrease in income as a result of the necessary reduction in the greater amberjack bag limit. NMFS observes that the revised bag limit measure does not prevent catch and release of more than one greater amberjack.

Amendment 12 states that greater amberjack are reproductively active starting at 32 inches (81.3 cm) for females and 33 inches (83.8 cm) for males. Some of the greater amberjack that must be released in the recreational fishery under the 28-inch (71.1-cm) minimum size limit and 1-fish bag limit are expected to reproduce before they reach the 36-inch (91.4-cm) minimum size limit for the commercial fishery and are harvested. Further, some fish would survive beyond the 36-inch stage, providing additional benefits for improving the stock condition. NMFS believes that the resulting additional reproductive activity for greater amberjack will provide conservation benefits that outweigh the associated short-term adverse economic impacts.

Also, NMFS acknowledges that the lack of uniform size and bag limits for the morphologically similar banded rudderfish and lesser amberjack may deter enforcement of the greater amberjack bag limit to the extent that the three species are misidentified. However, the reduced bag limit has been approved as a first step towards effective conservation and management of greater amberjack. NMFS anticipates that the Council will propose alternative management measures for banded rudderfish and lesser amberjack in the future that are fair and equitable to all fishermen, should such action prove necessary to conserve greater amberjack.

#### Aggregate Bag Limit for Reef Fish Without Bag Limits

*Comment:* A total of 131 commenters objected to the proposed 20-fish aggregate bag limit. These commenters stated that the measure would cause adverse economic impacts on the recreational fishery and is not needed to protect reef fish species currently not managed under bag limits.

*Response:* The Council, prior to its deliberations on Amendment 12, considered NMFS data that indicated that the adverse economic impacts of

the aggregate bag limit would be insignificant. The public comments provide no substantive information to support their claim of extensive economic impacts. Accordingly, NMFS disagrees with these comments. NMFS has approved the 20-fish aggregate bag limit as a risk-averse measure to prevent an uncontrolled increase in harvest of reef fish species for which no bag limits are in effect.

The measure would prevent unlimited harvest of reef fish by persons not fishing under commercial reef fish vessel permits. Currently, such persons can catch and land an unlimited number of reef fish species not subject to a bag limit; while sale of these species is not legal without a commercial permit, it is difficult to enforce this sale restriction. The aggregate bag limit should enhance enforcement of the prohibition on sale of reef fish by those persons.

The 20-fish aggregate bag limit will include banded rudderfish and lesser amberjack, since NMFS disapproved the bag limit for those two species, and will help restrain recreational harvest. As previously indicated, NMFS anticipates that the Council will initiate additional management measures for banded rudderfish and lesser amberjack which will contribute to the conservation of greater amberjack.

*Comment:* One commenter stated that the measure would encourage culling of the catch at sea (i.e., continual discard of the smaller reef fish to obtain the largest fish under the 20-fish aggregate bag limit) and, therefore, should be disapproved.

*Response:* NMFS acknowledges that persons may continue to harvest and retain the largest reef fish caught under the 20-fish aggregate bag limit. NMFS does not encourage this practice because some of the discarded reef fish may not survive release. The aggregate bag limit, however, will prevent an uncontrolled harvest of reef fish currently without bag limits and, thereby, should provide greater conservation benefits than the status quo.

#### Changes from the Proposed Rule

As discussed above, the minimum size limit for banded rudderfish and lesser amberjack, applicable to persons subject to the bag limit, is removed. Also, banded rudderfish and lesser amberjack are not included in a bag limit with greater amberjack.

#### Classification

The Regional Administrator, Southeast Region, NMFS, with concurrence by the Assistant Administrator for Fisheries, NOAA,

determined that the approved measures of Amendment 12 are necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that it is consistent with the Magnuson-Stevens Act and other applicable law, with the exception of those measures that were disapproved.

This action has been determined to be not significant for purposes of E.O. 12866.

Before the proposed rule was published, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. Specific findings supporting that conclusion were summarized in the proposed rule and are not repeated here. No public comments on the certification were received. The disapproval of the banded rudderfish and lesser amberjack management measures did not alter those findings or conclusions regarding the impacts of the approved measures of Amendment 12 that are implemented by this rule.

#### List of Subjects in 50 CFR Part 622

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

Dated: December 10, 1996.

Gary Matlock,

*Acting Assistant Administrator for Fisheries,  
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, 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, paragraph (b)(1)(i) is revised, and paragraph (b)(1)(v) is added to read as follows:

#### **§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Greater amberjack—1.

\* \* \* \* \*

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1) (i) through (iv) of this section—20.

\* \* \* \* \*

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#### **50 CFR Part 679**

[Docket No. 9608-30240-6338-02; I.D. 082796A]

RIN 0648-AH28

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Closure to Protect Red King Crab**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements Amendment 37 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The implementing regulations for Amendment 37 close portions of Bristol Bay, make adjustments to the prohibited species catch limit for red king crab in Zone 1 of the Bering Sea, and increase observer coverage in specified areas related to the trawl closures. These measures are necessary to protect the red king crab stocks in Bristol Bay, which have declined to a level that presents a serious conservation problem for this stock. They are intended to accomplish the objectives of the FMP.

**EFFECTIVE DATE:** January 1, 1997.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this rule may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Sue Salveson, 907-586-7228.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) is managed by NMFS according to the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*; Magnuson-Stevens Act), and is