

with the Corps regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Corps' monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of LOA in the **Federal Register** and solicit public comment; and

(2) *Emergencies*—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.236, an LOA may be modified without prior notice or opportunity for public comment. Notice will be published in the **Federal Register** within thirty days of the action.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 160510416-6999-02]

RIN 0648-BG06

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Yellowtail Snapper Management Measures

**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 a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management

Council (Gulf Council). This final rule revises the yellowtail snapper commercial and recreational fishing year and removes the requirement to use circle hooks for the commercial harvest of yellowtail snapper in the Gulf exclusive economic zone (EEZ) south of Cape Sable, Florida. The purpose of this final rule is to increase the operational efficiency of the yellowtail snapper component of the commercial sector of the Gulf reef fish fishery, achieve optimum yield, and decrease the regulatory burden of compliance with differing regulations established by separate regulatory agencies across the adjacent Gulf and South Atlantic jurisdictions.

**DATES:** This final rule is effective March 13, 2017.

**ADDRESSES:** Electronic copies of the framework action, which includes an environmental assessment, Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from [www.regulations.gov](http://www.regulations.gov) or the SERO Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Meyer, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [cynthia.meyer@noaa.gov](mailto:cynthia.meyer@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery includes yellowtail snapper and is managed under the FMP. The FMP was prepared by the Gulf Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 17, 2016, NMFS published a proposed rule for the framework action and requested public comment (FR 81 71471). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this final rule is provided below.

In the southeastern United States, yellowtail snapper are harvested by both commercial and recreational fishers, with landings coming almost exclusively from waters adjacent to Florida. Yellowtail snapper are managed separately in the Gulf and South Atlantic but are a single genetic stock. The 2012 Southeast Data, Assessment, and Review (SEDAR 27) combined the two areas for stock assessment purposes and indicated that yellowtail snapper in the Gulf and South Atlantic were not overfished and not experiencing overfishing.

#### Management Measures Contained in This Final Rule

This final rule revises the fishing year for Gulf yellowtail snapper and the fishing gear requirements for the Gulf yellowtail snapper commercial sector.

##### *Yellowtail Snapper Fishing Year*

Previously, the fishing year for both the commercial and recreational sectors for yellowtail snapper in the Gulf and the South Atlantic was January 1 through December 31. The South Atlantic Fishery Management Council changed the yellowtail snapper fishing year in the South Atlantic to begin on August 1, and end on July 31, for both the commercial and recreational sectors (81 FR 45245, July 13, 2016). This final rule similarly revises the fishing year for Gulf yellowtail snapper for both the commercial and recreational sectors to be August 1 through July 31, each year. Although the harvest of yellowtail snapper in the Gulf has not exceeded the stock ACL since ACLs were implemented in 2011 (76 FR 82044, December 29, 2011), this fishing year revision may more closely align any required ACL closure in the Gulf, if one were to occur, with any ACL closure in the South Atlantic. In addition, having the same fishing year for both the Gulf and South Atlantic would benefit those commercial fishers that harvest yellowtail snapper in both regions by decreasing the compliance burden of different regulations for the same species in adjacent management areas.

##### *Yellowtail Snapper Fishing Gear Requirements*

In the Gulf, a person harvesting reef fish, including yellowtail snapper, is required to use non-stainless steel circle hooks when fishing with natural bait (50 CFR 622.30(a)). This measure was put in place to reduce the post-release mortality of Gulf reef fish. This final rule revises this requirement to also allow the use of other non-stainless steel hook types, such as J-hooks, when commercial fishing with natural bait for yellowtail snapper in the area south of a line extending due west from 25°09' N. lat. off the west coast of Monroe County, Florida, to the Gulf and South Atlantic Councils' shared boundary. The northern boundary of the area for this fishing gear exemption coincides with a state of Florida species management boundary already put in place by the Florida Fish and Wildlife Conservation Commission.

The Gulf Council determined that allowing other hook types for the commercial harvest of yellowtail snapper in Federal waters off south

Florida was appropriate because of the specific fishing method used by commercial fishers that allows for quicker de-hooking when the fish are caught using J-hooks. Yellowtail snapper fishers have stated that J-hooks catch in the mouth of fish upon jerking the rod upward when fishers feel the fish take the bait. Landed fish are then quickly de-hooked using a purpose-built rig by pulling the fishing line across a horizontal bar, on which the hook catches. Allowing the use of non-circle hooks, such as J-hooks, is expected to result in less handling of undersized fish that need to be discarded, thereby increasing efficiency and potentially decreasing post-release mortality. This change makes the fishing gear requirements for the commercial harvest of yellowtail snapper consistent between the Gulf and South Atlantic. In the South Atlantic, snapper-grouper Federal commercial permit holders are not required to use circle hooks when fishing for any species within the snapper-grouper complex south of 28°00' N. lat.

#### Comments and Responses

NMFS received a total of seven comments on the proposed rule. One comment supportive of the proposed rule and one comment outside the scope of the proposed rule are not addressed in this final rule. Specific comments related to the framework action and the proposed rule, and NMFS' responses, have been grouped together by topic and are summarized below.

*Comment 1:* The fishing year for Gulf yellowtail snapper should not be revised. Having the same fishing year of August 1 through July 31 for both the Gulf and South Atlantic limits the opportunity for the stock to spawn and to replenish the respective populations. Additionally, maintaining different fishing years between the Gulf and South Atlantic helps to maintain a more steady opportunity to fish for yellowtail snapper.

*Response:* NMFS disagrees that the fishing year for Gulf yellowtail snapper should not be revised. Although spawning of yellowtail snapper in southeastern U.S. waters can occur year-round, their peak spawning period is from April to August. By starting the fishing year in August, any closure near the end of the fishing year, as a result of meeting the annual catch limit, would correspond with the species' peak spawning period.

Additionally, establishing identical fishing seasons for the Gulf and South Atlantic is unlikely to affect the opportunity to fish for yellowtail snapper because the Gulf stock ACL has

not been exceeded since ACLs were implemented in 2011. However, aligning the fishing years may improve regulatory compliance and reduce the enforcement burden. It can be challenging for fishers to abide by different regulations in the areas where the Gulf and South Atlantic Councils' jurisdictions are adjacent, because a single fishing trip may involve fishing in multiple jurisdictions. The change to the fishing year was also widely supported in comments provided to the Gulf Council during the development of the framework action.

*Comment 2:* Circle hooks should continue to be required to fish for Gulf yellowtail snapper. Removing the requirement for circle hooks will cause increased harm and mortality to released fish, both yellowtail snapper and any bycatch.

*Response:* NMFS disagrees that allowing the use of hooks other than circle hooks for the commercial harvest of yellowtail snapper off of the southwest coast of Florida will cause increased harm and mortality to released fish. The change in fishing gear requirements to allow for the use of J-hooks is only for the limited area of the Gulf just south of Cape Sable on the west coast of Florida, where the majority of commercial yellowtail snapper in the Gulf are caught. The requirement for circle hooks will remain in effect for the rest of the Gulf EEZ.

Commercial yellowtail snapper fishers use chum bags on the surface to attract yellowtail snapper to the stern of the fishing vessel, and then use natural bait on small hooks to catch and land the fish. Circle hooks are designed to be swallowed by the fish, come back up the fish's esophagus as the fish swims away, and finally hook the fish in the mouth. This practice requires fishers to allow the fish to swim off with the bait and then become hooked. Directed commercial yellowtail snapper fishing practices do not accommodate allowing a fish to swim off with the bait, which prevents the use of circle hooks as they are designed. Commercial yellowtail snapper fishers also use a fishing method that allows them to release yellowtail snapper which have been caught with J-hooks more easily than those caught with circle hooks, resulting in decreased handling times for fish which are to be discarded. Decreased handling times of yellowtail snapper by fishers may help reduce discard mortality rates. In addition, fishers can proactively prevent other fish species from taking bait at the surface, largely due to the close proximity of the fisher to the bait, which facilitates a direct

view of feeding activity and identification of the fish.

*Comment 3:* The change in hook requirements should apply to both the recreational and commercial harvest of yellowtail snapper because recreational fishers use the same technique as commercial fishers to harvest these fish.

*Response:* The Council determined, and NMFS agrees, that it is not necessary to change the circle hook requirement for the recreational sector at this time. Landings of yellowtail snapper in the Gulf come almost exclusively from waters adjacent to Florida, with over 97 percent of these landings, on average, by the commercial sector. Some commercial yellowtail snapper fishers reported that the small circle hooks necessary to target yellowtail snapper are more likely to be swallowed completely into the fish's stomach. This makes it more likely that the hook will snag somewhere in the fish's digestive track and makes it more difficult to release fish quickly, which reduces efficiency. The Council did not consider changing the hook requirement for the recreational sector because of the inherent multi-species nature of recreational fishing activities when yellowtail snapper are included, and because there was no expressed need to increase operational efficiency in the recreational fishing sector, which harvests only a small percentage of the total yellowtail snapper landings.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the framework amendment, the FMP, 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 statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No significant issues were received regarding the certification from public comments on the proposed

rule, no changes were made to the final rule in response to such comments, and NMFS has not received any new information that would affect its previous determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

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

Fisheries, Fishing, Gulf of Mexico, South Atlantic, Yellowtail snapper, Gear, Bycatch.

Dated: February 7, 2017.

**Alan D. Risenhoover,**

*Acting 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 § 622.7, add paragraph (g) to read as follows:

**§ 622.7 Fishing years.**

\* \* \* \* \*

(g) *Gulf of Mexico yellowtail snapper*—August 1 through July 31.

■ 3. In § 622.30, revise paragraph (a) to read as follows:

**§ 622.30 Required fishing gear.**

\* \* \* \* \*

(a) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required when fishing with natural baits, except that other non-stainless steel hook types may be used when commercial fishing for yellowtail snapper with natural baits in an area south of a line extending due west from 25°09' N. lat. off the west coast of Monroe County, Florida, to the Gulf of Mexico and South Atlantic inter-council boundary, specified in § 600.105(c).

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