

January 1, 2022 through December 31, 2026).

11. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A small-business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

13. Total Small Entities. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States. In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

14. *Permit-But-Disclose*. The proceeding that this Report and Order and Further Notice of Proposed Rulemaking initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex

parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302 that this Further Notice of Proposed Rulemaking is adopted.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of the Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

#### RIN 0648–BG33

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 37

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

**ACTION:** Notice of availability (NOA); request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (South Atlantic Council) has submitted Amendment 37 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 37 would modify the management unit boundaries for hogfish in the South Atlantic by establishing two hogfish stocks off (1) Georgia through North Carolina and (2) Florida Keys/East Florida; establish a rebuilding plan for the Florida Keys/East Florida hogfish stock; specify fishing levels and accountability measures (AMs), and modify or establish management measures for the Georgia through North Carolina and Florida Keys/East Florida stocks of hogfish. The purpose of Amendment 37 is to manage hogfish using the best scientific information available while ending overfishing and rebuilding the Florida Keys/East Florida hogfish stock.

**DATES:** Written comments must be received by December 6, 2016.

**ADDRESSES:** You may submit comments on Amendment 37 identified by “NOAA–NMFS–2016–0068” by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0068](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0068), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Nikhil Mehta, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be

considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 37 may be obtained from [www.regulations.gov](http://www.regulations.gov) or the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>. Amendment 37 includes a final environmental impact statement, initial regulatory flexibility analysis, regulatory impact review, and fishery impact statement.

**FOR FURTHER INFORMATION CONTACT:** Nikhil Mehta, NMFS SERO, telephone: 727-824-5305, or email: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The FMP being revised by Amendment 37 was prepared by the South Atlantic Council, and Amendment 37, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

### Background

Currently, hogfish is managed under the FMP as a single stock in the South Atlantic from the jurisdictional boundary between the South Atlantic Council and Gulf of Mexico Fishery Management Council (Gulf Council) (approximately the Florida Keys) to a line extending seaward from the North Carolina and Virginia state border. The current status determination criteria such as maximum sustainable yield (MSY) and minimum stock size threshold (MSST), annual catch limits (ACLs), recreational annual catch targets (ACTs), AMs, and management measures in the FMP are established for a single stock of hogfish for the South Atlantic region. The most recent stock

assessment for hogfish was completed in 2014 through the Southeast Data, Assessment, and Review assessment process (SEDAR 37). SEDAR 37 identified two separate stocks of hogfish in the South Atlantic region under the jurisdiction of the South Atlantic Council, and one stock of hogfish in the Gulf of Mexico (Gulf) under the jurisdiction of the Gulf Council. In the South Atlantic region, one stock of hogfish was identified to exist off North Carolina, South Carolina, and Georgia; and a separate stock of hogfish was identified to exist off the Florida Keys and East Florida. The South Atlantic Council's Scientific and Statistical Committee (SSC) did not consider the SEDAR 37 results for the Georgia through North Carolina stock as sufficient to determine stock status and inform South Atlantic Council management decisions, and the South Atlantic Council concurred. NMFS agreed and determined that the overfishing and overfished status determination of the Georgia through North Carolina stock is unknown. Based on SEDAR 37 and the South Atlantic Council's SSC recommendation for the Florida Keys/East Florida stock, NMFS determined that the Florida Keys/East Florida stock is currently undergoing overfishing and is overfished. Based on SEDAR 37, NMFS also determined that the West Florida hogfish stock in the Gulf identified by SEDAR 37, which occurs off the west coast of Florida to Texas, is neither overfished, nor undergoing overfishing. NMFS notified the South Atlantic Council of its determinations via letter on February 17, 2015.

### Actions Contained in the Amendment 37

Amendment 37 includes actions to revise the hogfish fishery management unit in the FMP by establishing two hogfish stocks, one in Federal waters off Georgia through North Carolina and one in Federal waters off the Florida Keys/East Florida; establish a rebuilding plan for the Florida Keys/East Florida hogfish stock; specify fishing levels and accountability measures (AMs), and modify or establish management measures for the Georgia through North Carolina and Florida Keys/East Florida stocks of hogfish. All weights of hogfish are described in round weight.

#### *Fishery Management Unit for Hogfish*

Currently, hogfish is managed as a single stock in Federal waters in the South Atlantic region from the jurisdictional boundary between the South Atlantic and Gulf Councils to the North Carolina/Virginia border.

Amendment 37 would establish new stock boundaries and create two stocks of hogfish under the jurisdiction of the South Atlantic Council. The first stock would be the Georgia through North Carolina stock, with a southern boundary extending from the Florida/Georgia state border, and a northern border extending from the North Carolina/Virginia state border. The second stock would be the Florida Keys/East Florida hogfish stock, with a southern boundary extending from 25°09' N. lat. near Cape Sable on the west coast of Florida. The management area would extend south and east around the Florida Keys and have a northern border extending from the Florida/Georgia state border.

The Gulf Council has approved Amendment 43 to the FMP for the Reef Fish Resources of the Gulf, and has selected the same boundary near Cape Sable on the west coast of Florida to separate the Florida Keys/East Florida hogfish stock from the hogfish stock in the Gulf (West Florida hogfish stock). In accordance with Section 304(f) of the Magnuson-Stevens Act, the Gulf Council requested that the Secretary designate the South Atlantic Council as the responsible Council for management of this hogfish stock in Gulf Federal waters south of 25°09' N. lat. near Cape Sable on the west coast of Florida. If the Gulf Council's request is approved, the Gulf Council would continue to manage the West Florida hogfish stock in Federal waters in the Gulf, except in Federal waters south of this boundary. Therefore, the South Atlantic Council, and not the Gulf Council, would establish the management measures for the entire range of the Florida Keys/East Florida hogfish stock, including in Federal waters south of 25°09' N. lat. near Cape Sable in the Gulf. Commercial and recreational for-hire vessels fishing for hogfish in Gulf Federal waters, i.e., north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils, would still be required to have the appropriate Federal Gulf reef fish permits, and vessels fishing for hogfish in South Atlantic Federal waters, i.e., south and east of the jurisdictional boundary, would still be required to have the appropriate Federal South Atlantic snapper-grouper permits. Those permit holders would still be required to follow the sale and reporting requirements associated with the respective permits.

As described in Amendment 37, the proposed stock boundary near Cape Sable, Florida, would be a good demarcation point because it coincides with an existing State of Florida management boundary for Florida's

Pompano Endorsement Zone and, therefore, would aid in simplifying regulations across management jurisdictions. NMFS specifically seeks public comment regarding the revised stock boundaries and the manner in which the Councils would have jurisdiction over these stocks if both Amendment 37 for the South Atlantic and Amendment 43 for the Gulf are approved and implemented.

*MSY and MSST for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks*

Currently, MSY for the single hogfish stock in the South Atlantic is the yield produced by the fishing mortality rate at MSY ( $F_{MSY}$ ) or the  $F_{MSY}$  proxy, and MSST is equal to the spawning stock biomass at MSY ( $SSB_{MSY}$ )\*(1-M) or 0.5, whichever is greater (where M equals natural mortality). However, MSY and MSST values for the single hogfish stock are unknown because hogfish were unassessed until recently. Amendment 37 would specify the MSY for the Georgia through North Carolina and Florida Keys/East Florida stocks of hogfish as equal to the yield produced by  $F_{MSY}$  or the  $F_{MSY}$  proxy, with the MSY and  $F_{MSY}$  proxy recommended by the most recent stock assessment. Based on SEDAR 37, the resulting MSY for the Florida Keys/East Florida hogfish stock is 346,095 lb (156,986 kg), and is unknown for the Georgia through North Carolina hogfish stock. Amendment 37 would specify the MSST for these two stocks of hogfish at 75 percent of  $SSB_{MSY}$ , which results in an unknown MSST value for the Georgia through North Carolina hogfish stock, and an MSST for the Florida Keys/East Florida hogfish stock of 1,725,293 lb (782,580 kg). The proposed MSST for hogfish is consistent with how the South Atlantic Council has defined MSST for other snapper-grouper stocks with low natural mortality estimates.

*Rebuilding Plan for the Florida Keys/East Florida Hogfish Stock*

Because the Florida Keys/East Florida hogfish stock is overfished, Amendment 37 would establish a rebuilding plan that would set the acceptable biological catch (ABC) equal to the yield at a constant fishing mortality rate and rebuild the stock in 10 years with a 72.5 percent probability of success. Year 1 of the rebuilding plan would be 2017, and 2027 would be the last year. The South Atlantic Council's SSC indicated that harvest levels proposed in the Amendment 37 rebuilding plan are sustainable and would achieve the goal of rebuilding the Florida Keys/East Florida hogfish stock. As explained

below, the ABC for the Florida Keys/East Florida hogfish stock would be 17,930 fish in 2017 and would increase annually through 2027 when the ABC would be 63,295 fish.

*ACLs and OY for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks*

Currently, the total ABC for the single hogfish stock (equal to ACL and OY) is 134,824 lb (61,155 kg), with a commercial ACL sector allocation (36.69 percent) of 49,469 lb (22,439 kg), and recreational ACL sector allocation (63.31 percent) of 85,355 lb (38,716 kg). For the Georgia through North Carolina hogfish stock, Amendment 37 would specify an ABC of 35,716 lb (16,201 kg), a total ACL and OY (equal to 95 percent of the ABC) of 33,930 lb (15,390 kg), and commercial and recreational ACLs based on re-calculated sector allocations of 69.13 percent to the commercial sector and 30.87 percent to the recreational sector. It was necessary to re-calculate the sector allocations based on the existing formula from the Comprehensive ACL Amendment, based on the appropriate landings from the relevant geographic region of the new stock. The commercial ACL would be 23,456 lb (10,639 kg) and the recreational ACL would be 988 fish.

For the Florida Keys/East Florida stock of hogfish, Amendment 37 would specify an ABC of 17,930 fish which would increase annually through 2027 when the ABC would be 63,295 fish. The total ACL and OY would be equal to 95 percent of the ABC, and the commercial and recreational ACLs would be based on re-calculated sector allocations of 9.63 percent to the commercial sector and 90.37 percent to the recreational sector. In 2017, the total ACL (and OY) would be 17,034 fish, the commercial ACL would be 3,510 lb (1,592 kg), and the recreational ACL would be 15,689 fish and would increase annually through 2027 as the stock rebuilds. In 2027, the total ACL (and OY) for the Florida Keys/East Florida hogfish stock would be 60,130 fish, the commercial ACL would be 17,018 lb (7,719 kg), and recreational ACL would be 53,610 fish.

*Recreational ACTs for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks*

The recreational ACT for the current hogfish stock is 59,390 lb (26,939 kg). Amendment 37 would specify a recreational ACT (equal to 85 percent of the recreational ACL) of 840 fish for the Georgia through North Carolina stock, and 13,335 fish for the Florida Keys/East Florida stock in 2017. The

recreational ACTs for the Florida Keys/East Florida stock would increase annually from 2017 through 2027 as the stock rebuilds. NMFS notes that the recreational ACT is currently used only for monitoring.

*AMs for the Commercial and Recreational Sectors for Both the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks*

The current South Atlantic commercial AMs for the single hogfish stock consist of an in-season closure of the commercial sector if the commercial ACL is met or projected to be met; and if the commercial ACL is exceeded, a post-season AM that would reduce the commercial ACL by the amount of the commercial ACL overage during the following fishing year, only if the total ACL is also exceeded and hogfish are overfished. Amendment 37 would retain the current South Atlantic in-season and post-season AMs for the commercial sector, and apply them to both the Georgia through North Carolina and Florida Keys/East Florida hogfish stocks.

The current South Atlantic recreational AMs for the single hogfish stock consist of an in-season closure of the recreational sector if the recreational ACL is met or is projected to be met. If the recreational ACL is exceeded, then during the following fishing year, NMFS will monitor for a persistence in increased landings. The post-season AM would reduce the length of the recreational season and the recreational ACL by the amount of the recreational ACL overage, only if the total ACL is also exceeded and hogfish are overfished. Amendment 37 would retain these current South Atlantic recreational AMs for both the Georgia through North Carolina and Florida Keys/East Florida hogfish stocks.

*Minimum Size Limits for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks*

The current minimum size limit for the single hogfish stock in the South Atlantic is 12 inches (30.5 cm), fork length (FL), for both the commercial and recreational sectors. For both the commercial and recreational sectors, Amendment 37 would increase the minimum size limit to 17 inches (43.2 cm), FL, for the Georgia through North Carolina hogfish stock, and 16 inches (40.6 cm), FL, for the Florida Keys/East Florida hogfish stock. The South Atlantic Council determined these minimum size limits could serve as a precautionary approach to address population stability, considering life

history characteristics for hogfish off Georgia through North Carolina, and reduce disruption to spawning, avoid recruitment overfishing, and benefit the spawning populations off the Florida Keys and East Florida.

*Commercial Trip Limit for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks*

Currently, there is no commercial trip limit for hogfish in the South Atlantic. Amendment 37 would establish a commercial trip limit of 500 lb (227 kg) for the Georgia through North Carolina stock, and 25 lb (11 kg) for the Florida Keys/East Florida stock. As described in Amendment 37, few fishermen catch more than 500 lb (227 kg) of hogfish per trip off Georgia through North Carolina, and the proposed commercial ACL is not expected to be met. However, because restrictions on commercial harvest of hogfish from the Florida Keys/East Florida stock could be large, there was some concern that fishermen may shift effort to Georgia and the Carolinas. Therefore, the South Atlantic Council proposed a 500-lb (227-kg) commercial trip limit for the Georgia through North Carolina stock to enable commercial harvest in that geographic sub-region to take place year-round. The South Atlantic Council determined that implementing a trip limit of 25 lb (11 kg) for the Florida Keys/East Florida stock would restrict harvest and help to extend the commercial fishing season.

*Recreational Bag Limits for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks*

The current recreational bag limit for hogfish in the South Atlantic is five fish per person per day in Federal waters off Florida, with no recreational bag limits in Federal waters off Georgia, South Carolina, and North Carolina.

Amendment 37 would set a recreational bag limit of one fish per person per day in Federal waters off the Florida Keys and East Florida, and a recreational bag limit of two fish per person per day in Federal waters off Georgia through North Carolina. The South Atlantic Council determined that these bag limits would reduce harvest and help to extend the recreational fishing season.

*Recreational Fishing Season for the Florida Keys/East Florida Hogfish Stock*

Currently, hogfish is available for the recreational sector to harvest year-round, as long as the recreational ACL has not been met. Amendment 37 would establish a recreational fishing season from May through October for the Florida Keys/East Florida hogfish stock. As described in Amendment 37, hogfish spawning activity occurs predominantly during the months of December through April, and begins (and ends) slightly earlier in the Florida Keys than on the West Florida shelf (e.g., from the Florida panhandle south along the west coast of Florida to Naples, Florida). Analysis in Amendment 37 showed that based on the proposed recreational ACLs, minimum size limits, and recreational bag limits, a recreational fishing season that is open for 6 months would help constrain recreational landings below the recreational ACL for the Florida Keys/East Florida hogfish stock. The South Atlantic Council determined that specifying a May through October fishing season would protect the overfished Florida Keys/East Florida hogfish stock during the peak spawning season, and the proposed ACLs and AMs would help ensure overfishing does not occur. The South Atlantic Council decided not to establish a recreational fishing season for the Georgia through North Carolina hogfish stock, because that stock does not seem

to be experiencing heavy fishing pressure, and the average recreational landings in recent years have been well below the proposed recreational ACL.

**Proposed Rule for Amendment 37**

A proposed rule that would implement Amendment 37 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

**Consideration of Public Comments**

The South Atlantic Council has submitted Amendment 37 for Secretarial review, approval, and implementation. Comments on Amendment 37 must be received by December 6, 2016. Comments received during the respective comment periods, whether specifically directed to Amendment 37 or the proposed rule will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 37. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: October 4, 2016.

**Emily H. Menashes,**

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

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