

amount of the Area 4 catch limit greater than 5,920,000 lb (2,685.3 mt) but less than or equal to 6,000,000 lb (2,721.6 mt) be allocated to Area 4E. With the proposed removal of Areas 4A and 4B from the CSP, the amount of the combined area 4C-E greater than 1,657,600 lb (752 mt, based on 28 percent of the total 1995 Area 4 catch limit) and less than 1,737,600 lb (788.2

mt) would be assigned to Area 4E. The amount of the combined area 4C-E catch limit greater than 1,737,600 lb (788.2 mt) would be distributed among areas 4C, 4D, and 4E according to the revised CSP apportionment schedule.

**Example:** If the IPHC specified the Area 4 catch limit to be 5,920,000 lb (2,685.3 mt), 31.1 percent or 1,859,780 lb (843.6 mt) of this total would be

apportioned to the combined area 4C-4E. Of that combined area 4C-4E catch limit, 1,657,600 lb (752 mt) plus 122,180 lb (55.4 mt, the remaining amount over 1,737,600 lb (788.2 mt)) would be distributed among Areas 4C, 4D, and 4E according to the revised CSP apportionment schedule, and 80,000 lb (36.2 mt) added to the Area 4E apportionment, as follows:

Area		Lb	Mt
4C	.4642×1,779,780	= 826,174	374.8
4D	.4642×1,779,780	= 826,174	374.8
4E	.0714×1,779,780+80,000	= 207,076	93.9
Totals	.9998	1,859,324	843.4

**Classification**

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 this proposed revision to the CSP would not have a significant economic impact on a substantial number of small entities as follows:

The 1996 CSP set aside the first 80,000 lb (36.3 mt) of the total Area 4 catch limit greater than 5,920,000 lb (2,685.3 mt), and so distributed the impact of removing those pounds from the Area 4 catch limit among the 720 IFQ and 159 CDQ fishermen in Areas 4A-4D. The revised CSP would set aside the first 80,000 lb (36.3 mt) of the combined Area 4C-4E catch limit over 1,657,600 lb (752 mt). The analysis prepared by the Council for this proposed revision of the CSP indicates that the impact of the removal of that 80,000 lb (36.3 mt) would, under the revised CSP, be borne by the 146 IFQ and 119 CDQ fishermen in the remaining CSP Areas 4C and 4D. All of these entities are considered small entities, and all would be affected by this action. Thus, this action would affect a substantial number of small entities. However, the analysis indicates that the potentially foregone amounts of halibut from fishermen in Areas 4C and 4D would amount to less than 5 percent of the annual gross revenues for fishermen in these areas. The proposed revision of the CSP would not increase compliance costs for any IFQ or CDQ fishermen.

Therefore, an initial regulatory flexibility analysis was not prepared.

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

**List of Subjects in 50 CFR Part 300**

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: January 5, 1998.

**Rolland A. Schmitt**,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*

2. In § 300.63, paragraph (b) is revised to read as follows:

**§ 300.63 Catch sharing plans and domestic management measures.**

\* \* \* \* \*

(b) The catch sharing plan for area 4 allocates the annual TAC among Areas 4C, 4D, and 4E, and will be implemented by the Commission in annual management measures published pursuant to § 300.62.

[FR Doc. 98-621 Filed 1-9-98; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 971128281-7281-01; I.D. 102197D]

RIN 0648-AG27

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 8**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would limit access to the commercial snapper-grouper fishery; allow the retention of snapper-grouper in excess of the bag limits on a permitted vessel that has a single bait net or cast nets on board; and, subject to specific conditions, exempt snapper-grouper lawfully harvested in Bahamian waters from the requirement that they be maintained on board a vessel in the exclusive economic zone (EEZ) of the South Atlantic with head and fins intact. In addition, Amendment 8 would redefine "optimum yield," "overfished," and "overfishing" for snapper-grouper and establish a "threshold level" for snapper-grouper, i.e., the level of spawning potential ratio at which the South Atlantic Fishery Management Council (Council) will take appropriate action including, but not limited to, eliminating directed fishing mortality and evaluating measures to eliminate any bycatch mortality. The intended effects of this rule are to conserve and manage the snapper-grouper resources off the southern Atlantic states.

**DATES:** Written comments must be received on or before February 26, 1998.

**ADDRESSES:** Comments on the proposed rule or on the initial regulatory flexibility analysis (IRFA) must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N.,

St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 8, which includes a final supplemental environmental impact statement, a regulatory impact review, an IRFA, and a social impact assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; phone: 803-571-4366; fax: 803-769-4520.

**FOR FURTHER INFORMATION CONTACT:** Peter Eldridge, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the 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.

#### **Limited Access**

The purposes of the proposed limited access program for the commercial snapper-grouper fishery are to promote stability in the fishery, facilitate long-term planning for the prosecution and management of the fishery, promote orderly utilization of the resource, decrease the incentive for overcapitalization, prevent continual dissipation of returns from fishing caused by open access to the fishery, prevent increases in fishing effort and habitat damage that would result from open access to the fishery, and provide a more flexible management system. To achieve these objectives, the Council proposes to limit participation in the commercial fishery to owners who had vessels with commercial vessel permits for snapper-grouper at any time from February 11, 1996, through February 11, 1997, and had at least one landing of snapper-grouper from January 1, 1993, through August 20, 1996.

Specifically, an owner of a vessel that had landings of snapper-grouper from the South Atlantic of at least 1,000 lb (453.6 kg), whole weight, during any one of the years 1993, 1994, or 1995, or in 1996 through August 20, would receive a transferable commercial permit. An owner of a vessel that did not have landings of at least 1,000 lb during any one of these years but had at least one landing of snapper-grouper from the South Atlantic from January 1, 1993, through August 20, 1996, would receive a trip-limited commercial permit. A vessel with a trip-limited

permit would be limited on any trip to 225 lb (102.1 kg) of snapper-grouper.

The Council chose these limited access measures to minimize exclusion of present participants from the fishery. These measures would not result in reduced fishing mortality in the short term, but would minimize the possibility of increasing fishing pressure in the long term.

#### *Historical Landings*

Eligibility for limited access permits based on landings of snapper-grouper from the South Atlantic would be determined from fishing vessel logbooks received by NMFS on or before August 20, 1996. The Council chose August 20, 1996, because that was the date when the Council decided to base eligibility on such landings. The Council was concerned that allowing consideration of landings from logbooks received after that date would provide an incentive for vessel owners to submit fraudulent logbooks that showed landings meeting the criteria. State trip ticket data may be considered in support of landings claims provided that such information was received by the state on or before September 20, 1996. Only landings that were recorded during the period when the vessel had a valid Federal permit and only landings that were harvested, landed, and sold in compliance with all state and Federal regulations would be used to determine eligibility for commercial snapper-grouper limited access permits.

If a vessel with documented landings of snapper-grouper during the qualifying period changed ownership, the owner at the time of the landings would retain credit for such landings for the purpose of determining eligibility for a limited access permit, unless the sale of the vessel included a written agreement that credit for such landings transfers to the new owner. If a snapper-grouper catch history is transferred under such an agreement, the entire snapper-grouper landings history would be transferred—partial transfers would not be recognized.

#### *Permit Application/Issuance/Reconsideration*

Proposed § 622.18(d) would set forth the procedures for permit application, issuance, and reconsideration. Applications for permits would have to be made within 90 days after publication of the final rule. Permits would be initially issued to qualifying vessel owners. Effective 150 days after publication of the final rule, the only commercial vessel permits that would be valid for the commercial snapper-grouper fishery would be those issued

under Amendment 8's limited access criteria.

An Application Oversight Board (Board) would be established to assist the Regional Administrator, Southeast Region, NMFS (Regional Administrator), in resolving disputes over eligibility for limited access permits. The Board would be made up of the state directors (or their designees) from each state in the Council's area of jurisdiction. If an applicant requests the Regional Administrator to reconsider a determination of initial permit eligibility, the Regional Administrator will forward the application and related materials to the Board for its consideration. The Board would consider whether the eligibility criteria for a limited access permit were applied to an applicant in a proper manner. The Board could not consider "hardship" applications in which vessel owners seek issuance of a permit based on personal, economic, social, or other considerations, other than the eligibility criteria. Each member would provide his/her individual recommendation on each application for reconsideration to the Regional Administrator for final administrative decision.

#### *Transfer of Permits*

Upon request, NMFS may transfer a transferable permit on a one-for-one basis to a replacement vessel, including a new vessel, or upon a change of ownership of a permitted vessel to an immediate family member. In other words, one commercial snapper-grouper permit issued according to the limited access criteria may be surrendered to the Regional Administrator in exchange for one limited access permit issued to the same owner or an immediate family member of the owner. In addition, if an individual has a written contract entered into and dated not later than August 20, 1996, that provides for a permit transfer with the purchase of a vessel that qualifies for a transferable permit, NMFS will transfer the permit to that individual on a one-for-one basis. In this case, the entire catch history of a vessel being purchased would be transferred—partial transfers of the catch history would not be recognized. An individual intending to qualify under the written contract provision would be required to provide a copy of the contract to the Regional Administrator not later than 150 days after the final rule is published.

NMFS will transfer a transferable permit under circumstances other than those described above if a vessel owner surrenders two existing snapper-grouper transferable permits to the Regional Administrator in exchange for one new

permit. The entire catch histories of the vessels whose permits are exchanged for the one new permit would be transferred to the owner of the vessel receiving the new permit.

The Council intends that the two-for-one permit transfer requirement would apply until the optimum number of vessels in the fishery is reached. Amendment 8 states the Council's intent to amend the FMP to eliminate the two-for-one permit transfer requirement once data become available to determine this optimum number and that number is reached.

By application from an owner of a vessel with a trip-limited permit, the Regional Administrator may transfer the permit to a replacement vessel, provided the replacement vessel is equal to or less than the size (length and gross tonnage) of the replaced vessel. A replacement vessel could be a new vessel or a vessel replacing a lost or damaged vessel.

As is the case for all commercial vessel permits issued by the Regional Administrator, a snapper-grouper limited access permit would be valid only for the vessel and owner named on the permit. Accordingly, a person desiring a change in either the vessel or the owner of a limited access permit would have to submit an application for transfer to the Regional Administrator. NMFS would charge an administrative fee to cover the cost of processing such application for transfer.

#### *Permit Renewal*

NMFS will not reissue a limited access permit if the permit is revoked or if an application for renewal is not received by the Regional Administrator within 60 days of the permit's expiration date. The current earned income or gross sales requirement for a commercial vessel permit for snapper-grouper would not apply for issuance of a limited access permit.

#### **Use of Nets for Bait**

Amendment 8 proposes to allow the use of cast and bait nets on board permitted vessels. The possession of bait nets would be limited to one per vessel. The bait net could be up to 50 ft (15.2 m) long by 10 ft (3.1 m) high with a stretched mesh size of not more than 1.5 inches (3.8 cm). Currently, the possession of nets on board severely limits the authorized possession of snapper-grouper. This proposal would allow fishermen on permitted vessels to use nets to catch bait while fishing for South Atlantic snapper-grouper on the same trip.

#### **Snapper-grouper From Bahamian Waters**

Amendment 8 proposes to exempt snapper-grouper caught in Bahamian waters in accordance with Bahamian law from the requirement that they be maintained with head and fins intact on board a vessel in the South Atlantic EEZ. This exemption would apply provided the vessel is in transit from the Bahamas and valid Bahamian fishing and cruising permits are on board. Vessels in transit from the Bahamas would not be allowed to fish in the South Atlantic EEZ. This proposal would allow fishermen legally fishing in Bahamian waters to return to ports in the southern Atlantic states with filleted fish or fish that otherwise do not have head and fins intact.

#### **Optimum Yield, Overfished, Overfishing, and Threshold Level**

Amendment 8 proposes to define optimum yield (OY) for snapper-grouper species as the yield from a stock with a 40-percent spawning potential ratio (SPR). The present definition of OY is any harvest level for a species which maintains, or is expected to maintain, over time, a survival rate of biomass into the stock of spawning age fish that will achieve at least a level of 30-percent spawning stock biomass per recruit (SSBR) relative to the SSBR that would occur with no fishing. The proposed definition of OY is more conservative than the current OY (i.e., it would provide more biological protection to the resource). The Council is changing from SSBR to SPR as a basis for specifying OY because SPR is technically a more correct reference to the spawning population and is used in the most recent stock assessment. SPR represents the number of spawning females of a species when it is being fished divided by the number of spawning females of the species when it is not being fished (i.e., when only natural mortality occurs).

Amendment 8 would define a snapper-grouper species as being overfished when the SPR is below 20 percent. Presently, a snapper-grouper species is considered overfished when the spawning stock is below the level of 30 percent of that which would occur in the absence of fishing (i.e., when the SPR is below 30 percent). Also, Amendment 8 would define overfishing for a stock that is not overfished as a fishing mortality rate that exceeds the fishing mortality rate that would produce an SPR of 20 percent.

The proposed changes to the definitions of overfishing and overfished stocks may not be in

compliance with national standards 1 (prevent overfishing) and 2 (use the best scientific information available) of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires the specification of a time period for ending overfishing and rebuilding the fishery that is as short as possible and does not exceed ten years, unless limited exceptions apply. The Magnuson-Stevens Act defines overfishing as the rate of fishing that jeopardizes the capacity of a fishery to produce MSY on a continuing basis. Although information defining the stock size that would produce MSY for snapper-grouper species is not yet available, the best scientific information available indicates that an acceptable substitute for the MSY fishing mortality rate is a fishing mortality rate that results in an SPR of 30-40 percent. It appears that changing the definitions of overfishing and overfished stocks from 30-percent SPR to 20-percent SPR would allow a fishing mortality rate that is too high to produce MSY. Therefore, the new definitions may not prevent overfishing or enable overfished stocks to be rebuilt to target levels.

This amendment would also establish a "threshold level" criterion of 10-percent SPR that would trigger management action by the Council. If the SPR falls below the 10-percent threshold level, the Council would take appropriate action to prevent further population decline, including but not limited to, eliminating fishing mortality due to directed fishing and evaluating measures to eliminate any bycatch mortality. The NMFS proposed National Standard Guidelines for the Magnuson-Stevens Act (62 FR 41907, August 4, 1997) state that the minimum stock size threshold should be set at the greater of either one-half the MSY stock size or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock were exploited at the specified maximum fishing mortality threshold. Given that the best scientific information available indicates a target SPR for species in the snapper-grouper management unit between 30 and 40 percent, the 10-percent threshold level appears to be too low to prevent overfishing and rebuild stocks within the appropriate time frame. As a result, it may not comply with national standards 1 and 2.

According to Amendment 8, when there is insufficient information available to determine if a species is overfished, overfishing would be defined as a fishing mortality rate in excess of the fishing mortality rate corresponding to a default SPR of 30 percent. If overfishing is occurring, a program to reduce fishing mortality

rates to at least the level corresponding to management target levels would be implemented.

The time frame in the FMP for recovery of overfished stocks would remain unchanged. For shorter lived, faster growing species (e.g., snapper, excluding red snapper; greater amberjack; black sea bass; and red porgy), the time frame is not to exceed 10 years. For longer lived, slower growing species (e.g., red snapper and groupers), the time frame is not to exceed 15 years.

#### Availability of Amendment 8

Additional background and rationale for the measures discussed above are contained in Amendment 8, the availability of which was announced in the **Federal Register** (62 FR 58703, October 30, 1997). Written comments on Amendment 8 must have been received by December 29, 1997. All comments received on Amendment 8 or on this proposed rule during their respective comment periods will be addressed in the final rule.

#### Changes Proposed by NMFS

For clarity, NMFS proposes to add to § 622.39(a) a reference to the bag and other limits of South Atlantic snapper-grouper that apply to persons aboard permitted vessels that have on board longlines in the longline closed areas.

For standardization and enforceability, NMFS proposes to specify at § 622.44 that all weights applicable to commercial trip limits are round or eviscerated weights. Currently, trip limits are monitored by the landed weight, whether whole, eviscerated, or mixed. Under this procedure, a person monitoring a trip does not have to sort fish between whole and eviscerated, weigh each group, and apply conversion factors to the eviscerated fish to determine equivalent whole weights. Accordingly, this standardization of the regulatory language does not constitute a change in practices in the fisheries.

#### Classification

At this time, NMFS has not determined that Amendment 8 is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 8.

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

The Council prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small

entities. Based on the IRFA, NMFS agrees with the Council's conclusion that Amendment 8, if approved and implemented through final regulations, would have a significant economic impact on a substantial number of small entities. A summary of the IRFA's assessment of the significant impacts on small entities follows.

Amendment 8 would affect most of the roughly 2,500 commercial vessels that currently hold valid commercial snapper-grouper permits, because the vast majority of such vessels operate in the EEZ for at least part of the year. All of the vessels that would be affected by Amendment 8 are considered small business entities for the purposes of the Regulatory Flexibility Act, because their individual annual gross revenues are less than \$3 million. The vessels that would be affected by Amendment 8 generate annual gross revenues ranging from \$53,000 (vessels that use vertical fishing lines) to about \$237,000 (vessels that use longlines). The exvessel value of catches from these vessels in 1995 was approximately \$15.5 million.

The Council estimates that the limited entry action may reduce annual gross revenue of commercial fishermen by approximately \$1.0 million (6.5 percent of current revenue) during the first year under that action. This estimate may be high, because some of the 513 vessels listed as having landed snapper-grouper species that would not qualify under the limited entry program may no longer be participating in the fishery. Also, other vessels may be eligible for a trip-limited permit that would allow them to harvest fish with a 225-lb (102.1-kg) trip limit. Thus, the actual reduction in gross revenue could be less than the estimated \$1.0 million.

Allowing the use of cast and bait nets for capturing bait would reduce costs for fishermen and could enhance fishing success, because live bait is more effective than frozen bait. Also, this measure clarifies the use of gear and should enhance enforcement of gear regulations.

Allowing the transit of Bahamian caught fish through the South Atlantic EEZ would increase demand for for-hire trips to the Bahamas and, as a result, increase revenue to the for-hire fishery. Also, allowing fishermen to fillet their Bahamian catch would reduce storage costs and enhance quality of fish during transit. This should result in increased satisfaction for anglers who generally prize fresh fish for consumption.

The Council considered the status quo as an alternative to each proposed action. For the limited entry system, the Council also considered a number of alternatives that would have established

different dates and/or pounds of snapper-grouper as criteria to determine initial eligibility. One alternative for the limited entry system also contained other options regarding the composition of the Application Oversight Board, permit transfers, and permit renewals. Relative to the proposed actions, the Council concluded that all of the alternatives would result in reduced net benefits from the fishery in the long term. Some of the alternatives would minimize economic impacts on small entities in the short term, but would not achieve the Council's goal of managing species in the management unit at the optimum yield level. Thus, these alternatives would not meet the stated objectives of the FMP.

A copy of the IRFA is available for comment (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This rule contains three, new, one-time collection-of-information requirements subject to the PRA—namely, the submission of applications for limited access commercial permits for snapper-grouper, reconsideration of determinations that applicants are not eligible for initial limited access commercial permits, and submission of contracts that provide for transfers of rights to limited access commercial permits. These requirements have been submitted to OMB for approval. The public reporting burdens for these collections of information are estimated at 20, 45, and 15 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collections of information, to NMFS and OMB (see ADDRESSES).

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

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

Dated: January 5, 1998.

**Rolland A. Schmitt,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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 § 622.4, paragraph (a)(2)(vi) and the first sentence of paragraph (g) are revised to read as follows:

**§ 622.4 Permits and fees.**

(a) \* \* \*

(2) \* \* \*

(vi) *South Atlantic snapper-grouper.*

For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ north of 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), either a transferable commercial permit for South Atlantic snapper-grouper or a trip-limited commercial permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kg) of tilefish aboard is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb of tilefish aboard harvested such tilefish in the EEZ. A vessel with a trip-limited commercial permit is limited on any trip to 225 lb (102.1 kg) of snapper-grouper. (See § 622.18 for information on limited access transferable and trip-limited commercial permits for the South Atlantic snapper-grouper fishery.)

\* \* \* \* \*

(g) \* \* \* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (p) of this section for a red snapper

endorsement, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. \* \* \*

\* \* \* \* \*

3. In § 622.7, paragraph (b) is revised to read as follows:

**§ 622.7 Prohibitions.**

\* \* \* \* \*

(b) Falsify information on an application for a permit or endorsement or submitted in support of such application, as specified in § 622.4(b) or (g) or §§ 622.17 or 622.18.

\* \* \* \* \*

4. Section 622.18 is added to subpart B to read as follows:

**§ 622.18 South Atlantic snapper-grouper limited access.**

(a) *Applicability.* Effective 150 days after the date of publication of the final rule, the only valid permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria in this section. A vessel may have either a transferable commercial permit or a trip-limited commercial permit for South Atlantic snapper-grouper.

(b) *Initial eligibility.* A vessel is eligible for an initial limited access commercial permit for South Atlantic snapper-grouper if the owner had a vessel with a commercial vessel permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, and had at least one landing of snapper-grouper from the South Atlantic from permitted vessels from January 1, 1993, through August 20, 1996, as reported on fishing vessel logbooks received by the SRD on or before August 20, 1996. An owner whose permitted vessels had landings of snapper-grouper from the South Atlantic of at least 1,000 lb (453.6 kg), whole weight, from permitted vessels in any one of the years 1993, 1994, or 1995, or in 1996 through August 20, 1996, as reported on fishing vessel logbooks received by the SRD on or before August 20, 1996, is eligible for an initial transferable permit. All other qualifying owners are eligible for an initial trip-limited permit.

(c) *Determinations of eligibility—(1) Permit history.* The sole basis for determining whether a vessel had a commercial vessel permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, is NMFS' permit records. An owner of a currently permitted vessel who believes he/she meets the February 11, 1996, through February 11, 1997, permit history criterion based on ownership of a vessel under a different name, as may have

occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership. No more than one owner of a currently permitted vessel will be credited with meeting the permit history criterion based on a vessel's permit history.

(2) *Landings.* (i) Landings of snapper-grouper from the South Atlantic during the qualifying period are determined from fishing vessel logbooks received by the SRD on or before August 20, 1996. State trip ticket data may be considered in support of claimed landings provided such trip ticket data were received by the state on or before September 20, 1996.

(ii) Only landings when a vessel had a valid commercial permit for snapper-grouper and only landings that were harvested, landed, and sold in compliance with state and Federal regulations may be used to establish eligibility.

(iii) For the purpose of eligibility for a limited access commercial permit for snapper-grouper, the owner of a vessel that had a commercial snapper-grouper permit during the qualifying period retains the snapper-grouper landings record of that vessel during the time of his/her ownership unless a sale of the vessel included a written agreement that credit for such landings was transferred to the new owner. Such transfer of credit must be for the vessel's entire record of landings of snapper-grouper from the South Atlantic.

(d) *Implementation procedures—(1) Notification of status.* On or about 10 days after the date the final rule is published, the RD will notify each owner of a vessel that had a commercial permit for South Atlantic snapper-grouper at any time from February 11, 1996, through February 11, 1997, and each owner of a vessel that has a commercial permit for South Atlantic snapper-grouper on the date the final rule is published, of NMFS' initial determination of eligibility for either a transferable or trip-limited limited access commercial permit for South Atlantic snapper-grouper. Each notification will include an application for such permit. Addresses for such notifications will be based on NMFS' permit records. A vessel owner who believes he/she qualifies for a limited access commercial permit for South Atlantic snapper-grouper and who does not receive such notification must obtain an application from the RD.

(2) *Applications.* (i) An owner of a vessel who desires a limited access commercial permit for South Atlantic snapper-grouper must submit an application for such permit postmarked

or hand-delivered not later than 90 days after the date of publication of the final rule. Failure to apply in a timely manner will preclude permit issuance even when the vessel owner meets the eligibility criteria for such permit.

(ii) A vessel owner who agrees with NMFS' initial determination of eligibility, including type of permit (transferable or trip-limited), need provide no documentation of eligibility with his/her application.

(iii) A vessel owner who disagrees with the initial determination of eligibility or type of permit, must specify the type of permit applied for and provide documentation of eligibility. Documentation and other information submitted on or with an application are subject to verification by comparison with state, Federal, and other records and information.

Submission of false documentation or information may disqualify an owner from initial participation in the limited access commercial South Atlantic snapper-grouper fishery and is a violation of the regulations in this part.

(iv) If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RD will notify the vessel owner of the deficiency. If the owner fails to correct the deficiency within 20 days of the date of the RD's notification, the application will be considered abandoned.

(3) *Issuance.* (i) If a complete application is submitted in a timely manner and the eligibility requirements specified in paragraph (b) of this section are met, the RD will issue an initial commercial vessel permit, transferable or trip-limited, as appropriate, and mail it to the vessel owner not later than 140 days after the date the final rule is published.

(ii) If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RD will notify the vessel owner of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RD's notification, the application will be considered abandoned.

(iii) If the eligibility requirements specified in paragraph (b) of this section are not met, the RD will notify the vessel owner, in writing, not later than 120 days after the date of publication of the final rule of such determination and the reasons for it.

(4) *Reconsideration.* (i) A vessel owner may request reconsideration of the RD's determination regarding initial permit eligibility by submitting a written request for reconsideration to the RD. Such request must be

postmarked or hand-delivered within 20 days of the date of the RD's notification denying initial permit issuance and must provide written documentation supporting permit eligibility.

(ii) Upon receipt of a request for reconsideration, the RD will forward the initial application, the RD's response to that application, the request for reconsideration, and pertinent records to an Application Oversight Board consisting of state directors (or their designees) from each state in the Council's area of jurisdiction. Upon request, a vessel owner may make a personal appearance before the Application Oversight Board.

(iii) If reconsideration by the Application Oversight Board is requested, such request constitutes the vessel owner's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) for the RD to make available to the Application Oversight Board members such confidential catch and other records as are pertinent to the matter under reconsideration.

(iv) The Application Oversight Board may only deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly in the vessel owner's case, based solely on the available record, including documentation submitted by the owner. The Application Oversight Board may not consider whether an owner should have been eligible for a commercial vessel permit because of hardship or other factors. The Application Oversight Board members will provide their individual recommendations for each application for reconsideration to the RD.

(v) The RD will make a final decision based on the eligibility criteria specified in paragraph (b) of this section and the available record, including documentation submitted by the vessel owner, and the recommendations and comments from members of the Application Oversight Board. The RD may not consider whether a vessel owner should have been eligible for a commercial vessel permit because of hardship or other factors. The RD will notify the owner of the decision and the reason for it, in writing, within 15 days of receiving the recommendations from the Application Oversight Board members. The RD's decision will constitute the final administrative action by NMFS.

(e) *Transfers of permits.* A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel

or the owner, an application for transfer must be submitted to the RD.

(1) *Transferable permits.* (i) An owner of a vessel with a transferable permit may request that the RD transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(iii) A transferable permit may be transferred to an owner who had, as of August 20, 1996, a written contract for the purchase of a vessel that included a provision transferring to the new owner the rights to any limited access permit to which the former owner might become entitled under the provisions for initial issue of limited access permits. To be considered, any such written contract must be submitted to the RD postmarked or hand delivered on or before the date that is 150 days after the date of publication of the final rule that contains this paragraph.

(iv) Except as provided in paragraphs (e)(1)(i), (ii), and (iii) of this section, a person desiring to acquire a limited access transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(v) A transfer of a permit that is undertaken under paragraph (e)(1)(ii), (iii), or (iv) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits.* An owner of a vessel with a trip-limited permit may request that the RD transfer the permit to another vessel owned by the same entity provided the length and gross tonnage of the replacement vessel are equal to or less than the length and gross tonnage of the replaced vessel.

(f) *Renewal.* NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RD does not receive an application for renewal within 60 days of the permit's expiration date.

5. In § 622.38, paragraph (a) is revised and paragraph (h) is added to read as follows:

**§ 622.38 Landing fish intact.**

\* \* \* \* \*

(a) The following must be maintained with head and fins intact: A cobia in or from the Gulf or South Atlantic EEZ; a king mackerel or Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ; except as specified in paragraphs (e) and (h) of this section, a South Atlantic snapper-grouper in or from the South Atlantic EEZ; a

yellowtail snapper in or from the Caribbean EEZ; and, except as specified in paragraphs (c) and (d) of this section, a finfish in or from the Gulf EEZ. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

\* \* \* \* \*

(h) In the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel is in transit through the South Atlantic EEZ. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through the EEZ and it does not fish in the EEZ.

6. In § 622.39, paragraph (a)(3) is added to read as follows:

**§ 622.39 Bag and possession limits.**

(a) \* \* \*

(3) Paragraph (a)(1) of this section notwithstanding, the bag and other limits specified in § 622.35(b) apply for South Atlantic snapper-grouper in or from the EEZ to a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued that has on board a longline in the longline closed area.

\* \* \* \* \*

7. In § 622.41, paragraph (d)(2)(ii) introductory text is revised and paragraphs (d)(4) and (d)(5) are added to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Except as specified in paragraphs (d)(3) through (d)(5) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

\* \* \* \* \*

(4) *Use of bait nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ on a trip with a bait net on board, may retain otherwise legal South Atlantic snapper-grouper taken on that trip with bandit gear, buoy gear, handline, rod and reel, or sea bass pot, provided only one such net is on board. For the purpose of this paragraph (d)(4), a bait net is a gillnet not exceeding 50 ft (15.2 m) in length or 10 ft (3.1 m) in height with stretched mesh measurements of 1.5 inches (3.8 cm) or smaller that is attached to the vessel when deployed.

(5) *Use of cast nets.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the South Atlantic EEZ on a trip with a cast net on board, may retain otherwise legal South Atlantic snapper-grouper taken on that trip with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(5), a cast net is a cone-shaped net thrown by hand and designed to spread out and capture fish as the weighted circumference sinks to the bottom and comes together when pulled by a line.

\* \* \* \* \*

8. In § 622.44, the last sentence of the introductory text and paragraph (c) are revised to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights):

\* \* \* \* \*

(c) *South Atlantic snapper-grouper.* When a vessel fishes on a trip in the South Atlantic EEZ, the vessel trip limits specified in this paragraph (c) apply, provided persons aboard the vessel are not subject to the bag limits. See § 622.39(a) for applicability of the bag limits.

(1) *Trip-limited permits.* A vessel for which a trip-limited permit for South Atlantic snapper-grouper has been issued is limited to 225 lb (102.1 kg) of snapper-grouper.

(2) *Golden tilefish.* (i) Until the fishing year quota specified in § 622.42(e)(2) is reached, 5,000 lb (2,268 kg).

(ii) After the fishing year quota specified in § 622.42(e)(2) is reached, 300 lb (136 kg).

(3) *Snowy grouper.* (i) Until the fishing year quota specified in § 622.42(e)(1) is reached, 2,500 lb (1,134 kg).

(ii) After the fishing year quota specified in § 622.42(e)(1) is reached, 300 lb (136 kg).

\* \* \* \* \*

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