

Section 62.1–44.34:11 Virginia Petroleum Storage Tank Fund

Section 62.1–44.34:12 Financial responsibility

(b) The regulatory provisions include:

(1) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks—Technical Standards and Corrective Action Requirements

*Part I: Definitions, Applicability, and Interim Prohibition*

9 VAC 25–580–10 Definitions, except “Underground storage tank” includes heating oil tanks of greater than 5,000 gallon capacity and “Regulated substance”

9 VAC 25–580–20 Applicability

9 VAC 25–580–30 Interim prohibition for deferred UST systems

9 VAC 25–580–40 Permitting and inspection requirements for all UST systems

*Part II: UST Systems: Design, Construction, Installation, and Notification*

9 VAC 25–580–50 Performance standards for new UST systems

9 VAC 25–580–60 Upgrading of existing UST systems

9 VAC 25–580–70 Notification requirements

9 VAC 25–580–80 Spill and overflow control

9 VAC 25–580–90 Operation and maintenance of corrosion protection

9 VAC 25–580–100 Compatibility

9 VAC 25–580–110 Repairs allowed

*Part III: General Operating Requirements*

9 VAC 25–580–120 Reporting and recordkeeping

*Part IV: Release Detection*

9 VAC 25–580–130 General requirements for all petroleum and hazardous substance UST systems, except heating oil tanks of greater than 5,000 gallon capacity

9 VAC 25–580–140 Requirements for petroleum UST systems

9 VAC 25–580–150 Requirements for hazardous substance UST systems

9 VAC 25–580–160 Methods of release detection for tanks

9 VAC 25–580–170 Methods of release detection for piping

9 VAC 25–580–180 Release detection recordkeeping

*Part V: Release Reporting, Investigation, and Confirmation*

9 VAC 25–580–190 Reporting of suspected releases

9 VAC 25–580–200 Investigation due to off-site impacts

9 VAC 25–580–210 Release investigation and confirmation steps

9 VAC 25–580–220 Reporting and cleanup of spills and overfills

*Part VI: Release Response and Corrective Action for UST Systems Containing Petroleum for Hazardous Substances*

9 VAC 25–580–230 General

9 VAC 25–580–240 Initial response

9 VAC 25–580–250 Initial abatement measures and site check

9 VAC 25–580–260 Site characterization

9 VAC 25–580–270 Free product removal

9 VAC 25–580–280 Corrective action plan

9 VAC 25–580–300 Public participation

9 VAC 25–580–310 Temporary closure

*Part VII: Out-of-Service UST Systems and Closure*

9 VAC 25–580–320 Permanent closure and changes-in-service

9 VAC 25–580–330 Assessing the site at closure or change-in-service

9 VAC 25–580–340 Applicability to previously closed UST systems

9 VAC 25–580–350 Closure records

*Part VIII: Delegation*

9 VAC 25–580–360 Delegation of authority Appendix I: Virginia Underground Storage Tank Notification Forms

Appendix II: Statement for Shipping tickets and Invoices

(2) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 590: Petroleum Underground Storage Tank Financial Responsibility Requirements

9 VAC 25–590–10 Definitions

9 VAC 25–590–20 Applicability

9 VAC 25–590–30 Compliance dates

9 VAC 25–590–40 Amount and scope of financial responsibility requirement

9 VAC 25–590–50 Allowable mechanisms and combinations of mechanisms

9 VAC 25–590–60 Financial test of self-insurance

9 VAC 25–590–70 Guarantee

9 VAC 25–590–80 Insurance and group self-insurance pool coverage

9 VAC 25–590–90 Surety bond

9 VAC 25–590–100 Letter of credit

9 VAC 25–590–110 Trust fund

9 VAC 25–590–120 Standby trust fund

9 VAC 25–590–130 Substitution of financial assurance mechanisms by owner and operator

9 VAC 25–590–140 Cancellation or nonrenewal by a provider of financial assurance

9 VAC 25–590–150 Reporting by owner or operator

9 VAC 25–590–160 Recordkeeping

9 VAC 25–590–170 Drawing on financial assurance mechanism

9 VAC 25–590–180 Release from the requirements

9 VAC 25–590–190 Bankruptcy or other incapacity of owner, operator or provider of financial assurance

9 VAC 25–590–200 Replenishment of guarantees, letters of credit or surety bonds

9 VAC 25–590–210 Virginia Petroleum Storage Tank Fund

9 VAC 25–590–220 Notices to the State Water Control Board

9 VAC 25–590–230 Delegation of authority

9 VAC 25–590–240 Lender liability

9 VAC 25–590–250 Local government financial responsibility demonstration

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Appendix I: Letter from Chief Financial Officer

Appendix II: Guarantee

Appendix III: Endorsement

Appendix IV: Certificate of Insurance

Appendix V: Performance Bond

Appendix VI: Irrevocable Standby Letter of Credit

Appendix VII: Trust Agreement

Appendix VIII: Certification of Acknowledgment

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Appendix X: Certification of Valid Claim

Appendix XI: Letter from Chief Financial Officer (short form)

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 040205043–4168–02; I.D. 122303G]

RIN 0648–AP95

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Rebuilding Plan**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Secretarial Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Secretarial Amendment 1). Secretarial Amendment 1 was prepared by the Secretary of Commerce and the Gulf of Mexico Fishery Management Council (Council) pursuant to the rebuilding requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule establishes a quota for red grouper, provides for closure of the entire shallow-water grouper fishery when either the shallow-water grouper quota or the red grouper quota is reached, establishes a bag limit of two red grouper per person per day, reduces the shallow-water grouper quota, reduces the deep-water grouper quota, and establishes a quota for tilefishes. In addition, for red grouper in the Gulf of Mexico, Secretarial Amendment 1 establishes a 10-year stock rebuilding plan, biological reference points, and stock status determination criteria consistent with the requirements of the Magnuson-Stevens Act. This final rule is designed to end overfishing and rebuild the red grouper resource.

**DATES:** This final rule is effective July 15, 2004.

**ADDRESSES:** Copies of the regulatory impact review (RIR) and the final regulatory flexibility act analysis (FRFA) are available from NMFS, Southeast Regional Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: [Phil.Steele@noaa.gov](mailto:Phil.Steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Council. The FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On January 8, 2004 (69 FR 1278), NMFS published a notice announcing the availability of Secretarial Amendment 1 and requested comments on its contents. On February 20, 2004 (69 FR 7898), NMFS published a proposed rule to implement Secretarial Amendment 1 and requested comments through April 20, 2004 (69 FR 7898, February 20, 2004). NMFS adopted Secretarial Amendment 1 on May 28, 2004. The rationale for the measures in Secretarial Amendment 1 is provided in the amendment and in the preamble to the February 20, 2004 (69 FR 7898), proposed rule and is not repeated here.

### Comments and Responses

NMFS received 17 comments on Secretarial Amendment 1 and three comments on the proposed rule in addition to a petition signed by 66 commercial fishermen on the proposed rule. Additionally, two Council members submitted a minority report objecting to various aspects of Secretarial Amendment 1. A summary of those comments and NMFS' responses to those comments follows.

*Comment 1:* Several comments were received that objected to the establishment of a 2-fish red grouper recreational bag limit (within the aggregate 5-fish grouper bag limit).

*Response:* Setting a 2-fish red grouper recreational bag limit (out of the aggregate 5-fish grouper bag limit) is projected to reduce the harvest in the recreational sector by 9 percent and is necessary to accomplish rebuilding goals without reallocating harvest. Although this reduction is slightly less than the 9.4-percent reduction sought by NMFS, the percent difference is not significant since the recreational sector only accounted for 19 percent of the total red grouper harvest during 1999-

2001. Further, according to a NMFS bag limit analysis conducted in 2001 on angler trips where red grouper were caught, the average number of red grouper taken per angler trip was only 1.2 fish, and only 6 percent of the angler trips caught more than two red grouper. The effect of the bag limit on this 6 percent of angler trips will achieve the above-mentioned 9 percent harvest reduction. However, overall, a reduction in the recreational bag limit will have little impact on most recreational fishermen. A bag limit reduction also eliminates the necessity for a closed season, which would result in more negative impacts on the for-hire sector, because trip cancellations are more likely to occur under a closed season than under a reduced bag limit.

*Comment 2:* Several comments recommended a prohibition on longlines as allowable gear in the commercial grouper fishery or movement of the longline gear boundary to the 50-fathom (91.4-m) depth contour.

*Response:* A prohibition on the use of longlines as allowable gear, and the subsequent reduction in red grouper landings of approximately 60 percent attributed to that sector, is unnecessary to rebuild the stock within 10 years. Further, a prohibition on longlines as allowable gear would disproportionately affect one sector of the commercial grouper fishery, i.e., longline fishermen, by allowing the vertical line and trap sectors of the fishery to harvest a greater proportion of the resource. Such action would have dire economic consequences for the longline sector and result in severe economic disruption on those coastal fishing communities dependent on this segment of the commercial fishery. Additionally, such action could result in the loss of some onshore processing infrastructure which could have negative economic impacts on other sectors of the commercial grouper fishery that require these processing facilities. Movement of the commercial longline gear boundary to the 50-fathom (91.4-m) depth contour, even with an estimated 60-80 percent shift in effort by longline fishermen to vertical line gear, would reduce the harvest of red grouper by approximately 38-43 percent. Because only a 9.4-percent reduction is necessary, these actions would be unnecessarily restrictive for rebuilding the red grouper stock and could lead to greater short-term socioeconomic loss from forgone yield.

*Comment 3:* One comment recommended reducing the commercial quota for shallow-water grouper by 50 percent.

*Response:* The measures implemented by this rule reduce the shallow-water grouper commercial quota to account for the required 9.4-percent reduction in the red grouper component of the quota which is necessary to end overfishing and rebuild the red grouper stock. Reducing the shallow-water grouper quota by 50 percent would be unnecessarily restrictive for rebuilding the red grouper stock and would lead to greater short-term socioeconomic loss from forgone yield.

*Comment 4:* One comment was received from the Council that recommended establishing a single commercial trip limit of 4,000 lb (1,814 kg) for shallow-water grouper if 75 percent of the shallow-water grouper quota is reached by September 30, and a petition submitted by commercial fishermen recommended a 5,500-lb (2,495-kg) trip limit year-round for the commercial grouper fishery.

*Response:* In an earlier draft of Secretarial Amendment 1, trip limits were proposed to help achieve the required 9.4-percent reduction in red grouper landings and to slow the commercial harvest, thereby providing for an extended open season. Landings data for the commercial shallow-water grouper fishery indicated that the shallow-water grouper quota was exceeded in 2000 and 2001. Thus, trip limits were proposed as a management measure to help achieve the required reduction in fishing mortality and control fishing effort to allow for an extended season. The Southeast Fisheries Science Center (SEFSC) recently recalculated the shallow-water grouper landings using an updated conversion factor which showed that the shallow-water grouper quota had only been exceeded by 6,500 lb (2,948 kg) in 2001. Therefore, alternatives for year-round trip limits were determined by NMFS to be unnecessary at this time to ensure an expanded season. Additionally, establishment of a trip limit may encourage effort shifting from one sector of the fishery to another sector with a higher trip limit, i.e., vertical line to longline, with a subsequent increase in fishing mortality.

NMFS conducted an economic analysis for a single commercial trip limit of 4,000 lb (1,814 kg) for shallow-water grouper if 75 percent of the shallow-water grouper quota is reached by September 30. The agency concluded that such action will not prevent a quota closure since the red grouper quota under this scenario, based on 1999 through 2001 landings data, is projected to be reached by late November or early December, which is similar to the

projected closure date under the proposed commercial quotas.

Anecdotal information received from several fishing organizations indicates that an unknown number of large highly migratory species longline vessels have entered the shallow-water grouper fleet in 2004. Effort by these larger vessels, which are capable of deploying longline gear of lengths substantially greater than gear used in the existing fleet, could increase fishing mortality rates on both the red grouper and shallow-water grouper stocks, thus potentially reducing the fishing season. NMFS will monitor landings through the existing shallow-water grouper quota monitoring program. If landings of either red grouper or other shallow-water grouper species have increased beyond projections for the 2004 fishing year, the Council or NMFS may elect to implement trip limits as an additional management measure.

*Comment 5:* One non-governmental organization (NGO) stated that the recommended reduction in fishing mortality is not sufficient to address overfishing and rebuild the red grouper stock.

*Response:* Secretarial Amendment 1 is based on the best available scientific information and accordingly will establish a 10-year red grouper rebuilding plan, structured in 3-year intervals, that would end overfishing and rebuild the stock to maximum sustainable yield (MSY). The rebuilding plan seeks to achieve a 9.4-percent reduction in the recreational and commercial harvest of red grouper, relative to the average landings for 1999–2001, during the first 3 years of the 10-year rebuilding plan. The appropriate measures for the subsequent 3-year intervals, consistent with the overall provisions of the rebuilding plan, would be determined based on the latest stock assessments available at that time. Secretarial Amendment 1 also includes measures designed to protect other shallow-water grouper, deep-water grouper, and tilefishes from any potential shift in fishing mortality that might result from implementation of the red grouper rebuilding plan.

*Comment 6:* One comment from an NGO stated that the use of the 1999–2001 time frame for establishing commercial quota baselines, and the de facto allocation for the recreational fishery, is both scientifically risky and inherently unfair to the recreational sector. Additionally, a minority report submitted by two Council members stated that the 6.56 million-lb (2.95 million-kg) allowable biological catch (ABC) for red grouper is too high.

*Response:* The Council decided to base its harvest reduction strategy on the baseline years 1999–2001 rather than 1990–2000 because the fishery is currently influenced by the strong 1996 red grouper year-class, and will likely continue to be influenced by it for the next 3 years of the rebuilding plan. A new stock assessment will be prepared and a new ABC selected for the second and subsequent 3-year intervals.

The commercial-to-recreational ratio of red grouper caught during 1990–2000 was 76:24, little changed from the 1986–1989 pre-regulatory ratio of 75:25. However, in recent years (1999–2001) the commercial-to-recreational ratio has shifted to 81:19. There are two likely reasons for this shift. First, in 2000, differential gag minimum size limits were implemented (24 inches (61 cm) commercial, 22 inches (56 cm) recreational), which allowed the recreational sector to focus more on gag. In fact, the recreational proportion of gag harvest increased in 1999–2001 compared to 1990–2000. Second, the strong 1996 year-class of red grouper entered the fishery around 1999. Since commercial sector catches predominately were red grouper while the recreational sector catches predominately were gag, this year-class provides more of a boost to commercial harvest than to recreational harvest. Single-species grouper allocations are not specified in Reef Fish Amendment 1, and the current amendment does not attempt to address the question of single-species grouper allocations. Instead, the current amendment achieves the needed reductions in red grouper harvest by applying the same percentage reductions to each sector, thus effectively maintaining allocations at current levels.

The RFSAP strongly recommended a constant  $F_{MSY}$  fishing mortality rate for red grouper with an ABC range of 6.59 to 7.63 million lb (2.99 to 3.46 million kg, respectively) in 2004. Further, the RFSAP also recommended that if the Council decided to take a more conservative approach and began to manage red grouper towards  $B_{OY}$ , a constant  $F_{OY}$  yield of 6.14 to 6.59 million lb (2.79 to 2.99 million kg) is recommended for 2004. The recommended ABC of 6.56 million lb (2.98 million kg) for the first 3-year interval of the rebuilding plan is mid-range of these high and low end values recommended by the RFSAP. This allows the stock to be adjusted in 3-year increments, rather than every year. This strategy allows harvest to increase in a stepwise fashion as the stock recovers.

## Classification

The Administrator, Southeast Region, NMFS, determined that Secretarial Amendment 1 is necessary for the conservation and management of the Gulf reef fish fishery and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA that describes the economic impact this rule is expected to have on small entities. A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rulemaking. This rule will: establish red grouper biological reference points and stock status criteria; adopt a 10-year red grouper rebuilding plan based on a 3-year interval rebuilding strategy that will include a 9.4-percent reduction in total red grouper harvests for the first 3-year interval; adjust the shallow-water grouper quota by an amount equal to the reduction in the red grouper quota; set the recreational bag limit at two red grouper out of the five aggregate grouper bag limit per person; close the commercial shallow-water grouper fishery when the commercial red grouper quota or the shallow-water grouper quota is reached, whichever comes first; reduce the deep-water grouper quota; and establish a tilefish quota.

The primary objective of this rule is to optimize the net benefits to the Nation of the shallow-water grouper stocks by rebuilding the red grouper component to a stock level capable of supporting optimum yield.

No comments were received regarding the economic impact of this rule. Therefore, no changes were made in the final rule as a result of such comments.

This rule contains no changes in recordkeeping or compliance requirements.

This rule will impact both the commercial and recreational participants that traditionally harvest shallow-water grouper species and dealers who receive these species from commercial harvesters.

There are currently approximately 1,204 active commercial reef fish permits and an unknown number of other permits in the process of being renewed. Examination of 2000 logbook data showed that of vessels with commercial reef fish permits, 782 vessels in Florida and 207 in other Gulf states landed reef fish with vertical line gear in 2000. An additional 155 vessels in Florida and 33 in other Gulf states

were identified as having landed reef fish using longline gear in 2000. Furthermore, 55 vessels, all in Florida, reported landing reef fish using fish traps. For all vessels landing reef fish, a total of 546 vessels participate in the shallow-water grouper fishery on a consistent basis. Of these vessels, 138 used longline gear, 353 used vertical line gear, and 55 used fish traps. Within the commercial red grouper fishery, longline gear accounted for 59 percent of landings, handline gear accounted for 24 percent, and fish traps accounted for 16 percent. The corresponding landings percentages for the commercial gag fishery are: 25 percent for longline gear, 73 percent for handline gear, and 2 percent for fish traps. Other gear types account for a minuscule portion of the commercial landings of these species. Red grouper and gag are the two most significant species in the shallow-water grouper fishery. The measures in this rule will directly or indirectly affect all of these vessels.

Although this rule will directly or indirectly affect all commercial vessels that participate in the grouper fishery, this rule will affect vessels that operate in the eastern Gulf (Florida) more significantly because the bulk of the grouper fishery is in this area. Among the Florida vessels, the longline vessels will bear most of the cost of the measures, particularly with respect to red grouper. High-volume vertical line and fish trap vessels will also bear a disproportionate share of the burden. Estimates of gross annual receipts per vessel for vessels in the reef fish fishery are as follows: \$67,979 for high-volume vessels using vertical line gear in the eastern Gulf; \$24,588 for low-volume vessels using vertical line gear in the eastern Gulf; \$116,989 for high-volume vessels using bottom longline gear Gulf-wide; \$87,635 for low-volume vessels using bottom longline gear Gulf-wide; \$93,426 for high-volume vessels using fish traps (Florida only); and \$86,039 for low-volume vessels using fish traps (Florida only). Estimates of net annual income per vessel (defined as gross receipts less routine trip costs) for vessels in the reef fish fishery are as follows: \$23,822 for high-volume vessels using vertical line gear in the eastern Gulf; \$4,479 for low-volume vessels using vertical line gear in the eastern Gulf; \$25,452 for high-volume vessels using bottom longline gear Gulf-wide; \$14,978 for low-volume vessels using bottom longline gear Gulf-wide; \$19,409 for high-volume vessels using fish traps (Florida only); and \$21,025 for low-volume vessels using fish traps (Florida only).

This rule will also affect fish dealers that receive groupers by way of purchase, barter, or trade. About 431 dealers located in the five Gulf states receive groupers. Of this total, approximately 87 dealers located in Florida will be most directly affected by this final rule. Of these 87 dealers, approximately 54 dealers generally receive less than 10,000 lb (4,536 kg) of grouper per year while 11 dealers generally receive more than 80,000 lb (36,287 kg) of grouper per year. Among the longline vessels operating in the fishery, more vessels reported sales to dealers in Madiera Beach (54 vessels) and St. Petersburg (34 vessels) than any other locations. Information on the average number of employees per reef fish dealer is not known. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast has been estimated at approximately 700 individuals, both part- and full-time. It is assumed that all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive exercise than dealing, therefore requiring greater employment. Therefore, it is assumed that total dealer employment is less than 700 individuals.

The measures in the rule that apply to the recreational sector will also affect all for-hire vessels that operate in the reef fish fishery. As of July 2003, a total of 1,377 reef fish permits had been issued to the recreational for-hire sector, which includes both charter boats and headboats. Similar to the situation with the commercial sector, most of the effects will be borne by those for-hire vessels that operate in Florida. This number, however, cannot be determined with certainty since the for-hire permit registration address does not necessarily indicate the area of operation. Further, identifying the number of vessels dependent upon shallow-water grouper species is not possible given available data. Based on fees, number of passengers, and number of trips, average annual receipts are estimated at \$68,000 for charter vessels and \$324,000 for headboats. Major activity centers for charter boats in Florida are Naples, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, Pensacola, and the Florida Keys. The major activity centers for headboats are Clearwater, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, and the Florida Keys. Florida Keys vessels, however, depend more on king mackerel, billfish, and dolphin than grouper species. Additional impacts from the measures

contained in this rule will be borne by the extended communities at the activity centers and the businesses therein. However, these entities cannot be quantified due to lack of sufficient data.

The Small Business Administration (SBA) considers a commercial fishing business to be a small business entity if the business is independently owned and operated, is not dominant in its field of operation, and has receipts of up to \$3.5 million annually. The benchmark for a small business in the for-hire fishery is a firm with receipts of up to \$6 million per year. The SBA benchmark for a fish dealer or processing facility is a business with fewer than 500 employees. Given the revenue and employment information provided above, all the business entities potentially affected by the rule are considered small entities.

The biological reference points and stock status criteria specified by Secretarial Amendment 1 will not directly affect fishery behavior and, thus, are not expected to produce any direct economic impacts. The quota reductions and associated quota closure for the commercial shallow-water grouper fishery are expected to take effect by mid-November of the first year of implementation. The quota closure is expected to reduce annual net revenues by 11 percent for longline vessels, 4 percent for vertical line vessels, and 5 percent for fish trap vessels. If vessels can successfully increase their landings and revenues more than their costs by increasing their number of trips, net income losses due to the quota closure provision can be partially offset. However, this would cause the quota to be reached faster every year, inducing a derby that may eventually result in decreases in ex-vessel prices and further erode vessel profits. The quotas for tilefish and deep-water groupers match the historical commercial harvests for these species so these particular measures are not expected to reduce the profits of commercial vessels.

The red grouper recreational bag limit is not expected to substantially affect the revenues of for-hire vessels, although trip cancellations by recreational anglers may occur as a result of the change. However, only 5 percent of charter vessels operating off the Florida Gulf coast have reported targeting one species, while 36 percent reported targeting three or fewer species, and 90 percent reported targeting eight or fewer species. About 29 percent of charter vessels have reported not targeting specific species. None of the headboats in the Florida Gulf target only one species, 60 percent

target four or less species, and 41 percent do not target specific species. Since the bag limit change is specific to red groupers, other species may still be targeted or caught. Thus, trip cancellations as a result of the red grouper bag limit reduction are expected to be relatively few. Fishing trip costs of for-hire vessels are also not likely to increase, since these vessels are expected to continue to fish in the same areas they traditionally fish. Total effects of the rule on the net revenue or profit of the for-hire vessels in Florida, however, cannot be determined with certainty because firm-specific data are not available for the for-hire fleet.

The profit profile for dealers is not known due to the absence of applicable data. The projected reduction in ex-vessel sales (\$2.248 million) as a result of the rule equals approximately 11.5 percent of total shallow-water grouper revenues. It is unlikely, however, that any dealer with substantial business operations would be wholly dependent upon harvests of shallow-water grouper. Thus, dealer business failure as a result of quota reductions is not expected to be substantial.

Three alternatives, including the no action alternative, were considered relative to the specification of red grouper MSY. The rule will establish red grouper MSY as a range whereas each of the two additional action alternatives specify the reference points alternately as the lower and upper bounds of the proposed range. Since specification of the maximum sustainable yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. The specification of a range contained in the rule was selected as best accounting for the uncertainty associated with the spawner-recruit relationship for this species.

Three alternatives, including the no action alternative, were considered relative to the specification of red grouper minimum stock size threshold. Since specification of the minimum stock size threshold is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the minimum stock size threshold than the rule, while another would establish a less conservative threshold. The specification contained in the rule was selected because it follows the recommendations of NMFS's Technical Guidance on the Use of Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act

(NOAA Technical Memorandum NMFS-F/SPO-##) (NMFS Technical Guidance).

Four alternatives, including the status quo alternative, were considered relative to the specification of red grouper maximum fishing mortality rate. One alternative would establish a more conservative specification of the maximum fishing mortality rate, while the other three alternatives would establish a less conservative threshold. The specification contained in the rule was selected because it follows the recommendations of the NMFS Technical Guidance.

Three alternatives, including the no action alternative, were considered relative to the specification of red grouper optimum yield. Since specification of the optimum yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the threshold, while another would establish a less conservative threshold. The specification contained in the rule was selected because it follows the recommendations of the NMFS Technical Guidance.

Five alternatives, including the no action alternative, were considered relative to the red grouper rebuilding plan specified by the rule. Since specification of a rebuilding plan is a required component of a fishery management plan for a resource that has been identified as overfished, the no-action alternative is not a viable alternative. Three alternatives would establish the same recovery period, 10 years, but specify different annual allowable biological catches. One of these alternatives would allow a higher initial catch than the rule, thereby inducing lower short-term adverse impacts than the rule. This alternative would not, however, require mandatory evaluations of the allowable biological catch every 3 years, as the rule will, and may not allow harvests to increase during the recovery period, as the rule will. Thus, this alternative may result in increased costs relative to the rule. The two alternatives that would establish lower catches than the rule would result in increased adverse impacts relative to the rule. An additional alternative would establish a shorter recovery period than the rule, requiring lower harvest levels, thereby accelerating the recovery schedule but with greater short-term adverse economic impacts. The recovery plan specified by the rule, therefore, best accomplishes NMFS' objectives while minimizing adverse economic impacts.

Three alternatives, including the no action alternative, were considered relative to the reduction in the shallow-water grouper quota by an amount equal to the reduction in the red grouper total allowable catch. Two alternatives would reduce the shallow-water grouper quota by amounts greater than the rule and would not, therefore, decrease the adverse impacts of the rule. The no action alternative could lead to greater mortality of red grouper as a result of catch and release mortality, therefore jeopardizing the recovery of the species.

Five alternatives were considered relative to commercial quota closure. The no-action alternative would close the commercial fishery for shallow-water grouper when the aggregate quota is reached. This would result in less adverse economic impacts than the closure specified by the rule but would result in excessive red grouper mortality if the red grouper quota is reached before the shallow-water grouper quota is met. One alternative would close the commercial red grouper fishery when this quota is reached, but allow the fishery for other shallow-water grouper species to continue until the aggregate quota is reached. While this alternative would result in less short-term adverse economic impacts than the rule, red grouper would continue to be caught as a bycatch species, thereby resulting in total red grouper mortality exceeding the quota. In addition to closing the commercial red grouper fishery, another alternative would close fishing for all shallow-water grouper species in certain areas of the Gulf when the red grouper quota is met. Multiple area closure options were considered, up to and including closure of the entire Gulf, which would match the provisions of the rule. For those options that are not Gulf-wide, the resultant short-term adverse impacts would be less than those of the rule. These options would potentially allow, however, excessive mortality of red grouper since red grouper would continue to be caught as bycatch. The final alternative would allow continued red grouper harvest if the red grouper allocation has not been met when the shallow-water grouper aggregate quota has been achieved. This alternative, however, would result in the shallow-water grouper aggregate quota being exceeded. Since these other alternatives would result in either excessive red grouper or excessive total shallow-water grouper mortality, only the closure specification contained in the rule is consistent with the NMFS' objectives.

Four alternatives were considered relative to fixed shallow-water grouper closed seasons. The fixed closure

specified by the rule is the status quo February 15 through March 15 closed season on red grouper, gag, and black grouper. One alternative would replace this closure with a March 1 through May 31 closure, and would apply the closure to either the same three species or all shallow-water grouper species. This alternative, regardless of the species options, would be more stringent than necessary to reduce red grouper harvests and protect gag spawning aggregations and would result in greater economic losses than the proposed alternative. A second alternative incorporates the same species options as the first rejected alternative, but does not identify a specific closure period. Depending upon the period chosen, the resultant impacts could be less than or greater than those of the rule. However, the rule was selected since the period encompassed best meets the dual purpose of reducing red grouper harvest and protecting gag spawning aggregations. A final alternative would eliminate the fixed closure. While this alternative would also eliminate the short-term adverse impacts of the rule, the desired reduction in red grouper harvests and protection of gag would not be accomplished.

Five alternatives were considered for commercial grouper trip limits. The rule will continue the status quo of no commercial grouper trip limits. The remaining alternatives would either impose trip limits that applied throughout the year, or would be triggered upon shallow-water grouper harvests reaching 75 percent of the aggregate quota. Each of these alternatives would result in greater adverse economic impacts than the rule and are, therefore, not consistent with NMFS' intent.

Approaches for constraining the recreational grouper harvest to its allocation included closures, bag limits, and minimum size limits. In addition to the specifications contained in the rule, which will maintain the status quo of no fixed closed season for the recreational grouper fishery, four alternatives were considered relative to recreational closures. In addition to options for applying the closure to selected species in the shallow-water grouper complex or the entire complex, each of these alternatives specified fixed closed seasons. One alternative additionally limited the closure to a specific region of the Gulf as opposed to the entire Gulf. Allowing the recreational fishery to remain open year-round, as will be accomplished by the rule in combination with appropriate bag and size limits, was determined to produce

the least adverse economic impacts on the fishery. Thus, the rule was determined to best achieve NMFS' objectives.

Four alternatives were considered for the recreational grouper bag limit. While this rule will establish a limit of two red grouper out of the aggregate five-fish shallow-water grouper bag limit, one alternative would establish a similar limit on gag in addition to the red grouper limit. This alternative would, thus, be more restrictive than the rule and increase adverse impacts. Additionally, this alternative would exceed the protection currently believed necessary for gag. Another alternative would not change the red grouper limit but would instead reduce the total aggregate bag limit. Available options, however, would result in either or both reductions in red grouper harvests that are greater than necessary or reductions in the harvest of other grouper species that are not currently justified. Thus, this alternative would increase the negative impacts on the fishery. The final alternative, the status quo, would not achieve the required red grouper harvest reductions. The rule, therefore, best achieves the necessary harvest reductions at the least adverse impact.

Four alternatives were considered to each of the minimum size specifications of the rule to retain the commercial and recreational red grouper minimum size limits at their current specification of 20 inches (50.8 cm) total length. The larger minimum size limits, however, lead to harvest reductions that exceed the required reductions, generate increased discard mortality, and increase expected losses relative to the rule. Thus, the rule best achieves NMFS' objectives at the least adverse impact.

The rule specifies that the fishing year remains the status quo, which provides that the fishing year for all reef fish begins January 1 each year. Alternatives to the status quo provide for a fishing year to start after a fixed commercial season for any reef fish or for the grouper fishery only. These alternatives are not expected to have immediate impacts on fishing participants. Maintaining the status quo, however, as specified by the rule, provides stability and helps eliminate future uncertainty associated with changes in the start of the open season for various species within the grouper fishery in particular and reef fish fishery in general.

The rule establishes a quota for tilefish and reduces the deep-water grouper quota from its current level, which has never been met, to the average annual harvest from 1996–2000, with the intent to minimize the potential adverse impacts of

participants in the shallow-water grouper fishery shifting effort to the deep-water species. In addition to options encompassing different quota levels and the status quo alternative, significant alternatives to the rule came in two forms. One form set different quota levels for deep-water groupers and tilefish independently, while the other form combined deep-water groupers and tilefish and provided for different quota levels for the aggregate. The alternative independent quotas for each group fall between the extremes of the alternative options and, thus, would be expected to result in less adverse impacts than the lower options, and more adverse impacts than the higher options. However, the quotas specified by the rule are equal to the average commercial harvest for these species, so adverse impacts on fishing participants are expected to be minimal.

Copies of the RIR and FRFA are available upon request (see **ADDRESSES**).

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

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

Dated: June 8, 2004.

**William T. Hogarth,**

*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)(ii) is revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Groupers, combined, excluding jewfish and Nassau grouper--5 per person per day, but not to exceed 2 red grouper per person per day or 1 speckled hind or 1 Warsaw grouper per vessel per day.

\* \* \* \* \*

■ 3. In § 622.42, paragraphs (a)(1)(ii) and (iii) are revised and paragraph (a)(1)(iv) is added to read as follows:

#### **§ 622.42 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper,

warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined--1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined -8.80 million lb (3.99 million kg), gutted weight, that is, eviscerated but otherwise whole. Within the shallow-water grouper quota there is a separate quota for red grouper--5.31 million lb (2.41 million kg), gutted weight. When either the shallow-water grouper quota or the red grouper quota is reached, the entire shallow-water grouper fishery will be closed and the closure provisions of § 622.43(a) introductory text and § 622.43(a)(1)(i) apply to the entire shallow-water grouper fishery.

(iv) Tilefishes (i.e., tilefish and goldface, blackline, anchor, and blueline tilefish) combined--0.44 million lb (0.20 million kg), gutted weight, that is, eviscerated but otherwise whole.

\* \* \* \* \*

[FR Doc. 04-13473 Filed 6-14-04; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 040430138-4173-02; I.D. 042204C]

RIN 0648-AS28

#### Atlantic Highly Migratory Species (HMS) Fisheries; Adjustment of the Semiannual Quotas for Large Coastal Sharks (LCS) in the North Atlantic Region; Shark Fishing Season

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the North Atlantic region seasonal quota split from an equal percentage to a 20- to 80- percentage split between the first and second 2004 semiannual seasons, respectively. This action also notifies eligible participants of the opening and closing dates for the commercial Atlantic LCS fishery for the 2004 second semiannual fishing season in the North Atlantic region.

**DATES:** This rule is effective on July 9, 2004. The fishery opening for LCS in the North Atlantic region is effective 12:01 a.m., local time, July 1, 2004, through 11:30 p.m., local time, July 15, 2004, and the closure is effective 11:30 p.m., local time, July 15, 2004, through 11:59 p.m., local time December 31, 2004.

**ADDRESSES:** For copies of Amendment 1 to the Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations, please write to Highly Migratory Species (HMS) Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or visit the webpage <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:** Chris Rilling, Karyl Brewster-Geisz, or Heather Stirratt, phone 301-713-2347 or fax 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and Amendment 1 to the HMS FMP, finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS issued a final rule (68 FR 74746) that established the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw). The final rule also established regional LCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split between the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. As was done since 1993, the quotas for each region were further split evenly between the 2004 first and second semiannual fishing seasons.

On May 13, 2004, NMFS published a proposed rule to adjust the seasonal quota split for the North Atlantic region (69 FR 26540). The comment period on that proposed rule closed on May 28, 2004. As described in the proposed rule, landings data from 2000-2002 indicated that the majority of LCS in the North Atlantic region were landed in the second semiannual season. Historically, first season landings, including state landings after a Federal closure, have ranged from 6 to 38 percent, with an average of approximately 20 percent of

the annual regional quota for the North Atlantic being landed during the first season. Second season landings, including state landings after a Federal closure, have ranged from 62 to 94 percent, with an average of approximately 80 percent of the annual regional quota for the North Atlantic being landed during the second season. In addition, as of April 23, 2004, there were no reported landings of LCS for the North Atlantic region during the first semiannual season, indicating that the current 50-percent split between the two semiannual seasons does not reflect the historic or current landings for the North Atlantic region.

Thus, this final rule adjusts the seasonal quota split from an even split (50/50) to a 20/80 split resulting in 8.1 mt dw (17,857.3 lb dw) for the first semiannual season and 32.6 mt dw (71,870.0 lb dw) for the second semiannual season, not adjusted for any over- or underharvest. This action will not affect the overall LCS landings quota for the fishery or the region (40.7 mt dw or 89,727.2 lb dw for the North Atlantic), but will adjust the North Atlantic 2004 semiannual season quotas to result in a longer second season that more accurately reflects historical and current landings in the region. Available information regarding any over- or underharvest from both seasons will be considered before establishing the trimester season that begins in 2005.

There have been no changes from the proposed to the final rule.

Since neither the annual quotas, nor the overall regional quotas will be changed, NMFS does not expect this action to result in any negative economic consequences. This action will likely have a positive economic impact by allowing fishermen to harvest an amount closer to the actual historic landings for the region. Without making this adjustment, the length of the second semiannual season would have to be shortened when the lower existing quota was reached, thus preventing fishermen from landing as many sharks as they have historically. The shortened season would also make effective management and reporting of the data in a timely manner impracticable. Dealer reports of shark landings are received on a bi-weekly basis, and under the lower existing quota the season would have to be closed in a matter of days rather than weeks, thus not allowing sufficient time to review landings reports.

On June 1, 2004, NMFS published a notice in the **Federal Register** (68 FR 30837) announcing the opening and closing dates for the commercial Atlantic large coastal, small coastal, and pelagic shark fisheries for the 2004