

**DATES:** The rules published at 72 FR 43546, August 6, 2007, are effective March 20, 2008. 47 CFR 6.11(a), 6.11(b), 6.18(b), 6.19, 64.604(a)(5), 64.604(c)(1)(i), 64.604(c)(1)(ii), 64.604(c)(2), 64.604(c)(3), 64.604(c)(5)(iii)(C), 64.604(c)(5)(iii)(E), 64.604(c)(5)(iii)(G), 64.604(c)(6)(v)(A)(3), 64.604(c)(6)(v)(G), 64.604(c)(7) and 64.606(b).

**FOR FURTHER INFORMATION CONTACT:** Lisa Boehley, Consumer Policy Division, Consumer & Governmental Affairs Bureau, at (202) 418-7395.

**SUPPLEMENTARY INFORMATION:** This document announces that, on January 15, 2008, OMB approved, for a period of three years, the information collection requirements contained in the Commission's Report and Order concerning *Sections 225 and 255 Interconnected Voice Over Internet Protocol Services (VoIP)*, FCC 07-110, published at 72 FR 43546, August 6, 2007. The OMB Control Number is 3060-1111. The Commission publishes this notice as announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060-1111, in your correspondence. The Commission will also accept your comments via the Internet if you send them to [PRA@fcc.gov](mailto:PRA@fcc.gov).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on January 15, 2008, for the information collection requirements contained in the Commission's rules at 47 CFR 6.11(a), 6.11(b), 6.18(b), 6.19, 64.604(a)(5), 64.604(c)(1)(i), 64.604(c)(1)(ii), 64.604(c)(2), 64.604(c)(3), 64.604(c)(5)(iii)(C), 64.604(c)(5)(iii)(E), 64.604(c)(5)(iii)(G), 64.604(c)(6)(v)(A)(3), 64.604(c)(6)(v)(G), 64.604(c)(7) and 64.606(b). The OMB Control Number is 3060-1111. The total annual reporting burden for respondents for these collections of information, including the

time for gathering and maintaining the collection of information, is estimated to be: 5,711 respondents, a total annual hourly burden of 149,962 hours, and \$5,711,000 in total annual costs.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

**RIN 0648-AU29**

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15A

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

**ACTION:** Notice of agency action.

**SUMMARY:** NMFS announces approval of Amendment 15A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). Amendment 15A updates management reference points for snowy grouper, black sea bass, and red porgy based on the most recent stock assessments; modifies rebuilding schedules for snowy grouper and black sea bass; defines rebuilding strategies for snowy grouper, black sea bass, and red porgy; and redefines the minimum stock size threshold for the snowy grouper stock. The measures contained in the subject amendment are intended to both comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and satisfy a U.S. district court's rulings to establish rebuilding plans for South Atlantic snowy grouper and black

sea bass and approve, amend or reject Amendment 15A by March 14, 2008.

**DATES:** NMFS approved Amendment 15A, without modification, on March 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** John McGovern, telephone: 727-824-5305; fax: 727-824-5308; e-mail: [John.McGovern@noaa.gov](mailto:John.McGovern@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On December 28, 2007, NMFS published a notice of availability of Amendment 15A and requested public comment (72 FR 73747). After considering the public comments received, NMFS approved Amendment 15A, without modification, on March 14, 2008. The background rationale for the measures in Amendment 15A are contained in the amendment and the notice of availability and are not repeated here.

#### Comments and Responses

NMFS received 17 comment letters on Amendment 15A and the associated environmental impact statement. Two of these comment letters supported the proposed actions. The remaining comment letters opposed one or more of the proposed actions for the reasons summarized below.

*Comment 1:* One group stated Amendment 15A should consider management measures to address the Magnuson-Stevens Act's requirement that an amendment designed to rebuild an overfished fishery must also allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

*Response:* Amendment 15A is intended to comply with the Magnuson-Stevens Act and satisfy a United States district court ruling that found a plan to rebuild snowy grouper and black sea bass should have been included in Amendment 13C to the FMP because the two species were overfished. Amendment 15A establishes the rebuilding plans but does not contain measures with direct regulatory effect; instead it specifies management reference points, a timeframe for rebuilding overfished stocks, and a strategy for how overfished stocks will be rebuilt within the specified timeframe, as required by the August 17, 2007, court opinion and October 2, 2007, court order. Although Amendment 13C did not have a

rebuilding plan, the amendment included measures with direct regulatory effect necessary to end overfishing of snowy grouper and black sea bass, and therefore, initiate recovery of those fisheries. The court determined the measures in Amendment 13C were "fair and equitable" and in compliance with national standard 4 of the Magnuson-Stevens Act. The Council is considering additional management measures in Amendments 15B and 17 to ensure both overfishing restrictions and recovery benefits would continue to be fairly and equitably allocated among fishing sectors during the rebuilding periods for snowy grouper and black sea bass.

*Comment 2:* One group of commenters supported fast-track strategies for fish stock recoveries. The commenters indicated such strategies would minimize the number of years needed for recovery, benefitting fish stocks as well as fishermen once stocks recovered.

*Response:* The Council evaluated a broad range of alternatives for the establishment of rebuilding schedules for snowy grouper and black sea bass. A rebuilding schedule for red porgy was established through Amendment 12, in 2000. The alternatives considered for each proposed rebuilding schedule action in Amendment 15A ranged from those that would rebuild stocks in the shortest amount of time in the absence of fishing mortality to those that would rebuild stocks over the longest period of time allowed by the Magnuson-Stevens Act. For snowy grouper, the Council's preferred alternative would rebuild the stock in 34 years, which is the maximum time allowed by the Magnuson-Stevens Act. However, shorter rebuilding schedules would not be expected to rebuild the snowy grouper stock to biomass at the maximum sustainable yield, even if retention was entirely prohibited due to the incidental capture of snowy grouper in this multi-species snapper-grouper fishery. As release mortality is 100 percent, it is expected these fish would still be caught incidentally and discarded dead when fishermen target co-occurring species. Amendment 13C reduced the allowable catch of snowy grouper to the extent that fishermen are not targeting the species and now only retain them as incidental catch.

The preferred rebuilding strategy alternative for snowy grouper would retain the total allowable catch (TAC) at 102,960 lb (46,702 kg) whole weight until modified by future action. By keeping TAC at this level, fishing mortality would decrease to levels less than the fishing mortality associated

with the maximum sustainable yield and thereby increase the probability that biomass would increase.

The preferred 10-year rebuilding schedule for black sea bass is also the longest allowed by the Magnuson-Stevens Act. However, the shortest rebuilding schedule (6 years) would not be expected to rebuild black sea bass to the biomass at the maximum sustainable yield, even if retention of black sea bass is entirely prohibited. Black sea bass is part of a multi-species fishery, and it is expected that these fish would still be caught incidentally and discarded dead when fishermen target co-occurring species. The Council's preferred rebuilding schedule would rebuild the stock to healthy levels, over a slightly longer time period and still within the allowable time frame, which would be less detrimental to the fishing community dependent on the resource.

*Comment 3:* Two commenters stated that despite NMFS' assertion that the best available data were used in the analyses supporting Amendment 15A, they remain concerned that the stock assessments do not provide adequate estimates of stock status.

*Response:* Status determinations for snowy grouper, black sea bass, and red porgy were derived from the Southeast Data, Assessment and Review (SEDAR) process. The SEDAR process involves a series of three workshops designed to ensure each stock assessment reflects the best available scientific information. The findings and conclusions of each SEDAR workshop are documented in a series of reports, which are ultimately reviewed and discussed by the Council and its Scientific and Statistical Committee (SSC). SEDAR participants, Council advisory committees, the Council, and NMFS staff reviewed and considered these and other concerns about the adequacy of the data. The Council's snapper-grouper committee acknowledged that while stock assessment findings are uncertain, there is no reason to assume that uncertainty leads to overly pessimistic or optimistic conclusions about stock status. Therefore, uncertainty should not be used as a reason to avoid taking action. The adequacy of these data was at issue in the recent civil action, *North Carolina Fisheries Association, Inc., et al., v. Carlos Gutierrez, Secretary, United States Department of Commerce*, Case No. 06-1815 (D.D.C. 2006), where the plaintiffs claimed, among other things, that actions taken in Amendment 13C were inconsistent with national standard 2 of the Magnuson-Stevens Act, which requires that all FMPs and plan amendments "be based upon the best scientific information available."

The same assessment information used in Amendment 13C was used in Amendment 15A to specify management reference points, and rebuilding plans for snowy grouper, black sea bass, and red porgy. In the court's opinion issued in the North Carolina Fisheries Association case, the judge concluded "the Secretary was not obliged to 'sit idly by' when faced with overfishing and overfished stocks simply because the data available to him may have been less than perfect. In sum, the Secretary's decision to act on the basis of the existing information easily meets the standard of rationality required of him." The NMFS' Southeast Fisheries Science Center (SEFSC) reviewed and certified Amendment 13C and its supporting analyses as being based on the best available scientific information. The SSC and the SEFSC have determined Amendment 15A is based on the best scientific information available.

*Comment 4:* One commenter stated the cumulative impacts section of the EIS is inadequate because impacts from previous regulations on fishery participants in all fisheries available to them in the past have been ignored in the analysis.

*Response:* Amendment 15A, which is integrated with the EIS, qualitatively discusses cumulative impacts (Section 4.5.2), and concludes that "it is not possible to differentiate actual or cumulative regulatory effects from external cause-induced effects." It also states, "In general, it can be stated, however, that the regulatory environment for all fisheries has become progressively more complex and burdensome, increasing, in tandem with other adverse influence, the pressure on economic losses, business failure, occupational changes, and associated adverse pressures on associated families, communities, and industries. Some reverse of this trend is possible and expected."

The integrated document also contains a discussion of potential adverse long-term socioeconomic impacts to some current fishery participants (Section 4.5.2). This section states that "Where losses are projected, as is always the case, individual losses may be so severe that some entities may not be able to remain in business long enough to reap the benefits of a recovered stock and increased long-term resource stability. Thus, even though the fishery as a whole may benefit, individual participants may suffer. However, as is also the case, failure to take action can result in persistent foregone economic benefits, or more severe corrective action with greater

adverse impacts if the period under which recovery is mandated is substantially shortened.”

The integrated document also incorporates, by reference, discussion of impacts associated with the regulatory measures associated with Amendment 13C to the FMP.

*Comment 5:* It is likely the recreational allocation of snowy grouper will be quite small, and any snowy grouper rebuilding schedule will be compromised until the Council can put into place an adequate method of accounting for recreational landings.

*Response:* Amendment 15B to the FMP, currently under development, includes alternatives to address allocation of snowy grouper. Furthermore, Amendment 15B includes alternatives that could modify the regulations on the sale of bag limit caught fish and, thus, improve accounting of snowy grouper landings. Amendment 17 to the FMP is being developed to establish annual catch limits for species experiencing overfishing, including snowy grouper. Amendment 17 would also include accountability measures to ensure annual catch limits in the recreational and commercial sectors are not exceeded and overfishing is prevented where possible and mitigated if it occurs.

*Comment 6:* Six individuals commented that the fishery would be best served by utilizing the rebuilding plan options which have the least effect on fishing effort and harvest as possible. They feel that the shorter the rebuilding schedule the more substantial socioeconomic impacts on fishermen will be, and they would like those impacts minimized as much as possible. These commenters also noted that fishing effort could shift to other species.

*Response:* The Council's preferred rebuilding schedule alternatives for snowy grouper and black sea bass are the maximum length of time allowed by the Magnuson-Stevens Act and would have less of a negative short-term social and economic impact than shorter rebuilding schedules. Some effort shift to other fisheries could occur as a result of management measures imposed through Amendment 13C, however, longer rebuilding schedules are likely to cause less effort shifting than shorter rebuilding schedules, which would require more stringent management regulations. An 18-year rebuilding schedule for red porgy was specified through Amendment 12 to the FMP in 2000. Also, the Council considered the rebuilding strategy alternatives that would have the greatest benefit to the

stock and result in the least short-term negative socioeconomic effects. Red porgy is no longer undergoing overfishing, and the stock is rebuilding. An increase in TAC for 2009 reflects the improved status of the red porgy fishery.

Snowy grouper and black sea bass are experiencing overfishing and are overfished. Amendment 13C implemented management measures over a 3-year period with the intent of ending overfishing by 2009. At the December 2007 Council meeting, the Council elected to set the snowy grouper TAC at the 2008 level of 102,960 lb (46,702 kg) whole weight rather than increase TAC to 109,360 lb (49,605 kg) whole weight in 2009. The Council was concerned that the 2009 TAC was based on the yield at FMSY, which would be considered to be a limit rather than a target under the reauthorized Magnuson-Stevens Act. By keeping catch at 2008 levels, fishing mortality would decrease below FMSY and the probability that overfishing had ended would increase.

The preferred rebuilding strategy for black sea bass would also retain TAC at the 2008 levels and could rebuild sea bass 2 years ahead of schedule resulting in a very large increase in the allowable catch once the stock is rebuilt. As a result, this alternative is expected to provide the greatest long-term, biological effects to the stock and associated ecosystem as well as significant economic benefits.

*Comment 7:* One individual suggested that a more reasonable approach to end overfishing would be through the establishment of a two-for-one permit buyout program, and suggested anyone holding a permit is entitled to an equal allocation of fish.

*Response:* A two-for-one permit buyout program would address the number of allowed participants over the long term but would not immediately or directly address overfishing. The Council implemented a 2 for 1 permit program in 1998, and many snapper grouper species are still experiencing overfishing. The possibility of using a limited access privilege (LAP) program in the South Atlantic snapper-grouper fishery is being considered in Amendment 18 to the FMP. Such a program would further limit fishery participation and would be created with the intent to prevent and/or end overcapitalization of the fishery. Allocations for certain snapper-grouper species are being considered in snapper-grouper Amendment 15B, Amendment 16, and a comprehensive allocation amendment, which are in development.

*Comment 8:* One group recommended against using the maximum amount of

time possible under the law ( $T(\max)$ ) to rebuild severely depleted fish stocks such as snowy grouper.

*Response:* Rebuilding schedules of 12 and 23.5 years (Alternatives 2 and 3 in Amendment 15A, respectively) would not be expected to rebuild the snowy grouper stock to the biomass at the maximum sustainable yield, even if retention of snowy grouper is entirely prohibited. Snowy grouper is part of a multi-species fishery. Even with no harvest, one would expect snowy grouper to be caught incidentally and released dead by fishermen when co-occurring species were targeted. Snowy grouper is a deepwater species, and release mortality is estimated to be 100 percent; therefore, no incidentally captured snowy grouper would survive. Actions taken in Amendment 13C substantially reduced the allowable harvest of snowy grouper to a level that would likely be taken incidentally. The longest rebuilding schedule allows fishermen to retain snowy grouper that are incidentally caught rather than release dead fish. Snowy grouper probably would not be able to rebuild in a shorter timeframe due to bycatch mortality when fishermen target co-occurring species. The Council is considering the formation of a deepwater snapper-grouper unit in Amendment 17 to the FMP. The Council believes that managing the deepwater species as a unit would decrease discards of these species with high release mortality rates.

*Comment 9:* One commenter stated the definition of minimum stock size threshold (MSST) at  $0.75 \times \text{SSB}_{\text{MSY}}$  is inappropriate and suggested retaining the MSST definition at  $(1-M) \times \text{SSB}_{\text{MSY}}$ .

*Response:* The current definition of MSST is  $(1-M) \times \text{SSB}_{\text{MSY}}$  or  $0.5 \times \text{SSB}_{\text{MSY}}$ , whichever is greater, where M equals the natural mortality rate. The relatively low estimation of M (0.12) produces an MSST that is similar to  $\text{SSB}_{\text{MSY}}$ . By modifying the current definition of MSST for snowy grouper to  $0.75 \times \text{B}_{\text{MSY}}$ , the Council is hoping to avoid a situation where the natural variation in recruitment causes the stock biomass to frequently alternate between an overfished and rebuilt condition, even if the fishing mortality rate applied to the stock was within the limits specified by the maximum fishing mortality threshold. Such a situation could create administrative difficulties if the overfished threshold was met and a rebuilding plan was unnecessarily triggered. Regardless of which MSST definition is chosen, snowy grouper is overfished and biomass is well below the threshold that would trigger a rebuilding plan. The recent SEDAR

assessment estimates current biomass of snowy grouper at 18 percent of SSBMSY.

*Comment 10:* Several commenters objected to the modified F rebuilding strategies because they either fail to achieve optimum yield, or fail to prevent overfishing by using TACs set at  $F_{MSY}$ .

*Response:* Achievement of OY has been specified in Amendment 15A through the selection of the preferred rebuilding strategy alternatives for snowy grouper, red porgy, and black sea bass. An estimate of OY is the target when a stock is rebuilt and plans can transition from rebuilding to OY management. OY for each of the subject species has been defined in the amendment. The preferred rebuilding strategies are expected to achieve the OY target for each species within the rebuilding schedule time frame, while minimizing to the extent practicable, adverse socioeconomic impacts.

Prior to December 2007, the preferred rebuilding strategy for snowy grouper was based on the yield at  $F_{MSY}$ . However, in response to comments from The Ocean Conservancy, the Council, at its December 2007 meeting, added a new sub-alternative for snowy grouper that would not increase the TAC; thereby setting yield based on a fishing mortality rate less than  $F_{MSY}$ . By leaving the TAC at the 2008 level, the allowable fishing mortality rate will decrease below  $F_{MSY}$  and increase the chance overfishing will end and the stock will rebuild. In addition, based on the reauthorized Magnuson-Stevens Act, it would be difficult to justify increasing the TAC before a stock assessment indicates overfishing is ended. A 2010 assessment update for snowy grouper will determine if management measures have been effective in ending overfishing, and if so, warrant a subsequent increase in TAC, which would help achieve optimum yield.

The TAC for red porgy, as specified through the preferred rebuilding strategy alternative is set below the yield when fishing at MSY and will result in

a fishing mortality rate that approximates  $F_{OY}$ . For black sea bass, the TAC in 2009 is established at the yield when fishing at MSY. However, with the preferred constant catch strategy, the TAC for 2009 (847,000 lb (384,193 kg whole weight) would remain in effect beyond 2009 until modified. Holding catch at constant levels as the stock rebuilds would be expected to gradually reduce the fishing mortality rate to  $F_{OY}$  by 2010, increasing the chance overfishing will end and the stock will rebuild. The preferred rebuilding strategy alternatives for snowy grouper, red porgy, and black sea bass are expected to provide the greatest long-term, biological effects to the stocks and associated ecosystem throughout their entire rebuilding time frames.

*Comment 11:* Any fishery management plan must include measures that minimize bycatch and unavoidable bycatch mortality to the extent practicable. Amendment 15A does not contain any discussion of bycatch reduction in the deepwater complex.

*Response:* Although no measures in the amendment involve regulatory changes, the preferred rebuilding alternative for red porgy that would increase TAC beyond 2008 levels accounts for an estimate of increase in dead discards. Preferred rebuilding strategies for snowy grouper and black sea bass keep TAC at 2008 levels; however, other alternatives considered that increase TAC in 2009 account for an increased estimate of dead discards that could occur. In addition, Amendment 15A contains a discussion on bycatch of snowy grouper in the bycatch practicability section and includes estimates of the magnitude of bycatch that are currently occurring in the commercial and recreational sectors. Furthermore, Appendix E to Amendment 15A provides estimates of dead discards that could occur in fisheries for snowy grouper, black sea bass, and red porgy as a result of new management measures imposed through

Amendment 13C. Discussion in Amendment 15A also indicates snowy grouper bycatch could be reduced through future actions in Amendment 17. Alternatives in Amendment 17 include actions to establish a deepwater unit composed of co-occurring species and would establish management measures for the deepwater unit including an aggregate trip limit and a quota. Alternatives would also consider prohibiting all purchase and sale of species in the unit after any of the individual quotas are met. Although some bycatch of species in the unit could occur when targeting shelf edge species, management of the deepwater species as a unit is expected to substantially reduce bycatch of snowy grouper. Amendment 17 would also establish ACLs and accountability measures for snowy grouper and other species experiencing overfishing, further reducing bycatch.

*Comment 12:* One individual stated that Amendment 15A would prevent the remaining fishermen from making a living, and would increase the cost of fish.

*Response:* Retaining existing values for the reference points and subsequent allowance of harvest at the respective MSY value may lead to excessive exploitation, precipitating imposition in the future of more restrictive management measures and reductions in economic and social benefits. Once the resource is rebuilt, consistent with the rebuilding plans in Amendment 15A, the specification of MSY/OY and the related increase in total allowable harvest and reduced harvest restrictions would support increased economic and social benefits of the fishery.

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

Dated: March 14, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

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