

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 0907271173-0629-03]

RIN 0648-AY11

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 17B**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 17B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule establishes annual catch limits (ACLs) and accountability measures (AMs) for eight snapper-grouper species in the FMP that are undergoing overfishing, and for black grouper, which was recently assessed and determined to not be undergoing overfishing or overfished; modifies management measures to limit total mortality of those species to the ACL; and adds ACLs, annual catch targets (ACTs), and AMs to the list of management measures that may be amended via the framework process. The intent of this final rule is to address overfishing of eight snapper-grouper species while maintaining catch levels consistent with achieving optimum yield.

**DATES:** This rule is effective January 31, 2011.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) and the record of decision may be obtained from Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue, South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727-824-5305.

**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.

On September 22, 2010, NMFS published a notice of availability of

Amendment 17B and requested public comment (75 FR 57734). On October 10, 2010, NMFS published a proposed rule for Amendment 17B and requested public comment (75 FR 62488). NMFS approved Amendment 17B on December 21, 2010. This final rule for Amendment 17B implements ACLs and AMs for eight snapper-grouper species undergoing overfishing. The rationale for the measures contained in Amendment 17B is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

**Comments and Responses**

A total of 175 comments were received on Amendment 17B and the proposed rule, including comments from individuals, State and Federal agencies, environmental organizations, and fishing associations. NMFS received 25 comments of general support and 48 individual comments in general opposition of Amendment 17B, 31 of which specifically oppose the deepwater closure for six deepwater snapper-grouper species. Included in the letters of opposition was a minority report submitted by the five members of the Council who voted against the final approval of Amendment 17B. NMFS also received 85 identical postcards opposing implementation of Amendment 17B, and 8 comments that did not support or oppose Amendment 17B but contained remarks on specific actions contained in the amendment. Additionally, 5 comments were received from environmental organizations, one of which was endorsed by two of the organizations, and one which was endorsed by 30,794 individuals. One State and one Federal agency submitted comments on Amendment 17B, and 2 comments were unrelated to actions contained in Amendment 17B. Of the 175 comments received, 22 contained remarks on the potential economic impacts of Amendment 17B. Specific comments related to the actions contained in the amendment and the rule as well as NMFS'S respective responses, are summarized below.

*Comment 1:* Several commenters suggested the prohibition on harvest and possession of six deepwater snapper-grouper species beyond 240 feet (73 m) is not necessary, and reductions in incidental harvest of speckled hind and warsaw grouper could be achieved through: (1) A temporary prohibition on commercial harvest and sale of speckled hind and warsaw grouper; (2) responsible fishing methods such as venting fish; (3) a temporary deepwater closure; or (4) seasonal closures.

*Response:* Commercial sale of speckled hind and warsaw grouper is currently prohibited. NMFS previously considered a Council-approved measure to use venting tools for snapper-grouper species to reduce bycatch mortality caused by barotrauma (injuries sustained in response to the sudden pressure change when brought to the surface from depth), in Amendment 16 to the FMP. The measure requiring the use of venting tools was disapproved based on data indicating the benefits of venting are not clear for all species, and venting could potentially cause harm in some cases if excluded unnecessarily or improperly. NMFS determined that additional guidance is needed to identify species that would benefit from venting to ensure the maximum benefit is provided to these species. If future research on the use of venting tools, and/or any other barotrauma mitigation methods, indicate speckled hind or warsaw grouper would benefit from the required use of such tools or techniques, the Council has the option to consider the issue again in a future amendment.

Implementing the deepwater snapper-grouper closure for any period of time less than year-round could result in incidental harvest and bycatch mortality of speckled hind and warsaw grouper, and could negatively impact efforts to protect South Atlantic speckled hind and warsaw grouper. At its December 2010 meeting, the Council requested a regulatory amendment be prepared to examine new information related to the prohibition on harvest and possession of the six deepwater snapper-grouper species beyond 240 ft (73 m). The regulatory amendment would re-evaluate the deepwater snapper-grouper closure and the new information, and determine if there are more effective measures to reduce bycatch mortality of speckled hind and warsaw grouper. Additionally, a new benchmark stock assessment for speckled hind and warsaw grouper is scheduled to be conducted in 2013. If the results of this new stock assessment indicate some modification to the management measures implemented through Amendment 17B is needed, the Council would make such adjustments as appropriate.

*Comment 2:* Several commenters stated the prohibition on all bottom fishing beyond 240 ft (73 m) is draconian in nature, and too expansive to protect only two rarely captured snapper-grouper species.

*Response:* The deepwater snapper-grouper closure proposed in Amendment 17B would not prohibit all bottom fishing beyond 240 ft (73 m). The closure would prohibit the harvest

and possession of six snapper-grouper species that co-occur with speckled hind and warsaw grouper including, snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper.

Both speckled hind and warsaw grouper are undergoing overfishing, and the extent to which they are overfished is unknown. These species are extremely vulnerable to overfishing because they are slow growing, long-lived, and change sex from female to male with increasing size and age. These species are not often targeted due to the current bag limits (one of each per vessel per trip), but when they are caught they are likely to suffer release mortality. The incidental catch of speckled hind and warsaw grouper, particularly in deep water where release mortality is high, may be responsible for the continued overfishing of these species. Therefore, the Council determined that a prohibition on the harvest and possession of speckled hind and warsaw grouper, along with their co-occurring species caught in 240 ft (73 m) and greater, was an appropriate action to reduce bycatch mortality of speckled hind and warsaw grouper in depths where depth-related release mortality is very high. Like gag, speckled hind and warsaw grouper are slow growing, long lived, and have similar life histories. Therefore, speckled hind and warsaw grouper may be expected to have similar depth-related bycatch mortality rates to gag. If depth-related mortality of speckled hind and warsaw grouper is similar to gag, release mortality at depths of 240 ft (73 m) would be expected to be greater than 70 percent. The deepwater closure is expected to provide protection to the largest, most fecund fish and help ensure a natural sex ratio into the future. According to the Amendment 17B biological impacts analysis, prohibiting all harvest of deepwater snapper-grouper species beyond 240 ft (73 m) would also protect spawning aggregations.

*Comment 3:* One commenter stated that NMFS should concentrate efforts on managing other overexploited species such as mutton snapper and yellowtail snapper.

*Response:* Mutton snapper and yellowtail snapper are among the 73 species in this FMP. Recent assessments indicate that mutton snapper and yellowtail snapper are not overfished and are not experiencing overfishing. The Reauthorized Magnuson-Stevens Act requires that ACLs and AMs be specified for all species undergoing overfishing in 2010 and species not undergoing overfishing in 2011.

Speckled hind and warsaw grouper are both undergoing overfishing according to the 2009 Report to Congress on the Status of U.S. Fisheries (and in all previous such Reports to Congress). Therefore, NMFS is required to establish ACLs at levels to end and prevent overfishing of speckled hind and warsaw grouper, along with management measures to limit harvest levels to the ACL. In the case of speckled hind and warsaw grouper, the ACL is zero, and the deep water closure is intended to reduce depth-related bycatch mortality to reduce the probability that overfishing will occur. The Council is currently developing a Comprehensive ACL Amendment, which would specify ACLs and AMs for mutton snapper and yellowtail snapper.

*Comment 4:* One commenter stated the cumulative impact of the recent regulations approved through Amendment 17A to the FMP and the regulations contained in this final rule are overly complex for commercial and for-hire fishermen to abide by.

*Response:* The Magnuson-Stevens Act, as reauthorized in 2006, mandates the Council and NMFS establish ACLs and AMs for species undergoing overfishing by 2010. Section 303(a)(15) of the Magnuson-Stevens Act states, in relevant part, that any FMP which is prepared by any Council "shall establish a mechanism for specifying annual catch limits in the plan \* \* \* implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability." Therefore, in order to meet these mandates, several recent regulatory changes have been made in the snapper-grouper fishery. NMFS strives to minimize complexity in its regulations, but must meet statutory mandates such as the requirements for ACLs and AMs.

*Comment 5:* Several commenters stated the data upon which the prohibition on the harvest and possession of the six deepwater snapper-grouper species beyond 240 ft (73 m) is based is out of date, insufficient, and/or incorrect, and is not the best available science. One commenter inquired if the data used to inform the deepwater closure action was subject to an independent review. Additionally, two commenters cite the recently published **Federal Register** notice that denies a petition to list warsaw grouper as threatened or endangered under the Endangered Species Act (ESA) as based on a lack of substantial scientific or commercial information, and implied that the speckled hind and warsaw grouper

management measures in Amendment 17B are not based on adequate scientific information.

*Response:* The intent of the action to prohibit the harvest of six deepwater species is to reduce bycatch mortality of speckled hind and warsaw grouper. Speckled hind and warsaw grouper are undergoing overfishing, and therefore, action must be taken to ensure overfishing is ended and does not occur. The Southeast Fisheries Science Center (SEFSC) certified, in a memorandum dated May 19, 2010, that Amendment 17B is based upon the best available scientific information. At its December 2010 meeting, the Council requested that a regulatory amendment be prepared to examine new information related to the prohibition on the harvest and possession of the six deepwater snapper-grouper species. The regulatory amendment would evaluate the new information and the deepwater snapper-grouper closure and determine if there are more effective measures to reduce bycatch mortality of speckled hind and warsaw grouper.

The petition to list speckled hind and warsaw grouper as endangered or threatened was denied by NMFS under the ESA because "the petition does not present substantial scientific or commercial information indicating the petition action may be warranted" (75 FR 59690, September 28, 2010). This means that warsaw grouper was not determined to be endangered (*i.e.*, is in danger of extinction throughout all or a significant portion of its range) or threatened (*i.e.*, is likely to become endangered within the foreseeable future throughout all or a significant portion of its range). The negative finding on the ESA petition does not necessarily mean that inadequate scientific information was used in Amendment 17B. Under the Magnuson-Stevens Act, NMFS must use the best scientific information available when establishing management measures, including ACLs and AMs.

*Comment 6:* Several commenters are concerned that the prohibition on harvest and possession of six deepwater snapper-grouper species beyond a depth of 240 ft (73 m) will lead to increased incidences of release mortality.

*Response:* Prohibiting the harvest and possession of species that are most often caught with speckled hind and warsaw grouper in deeper waters would reduce the incentive to target those co-occurring species. As a result, a reduction in depth-related bycatch mortality of speckled hind and warsaw grouper is expected.

*Comment 7:* Several commenters feel the deepwater closure in Amendment

17B should only apply to the commercial sector.

*Response:* In the northern portion of the Council's area of jurisdiction, fisheries and fishery components in depths greater than 240 ft (73 m) are primarily prosecuted by the commercial sector. However, the Council chose to include the recreational sector in the prohibition on harvest and possession of snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper beyond 240 ft (73 m) because recreational fishing in deeper waters is common in the southern area of the Council's jurisdiction *i.e.*, southeast Florida and the Florida Keys, the 240-ft (73-m) depth contour is close to shore. Because deep water is much more accessible to recreational fishermen off southern Florida, recreational fishermen are more likely to incidentally capture speckled hind and warsaw grouper in depths where these fish are more likely to die as a result of barotrauma-related injuries.

*Comment 8:* One commenter stated the lack of warsaw grouper landings data was due to fishermen misidentifying warsaw grouper as snowy grouper.

*Response:* It is unlikely warsaw grouper landings are significantly underreported due to misidentification with snowy grouper. Snowy grouper and warsaw grouper do share some common physical characteristics, however, these species also have several distinguishing characteristics that make it possible to easily identify both species. When fishermen submit species landings information to NMFS, identification accuracy is not expected to be 100 percent, and this is taken into consideration when conducting stock assessments.

*Comment 9:* One commenter asked how NMFS will determine when the speckled hind and warsaw grouper stocks are rebuilt, if fishing for them is prohibited.

*Response:* The overfished status of speckled hind and warsaw grouper is unknown. Therefore, a rebuilding plan is not required. The deepwater closure is intended to reduce depth-related bycatch mortality to help end overfishing of speckled hind and warsaw grouper. Prohibiting harvest of one or more species in a certain area does not prevent the collection of scientific information on those species. The SEFSC conducts fishery-independent studies and surveys to measure the overall abundance of fish stocks in the South Atlantic. In Amendment 17A to the FMP, the Council required implementation of a

fishery-independent monitoring program. This program would continue the long-term data set that already exists for snapper-grouper species from sampling programs such as the Southeast Monitoring Assessment and Prediction program, and the Marine Resources Monitoring Assessment and Prediction program in the South Atlantic, which monitor fish stocks in depths shallower and deeper than 240 ft (73 m), and these programs should continue to provide information on warsaw grouper and speckled hind.

Fishery-dependent data may also be collected during a period when certain species may not be landed. These data may be collected through the Cooperative Research Program (CRP), which is a competitive Federal assistance program that funds projects seeking to increase and improve the working relationship between researchers from NMFS, State fishery agencies, universities, and fishermen. The intent of the CRP in the Southeast Region is to utilize the collective experience of fishermen and scientists to advise fishery managers of best fishery management practices based on fishing experience and sound scientific research procedures. Other fishery-dependent data collection sources include the Marine Recreational Fisheries Statistical Survey (MRFSS) (now part of the Marine Recreational Information Program (MRIP)), commercial logbooks, headboat logbooks, observer data, the Trip Interview Program, and dealer reported landings.

*Comment 10:* After the Council voted to approve Amendment 17B for Secretarial review, the five members of the Council who voted against the final approval of Amendment 17B submitted a minority report to NMFS, dated March 23, 2010. This report is endorsed by one fishing organization and one State agency. The minority report outlines the dissenting Council members' opposition to the deepwater closure for the six co-occurring snapper-grouper species. Specifically, these Council members oppose the inclusion of blueline tilefish in the list of snapper-grouper species prohibited beyond 240 ft (73 m). The report states the deepwater closure was based on inadequate assessments, does not include rebuilding plans for speckled hind and warsaw grouper, and does not consider and properly analyze the impacts of the prohibition on the sale of bag limit-caught snapper-grouper. The report also notes a lack of data on the range where speckled hind and warsaw grouper are found, particularly off the coast of North Carolina. The report mentions that the

species most commonly caught with speckled hind are vermilion snapper, red grouper, and scamp, which are not deepwater species. The minority report suggests that other alternatives besides the deep water closure should have been considered by the Council, including allowing fishing for species other than speckled hind and warsaw grouper on various well-known ship wrecks or other potential sites and closing only a percentage of the most productive bottom habitat. The minority report also lists fish stocks that have been successfully rebuilt or are currently rebuilding without the utilization of large area closures for fishery management, namely Atlantic king and Spanish mackerel, greater amberjack, and golden tilefish.

*Response:* Speckled hind and warsaw grouper have not undergone a recent stock assessment. However, the 2009 Report to Congress on the Status of U.S. Fisheries states that both speckled hind and warsaw grouper are undergoing overfishing and their overfished status is unknown. The stock status determination for these two species included in the Report to Congress is the best scientific information available for speckled hind and warsaw grouper. Therefore, NMFS is required to establish ACLs for these species at levels that can end, as well as prevent, overfishing and implement management measures to limit harvest levels of these species to the ACL. Since the overfished status of speckled hind and warsaw grouper is currently unknown, rebuilding plans are not required at this time. To address overfishing of speckled hind and warsaw grouper, the Council's Scientific and Statistical Committee (SSC) recommended an Acceptable Biological Catch (ABC) of zero for both species based on landed catch, rather than total removals. Subsequent to the SSC ABC recommendation, the Council specified an ACL of zero for speckled hind and warsaw grouper.

Speckled hind and warsaw grouper are extremely vulnerable to overfishing because they are slow growing, long-lived, change sex from female to male with increasing size and age, and occur in deep water where release mortality is very high. The prohibition on the harvest and possession of six deepwater snapper-grouper species, including blueline tilefish, that co-occur with speckled hind and warsaw grouper is expected to reduce the incidental take of speckled hind and warsaw grouper in water depths where survival of released fish is low. Of the six species for which harvest and possession would be prohibited beyond 240 ft (73 m), commercial and recreational landings

are highest for blueline tilefish and snowy grouper, which are often caught together in the same location and during the same trip. Speckled hind and warsaw grouper can be incidentally caught while blueline tilefish and other deepwater species are being targeted. This incidental catch, if allowed to continue, may contribute to the continued overfishing of speckled hind and warsaw grouper. Furthermore, recent snowy grouper regulations resulted in effort shifts from snowy grouper to blueline tilefish, which could increase the probability of snowy grouper bycatch after the 100-lb (45-kg) trip limit or quota for snowy grouper is met, in addition to a potential for increased bycatch of speckled hind and warsaw grouper. If blueline tilefish were eliminated from the list of prohibited deepwater species, incidental take of speckled hind and warsaw grouper could persist in that portion of the snapper-grouper fishery; therefore, the Council determined it would be prudent to retain blueline tilefish in the list of prohibited species beyond a depth of 240 ft (73 m).

The minority report includes an examination of trip ticket information from vessels fishing for blueline tilefish north of Cape Hatteras, North Carolina, which suggests blueline tilefish can be captured without resultant incidental catch of speckled hind and warsaw grouper. At its December 2010 meeting, the Council considered this new information, and voted to request the preparation of a regulatory amendment to examine the new information and to determine if there are more effective management measures that could be implemented to reduce the depth-related bycatch mortality of speckled hind and warsaw grouper.

The Magnuson-Stevens Act requires the establishment of ACLs and AMs. In the comments and responses section of the final rule implementing the National Standard 1 Guidelines, NMFS states, "ACLs must be implemented using the best data and information available \* \* \* NMFS believes that Councils must implement the best ACLs possible with the existing data" (74 FR 3178, January 16, 2009). As required by the Magnuson-Stevens Act, the Council has developed ACLs and AMs for speckled hind and warsaw grouper using the best scientific information available during the amendment development process.

The minority report points out that the species most commonly caught with speckled hind are vermilion snapper, red grouper, and scamp, none of which are deepwater species. Juvenile speckled hind and warsaw grouper are found in depths less than 240 ft (73 m)

and are often caught with species such as vermilion snapper, red grouper, scamp, and others. However, the Council chose not to prohibit catch in shallower water because it is likely that some portion of released speckled hind and warsaw grouper would survive the trauma of capture. Like gag, speckled hind and warsaw grouper are slow growing, long lived, and have similar life histories. Therefore, they may be expected to have similar bycatch mortality rates to gag. If release mortality rates of speckled hind and warsaw grouper are similar to those published for gag, release mortality at depths greater than 240 ft (73 m) would be expected to be greater than 70 percent. Based on this assumption, the Council determined the most effective method of reducing the incidence of bycatch related mortality in deepwater was to prohibit the harvest and possession of the species that co-occur with speckled hind and warsaw grouper beyond 240 ft (73 m).

During the development process for Amendment 17B, alternatives such as allowing fishing for species other than speckled hind and warsaw grouper on various well-known ship wrecks or other potential sites, and closing only a percentage of the most productive bottom habitat, were not proposed by Council members and thus were not included in the document for analysis. The approval and implementation of the prohibition on harvest and possession of six deepwater snapper-grouper species beyond 240 ft (73 m) does not preclude the Council from proposing future action to modify this prohibition if scientific information indicates it is appropriate to do so. Re-addressing the deepwater closure will be accomplished through a regulatory amendment proposed by the Council at its December 2010 meeting.

The minority report states the impact of the prohibition on bag-limit sales of snapper-grouper implemented through Amendment 15B to the FMP was not properly analyzed in Amendment 17B because the impact of sales from only snapper-grouper fishermen with Federal permits was not determined. The impacts of the bag limit sale prohibition were analyzed and documented by NMFS in the supporting documentation for Amendment 15B, including the National Environmental Policy Act document, the Regulatory Impact Review, and the Regulatory Flexibility Analysis. The analysis conducted for Amendment 15B to the FMP used State trip ticket data because at the time the analysis was conducted, fishermen that did not possess a Federal permit for snapper-grouper could still sell their bag

limit caught fish. The analysis conducted for Amendment 17B, however, did not use trip ticket data and used only Federal logbook data, because at that time the prohibition on bag limit sales had been implemented. As such, the relevant economic analysis does not include bag limit sales information and was conducted correctly.

Different actions are needed to end overfishing of species depending on their life history and habitat requirements. Snapper-grouper species such as speckled hind and warsaw grouper are long-lived and slow growing and require more stringent management measures, such as area closures, to end overfishing. King mackerel and Spanish mackerel are not as long lived nor do they suffer the high release mortality rates of speckled hind and warsaw grouper. Therefore, management measures that would be needed to end overfishing of mackerel species may not be as onerous as those that would be needed for long-lived species found in deep water.

Golden tilefish has never been determined to be overfished and it will not be known if actions taken to end overfishing of golden tilefish were successful until the stock is assessed again in 2011. Greater amberjack have never been determined to be overfished or experienced overfishing.

*Comment 11:* One commenter questioned why co-occurring species deeper than 240 ft (73 m) would be prohibited to protect speckled hind and warsaw grouper when these species are not frequently caught in these depths. The species most commonly caught along with speckled hind are vermilion snapper, red grouper, and scamp, none of which are considered by the Council to be deepwater species. Since speckled hind predominately live inshore of 40 fathoms and warsaw grouper are common inside of 100 ft (31 m), at least off the Florida coast, NMFS should consider closing the entire EEZ.

*Response:* The Council is aware that speckled hind and warsaw grouper are currently not commonly caught by fishermen and that the inshore shelf edge in 160 ft (49 m) is the area where juveniles are most abundant. However, adults of these species do occur in deep water where release mortality is extremely high and are incidentally captured when fishermen target co-occurring species. Therefore, the Council determined that prohibiting the harvest of species that co-occur with warsaw grouper and speckled hind in water deeper than 240 ft (73 m) could help reduce bycatch mortality, particularly as population biomass increases and more adults occur in

deeper water. Speckled hind and warsaw grouper occur in shallower water as juveniles with vermilion snapper and others. This is their zone of greatest abundance where some level of survival of released fish would be expected to occur. Therefore, the Council did not feel it was necessary to close the harvest of co-occurring species in depths less than 240 ft (73 m). As noted previously, speckled hind and warsaw grouper share similar biological characteristics to gag. Therefore, if depth related bycatch is similar to gag, in depths greater than 240 ft (73 m), release mortality would be expected to be greater than 70 percent. By prohibiting the harvest and possession of co-occurring species, in addition to prohibiting all harvest and possession of speckled hind and warsaw grouper, fishing mortality of speckled hind and warsaw grouper is expected to decrease and protection would be provided to adult fish with the greatest spawning potential.

*Comment 12:* One commenter feels the deepwater closure will result in an effort shift to the black sea bass, gray triggerfish, and vermilion snapper components of the snapper-grouper fishery, and lead to more out-of-state fishing by southern vessels in waters off North Carolina.

*Response:* Effort shifts resulting from the deepwater closure are difficult to predict. Negative biological impacts of effort shifts may be mitigated by ACLs and AMs in Amendment 17B and the Comprehensive ACL Amendment, which are designed to prevent the ACL from being exceeded or correct for ACL overages should they occur. However, negative social and economic effects could result from ACLs being met more quickly due to effort shifts.

The commercial sector for vermilion snapper is currently managed under a quota split into two seasons, and this amendment will specify the same split season for commercial ACLs, as well as specify a recreational ACL. Additionally, trip limits for vermilion snapper are being considered by the Council in Regulatory Amendment 9 to the FMP. Therefore, effort shift into the vermilion snapper portion of the fishery is unlikely to have negative biological impacts on vermilion snapper because the commercial harvest and sale of vermilion snapper would be prohibited when the ACLs are projected to be met.

The Council is developing Amendment 18A to the FMP, which includes actions to: Limit the number of black sea bass pots allowed per vessel; limit the number of participants in the black sea bass component of the snapper-grouper fishery; and require

that pots be returned to port at the completion of a fishing trip. If approved, these controls should limit effort shift into the black sea bass component of the snapper-grouper fishery, minimizing the occurrence of black sea bass pot "ghost fishing" on snapper-grouper species, as well as interactions with protected species.

Gray triggerfish are included within the 20 snapper-grouper aggregate bag limit for the recreational sector, and there is a 12-inch (30.5-cm) total length size limit in Federal waters off the east coast of Florida for the commercial and recreational sectors. The Comprehensive ACL Amendment, currently under development, would establish an ACL for gray triggerfish. This ACL would be associated with an AM intended to maintain harvest at or below the specified ACL. Therefore, if the Comprehensive ACL Amendment is implemented, a mechanism for controlling harvest of gray triggerfish would be established and could mitigate effort shifts that may result from actions contained in Amendment 17B. The deepwater closure could result in some amount of permanent and/or temporary effort shifting, however, the number of vessels that may or may not shift effort to other fisheries in response to the deepwater area closure cannot be predicted.

*Comment 13:* One commenter states the Council discussion concerning warsaw grouper and speckled hind was inadequate considering the scope of the deepwater closure being implemented through Amendment 17B.

*Response:* The Council discussed management measures for speckled hind and warsaw grouper beginning in June 2008. Since that time, the Council has met seven times and discussed actions in Amendment 17B before taking final action to approve the amendment. At its December 2010 meeting, the Council requested a regulatory amendment be prepared to examine new information related to the prohibition on harvest and possession of the six deepwater snapper-grouper species and evaluate the new information to determine if the deepwater closure in certain areas of the South Atlantic is still necessary.

*Comment 14:* One commenter states that the Amendment 17B cumulative impacts assessment of the role of the marine protected areas (MPAs) implemented through Amendment 14 to the FMP is inaccurate, and the ancillary impacts of the Oculina Experimental Closed Area for speckled hind and warsaw grouper were not mentioned in Amendment 17B.

*Response:* The effective date of the eight MPAs implemented through Amendment 14 to the FMP was February 13, 2009. Because these MPAs have been in place for a short period of time, little is known about their potential to positively impact snapper-grouper species beyond the basic protections afforded to habitats in these MPAs, and subsequent benefits realized by local fish populations. It is expected that the MPAs may help, to some extent, to protect a portion of the population (including spawning aggregations) and habitat of long-lived, slow growing, deepwater snapper-grouper species (speckled hind, snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, and blueline tilefish) from directed fishing pressure to achieve a more natural sex ratio, age, and size structure within the MPAs. Because the snapper-grouper species most affected by the MPAs and the Oculina closed area are long-lived, quantifiable biological benefits may not be measureable in the short-term. However, future studies are expected to analyze the affects of the MPAs and the Oculina closure on snapper-grouper species. Over time, continued research will provide further insight on the ecological benefits of conservation areas.

*Comment 15:* One commenter states that snowy grouper is the main driver for deepwater snapper-grouper fishing and past regulations to reduce snowy grouper harvest have not been considered in Amendment 17B as they relate to effort-reduction in the deepwater portion of the snapper-grouper fishery.

*Response:* Effort reductions resulting from previously implemented snowy grouper regulations were taken into account when analyzing the biological and socioeconomic impacts of the deepwater closure. As required under NEPA, Amendment 17B analyzes the impacts of the status quo alternative for each action, including the action to prohibit the harvest and possession of six deepwater species beyond 240 ft (73 m). The baseline condition used in the status quo (no action) analysis for the action to prohibit the harvest and possession of six deepwater species beyond 240 ft (73 m) included the snowy grouper harvest restrictions implemented through Amendment 13C to the FMP. These restrictions included a recreational bag limit for snowy grouper of one per person per day, a commercial trip limit of 100 lb (45 kg) gutted weight, and a reduced commercial quota of 84,000 lb (38,102 kg) gutted weight. Amendment 15A to the FMP specified an ABC for snowy

grouper that is consistent with the rebuilding plan for the species.

*Comment 16:* One commenter is opposed to reducing the recreational ACL for snowy grouper to 523 fish, and favors allowing existing regulations to rebuild the stock.

*Response:* The Magnuson-Stevens Act requires that ACLs and AMs be specified in 2010 for species undergoing overfishing. The Council chose to base the ACL for snowy grouper on the current total allowable catch (TAC). The Council also chose to specify sector ACLs for snowy grouper rather than one ACL for the commercial and recreational sectors. The Council determined the recreational sector ACL to be 523 fish, based on landings data from 2005–2008. Because this ACL is quite small, and recreational landings data is associated with a high degree of uncertainty, the AM will compare a 3-year running average of recreational landings to the recreational ACL. The AMs established for snowy grouper are intended to maintain harvest levels at or below the specified ACLs.

*Comment 17:* One commenter recommended additional inshore seasonal closures in the Florida Keys area to help rebuild overfished stocks.

*Response:* The Florida Keys area has an extensive network of marine sanctuaries, where fishing is limited or prohibited, and there is the offshore East Hump MPA, which was established in Amendment 14 to the FMP. The Council has not requested consideration of inshore area closures in the Florida Keys to address overfishing of the species addressed in Amendment 17B.

*Comment 18:* Several commenters state that aggregating the gag, black grouper, and red grouper ACLs, and the associated AMs is not an appropriate method for managing these stocks. One commenter emphasizes the fact that black grouper is no longer considered to be undergoing overfishing or overfished, further justifying not including it in the aggregate ACL. One commenter recommended developing a catch share program for these species in order to ensure all commercial sector participants are given the opportunity to harvest them.

*Response:* Amendment 16 established a commercial AM for red grouper and black grouper through a prohibition on the harvest of all shallow-water snapper-grouper species that would be effective when the commercial ACL for gag (a biologically similar species) is projected to be met each year. Because black grouper and red grouper had not been recently assessed at the time Amendment 17B was developed, and the Council was aware that a new stock

assessment for both species was forthcoming, the Council chose to establish an aggregate ACL that includes gag, red grouper, and black grouper, based on expected catch resulting from management measures implemented through Amendment 16 to the FMP.

The red grouper and black grouper Southeast Data, Assessment, and Review (SEDAR) stock assessment (SEDAR 19) was completed in 2010, after Amendment 17B had been submitted to NMFS for Secretarial review. The assessment indicated black grouper is not overfished and is not undergoing overfishing, and red grouper is overfished and undergoing overfishing. Therefore, a new FMP amendment is currently under development to establish a rebuilding plan and assign an individual ACL and AM for red grouper. The black grouper stock assessment was not completed until after Amendment 17B was submitted to the Secretary for review. Black grouper ACLs and AMs have been retained in Amendment 17B, however, the Council will immediately consider whether adjustments to ACLs and AMs are needed in light of the new assessment. The Comprehensive ACL Amendment, which is also under development by the Council, would consider a new ACL and AM for black grouper, as well as species groups for many different snapper-grouper species that could include gag, red grouper, and black grouper.

*Comment 19:* Several commenters state they have witnessed the progressive decline in deepwater snapper-grouper species over many years, and support measures to end overfishing and rebuild deepwater snapper-grouper stocks.

*Response:* NMFS agrees that effective management strategies must be utilized to rebuild stocks that are overfished to sustainable levels and prevent future overfishing from occurring. Actions have been taken through previous amendments to address overfishing of black sea bass, vermilion snapper, gag, red grouper, black grouper, snowy grouper, speckled hind, warsaw grouper, red snapper, and golden tilefish. It is the intent of the Council and NMFS to employ a system of ACLs and AMs to achieve these goals.

*Comment 20:* One commenter feels the restrictions on vermilion snapper are too restrictive and have fostered a derby fishery, and suggests a trip limit be implemented for vermilion snapper. Another commenter recommended the implementation of a system of trip limits, also known as the “Fisherman’s Plan,” as a means of maintaining harvest

levels of vermilion snapper below the specified ACLs.

*Response:* Regulatory Amendment 9 to the FMP includes an action to specify trip limits for vermilion snapper. It is the Council’s intent to alleviate the derby nature of the vermilion snapper component of the snapper-grouper fishery by implementing a trip limit as soon as possible. Additionally, Amendment 21 to the FMP, which is in the early stages of the development process, includes an action to establish a catch share program for vermilion snapper. Establishing a catch share program would eliminate the derby-style fishery, and would promote safety at sea.

*Comment 21:* One commenter feels Amendment 17B would not reduce harvest enough to end overfishing of the subject stocks, and recommends reducing all the ACLs contained in Amendment 17B by 66 percent.

*Response:* The best scientific information available supports the recently implemented harvest reductions in previous amendments and the ACLs contained in Amendment 17B. Actions have been taken in previous amendments to address overfishing of most species addressed in Amendment 17B. A reduction of the current ACLs by 66 percent is not supported by the best available scientific information, and could result in unnecessary adverse socioeconomic impacts on the fishing community. Therefore additional harvest restrictions beyond those in Amendment 17B are not necessary to end overfishing of the species addressed in Amendment 17B as required by the Magnuson-Stevens Act. Amendment 17B specifies ACLs and AMs for speckled hind, warsaw grouper, snowy grouper, black sea bass, vermilion snapper, black grouper, red grouper, gag, and golden tilefish to end overfishing and help ensure that overfishing does not occur in the future.

*Comment 22:* One commenter stated the impacts of anthropogenic pollutants such as sunscreens, pharmaceuticals, and cruise ships could have an effect on snapper-grouper reproductive fitness.

*Response:* The direct impacts of anthropogenic toxins introduced into the marine environment have been studied in recent years, but their impacts on snapper-grouper species are not quantifiable at this time. Ongoing research in the field is likely to continue as human impacts on the environment increase. Several studies show a correlation between pharmaceutical waste and subsequent lowered reproductive fitness in marine organisms. The extent to which chemical waste impacts snapper-

grouper species in the South Atlantic is unknown, and may be more difficult to measure in deepwater species, which do not spend the majority of their live cycles in close proximity to known pollution sources.

The Environmental Protection Agency (EPA) has participated in several surveys to assess the impacts of cruise ship discharge of food waste, gray water, bilge water, and ballast water on the marine environment, including a survey conducted in August 2001 to estimate the dilution of cruise ship discharges into receiving waters. Another survey, conducted in Skagway Harbor, Alaska, in July 2008, estimated the near-field dilution of treated sewage/gray water discharges from docked cruise ships. The EPA also prepared a Cruise Ship Discharge Assessment Report (Assessment Report), which examines waste streams generated by cruise ships. The report is available at: [http://water.epa.gov/polwaste/vwd/cruise\\_ship\\_disch\\_assess\\_report.cfm](http://water.epa.gov/polwaste/vwd/cruise_ship_disch_assess_report.cfm). Despite these and other ongoing studies, the direct impact of cruise ship waste discharge on snapper-grouper species in the South Atlantic is not known at this time.

*Comment 23:* One commenter suggests requiring permits and logbooks on all vessels in all sectors of the snapper-grouper fishery.

*Response:* Logbooks and snapper-grouper permits are required for participants in the commercial snapper-grouper fishery. Permits are also required for all participants in the for-hire sector of the snapper-grouper fishery, and logbooks are required on headboats if selected by NMFS. Amendment 15B, which became effective in December 2009, requires any vessel fishing for snapper-grouper in the South Atlantic EEZ, if selected by NMFS, to maintain and submit fishing records; and requires any vessel that fishes in the EEZ, if selected by NMFS, to carry an observer and install an electronic logbook (ELB) and/or video monitoring equipment provided by NMFS. The reporting and record-keeping requirements contained in Amendment 15B only include selected vessels because these requirements are cost prohibitive if applied to every fisher in the South Atlantic at this time.

*Comment 24:* One commenter stated that a prohibition on all longline fishing would end overfishing of golden tilefish.

*Response:* Golden tilefish are primarily harvested using bottom longline gear. Actions were taken in Amendment 13C to end the overfishing of golden tilefish, which included a reduction in the quota to 295,000 lb (133,810 kg) gutted weight. Therefore,

eliminating the longline harvest for golden tilefish could have unnecessary negative economic and social effects. The effectiveness of management measures in ending overfishing for golden tilefish will be determined in an assessment scheduled for 2011.

Amendment 17B established ACLs and AMs to help ensure golden tilefish overfishing does not occur.

Currently, for the snapper-grouper fishery, the use of bottom longline fishing gear is limited by species and area. A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. Additionally, under the FMP, a longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10' N. latitude (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10' N. latitude where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. Under the FMP, a person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10' N. latitude, or north of 27°10' N. latitude where the charted depth is less than 50 fathoms (91.4 m), is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified, and to zero for all other South Atlantic snapper-grouper.

Additionally, Amendment 18A to the FMP is addressing potential effort control mechanisms for the golden tilefish component of the snapper-grouper fishery, including an endorsement for hook-and-line and longline gear. Therefore, Amendment 18A may mitigate, to some extent, any effort shift into the golden tilefish component of the snapper-grouper fishery.

*Comment 25:* Three commenters felt the golden tilefish allocation of 97-percent commercial and 3-percent recreational is unfair and allocates too much of the total ACL to the commercial sector.

*Response:* The sector allocations for golden tilefish were chosen based on long-term and short-term landings histories. The preferred allocation of 97 percent for the commercial sector and 3 percent for the recreational sector is representative of past and current harvest levels for both sectors and thus would cause the least disruption to the economic and social environments. The

Council considered an alternative that would allocate half of the ACL to the commercial sector and half to the recreational sector, but rejected this alternative because it would result in the largest deviation from the short and long-term landings trend for the two sectors. It was concluded that the preferred allocation is fair and equitable based on the best scientific information available.

*Comment 26:* Two commenters suggested that the Federal government buy out those fishermen who are ready to leave the fishery because of overly burdensome regulations. One commenter suggested the U.S. Department of Commerce develop a fisheries disaster assistance program for commercial and for-hire fishermen affected by recently implemented regulations.

*Response:* The Council discussed the establishment of a buy-out program for commercial snapper-grouper fishermen in Georgia during the development process for Amendment 17A to the FMP, which was drafted concurrently with Amendment 17B. A buy-out program for the commercial sector would require a great deal of planning, time, funds, and acceptance from fishery participants. Because of these limiting factors and the need to end overfishing immediately as required by the Magnuson-Stevens Act, a buy-out program was not pursued by the Council or NMFS during the development of Amendment 17B.

The Magnuson-Stevens Act states the Secretary may establish a regional economic transition program to provide immediate disaster relief assistance upon the request and concurrence with the Governors of the affected States. Neither the Secretary nor NMFS has received a request from any of the four affected States' governors for disaster relief. Therefore, a disaster relief program for the snapper-grouper fishery has not been considered.

*Comment 27:* Several commenters feel the economic impact analysis for actions contained in Amendment 17B is either absent or inadequately represents the true impacts expected from the implementation of Amendment 17B.

*Response:* Amendment 17B contains a complete economic impact analysis of all actions and alternatives considered by the Council in Amendment 17B. Additionally, Amendment 17B contains a social impact analysis of all the alternatives considered by the Council. Furthermore, in compliance with Magnuson-Stevens Act, Amendment 17B contains a Regulatory Impact Review, an initial Regulatory Flexibility Analysis, a Fishery Impact Statement,



and a Social Impact Assessment. These economic and social analyses utilize recent landings, trip ticket, logbook, permit, and financial data for the commercial and recreational sectors. As such, the subject analyses have been determined to represent an accurate and complete economic picture of potential impacts that may result from the implementation of Amendment 17B.

*Comment 28:* Three commenters feel Amendment 17B contained several deficiencies, including: the absence of overfishing limits (OFLs) for six species, the absence of ABCs for five species, the lack of an ABC control rule, failing to account for management uncertainty in the ACLs, and failing to include discard mortality in the ACLs (most notably for speckled hind and warsaw grouper). One commenter states that Amendment 17B establishes ACLs and management measures that are unlikely to end overfishing for golden tilefish, black sea bass, and snowy grouper. Additionally, one commenter states that Amendment 17B should include an ACL performance standard, and re-evaluation of the ACLs and AMs that would be triggered if the catch exceeds the ACL more often than once in a given period of time.

*Response:*

*OFL:* The Magnuson-Stevens Act National Standard 1 Guidelines give the Councils flexibility to use either the maximum fishing mortality threshold (MFMT) or the overfishing limit (OFL) to determine if overfishing is occurring. The National Standard 1 Guidelines state, "The OFL is an annual level of catch that corresponds directly to the MFMT, and is the best estimate of the catch level above which overfishing is occurring." Furthermore, in June 2008, the SSC stated that for species assessed through SEDAR, OFL is equal to the yield at MFMT. Golden tilefish, snowy grouper, black sea bass, vermilion snapper, red grouper, and black grouper have been assessed through SEDAR and, therefore, have estimates of MFMT. The numerical estimates of MFMT for black grouper and red grouper will be provided in the Comprehensive ACL Amendment and Amendment 24, respectively.

The SSC was unable to provide recommendations of the OFL for speckled hind and warsaw grouper at its June 2008 meeting, based on current data, and, therefore, specified OFL as "unknown." The SSC encountered similar problems when attempting to specify OFLs for species at its April 2010 meeting. Discussion at the April 2010 meeting focused on what the SSC was responsible for providing to the Council under National Standard 1

Guidelines. To explain its reasoning and judgment, the April 2010 SSC report states, "It became clear that recommending an ABC was the main goal, and providing this recommended value without an estimate of OFL was acceptable in situations where only catch series data were available."

*ABC:* At its December 2008 meeting, the SSC considered the guidance given in the proposed Magnuson-Stevens Act National Standard 1 Guidelines and rescinded all estimates of ABC from its June 2008 meeting (except for an ABC of zero for speckled hind and warsaw grouper based on landed catch). At its December 2008 meeting, the SSC also recommended that the ABC levels for snowy grouper, black sea bass, and red snapper be set consistent with the rebuilding plans for those species until they can be further amended using more updated scientific information. The SSC reaffirmed, at its April 2010 meeting, that "For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates in the rebuilding plan." At its June 2009 meeting, the SSC recommended ABCs for gag and vermilion snapper based on a P\* analysis, which is being used as the Council's preferred ABC control rule for assessed species that are not experiencing overfishing in the Comprehensive ACL Amendment.

The SSC did not provide an ABC value for golden tilefish because of the age of the assessment and because of the lack of a current estimate of abundance. Golden tilefish will be assessed by SEDAR in 2011. The ABC control rule being used in the Comprehensive ACL Amendment will be applied to golden tilefish to obtain an ABC value when the assessment and amendment are completed in 2011. The SSC did not provide an ABC value for black grouper and red grouper because assessments were ongoing for those species when Amendment 17B was being developed by the Council, and since the SEDAR assessments have now been completed, OFLs, ABCs, and ACLs will be specified in the Comprehensive ACL Amendment and Amendment 24 for black grouper and red grouper, respectively.

*ABC Control Rule:* For overfished stocks and stock complexes, the SSC has indicated that the ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates in the rebuilding plan. Amendment 17B did not specify ABC control rules for assessed species that were not overfished or for data poor species because these control rules were under development by the SSC. The

SSC met in March and June of 2009 to determine ABC control rules for data rich species, and met in April and August of 2010 to identify the protocol for determining the ABC for data poor species. A final version of the SSC's recommendation of an ABC control rule for assessed species was provided to the Council at its March 2010 meeting, after the Council had voted to submit Amendment 17B for Secretarial review. The SSC has not completed its recommendations for ABC control rules for non-assessed species. ABC control rules for assessed and data poor species will be included in the Comprehensive ACL Amendment.

The SSC recommended and the Council chose an ACL of zero for speckled hind and warsaw grouper based on landings only. Choosing an ACL based on total mortality rather than landed catch would require the SEFSC to monitor discarded speckled hind and warsaw grouper in the commercial and recreational sectors. The Council's SSC expressed concerns about monitoring discards when discussing ACLs for speckled hind and warsaw grouper at its March 2009 meeting. The SSC was not only concerned about the accuracy of discard data as currently collected from the recreational and commercial sector but also the possibility that some members of the fishing community might under-report discarded fish if they believed further restrictions might be imposed if levels of dead discards became elevated. Therefore, due to concern about monitoring discards, the SSC recommended an acceptable biological catch equal to zero for speckled hind and warsaw grouper based on landed catch only.

*Management Measures:* Action is being taken in Amendment 17B to reduce discards of speckled hind and warsaw grouper by prohibiting the take of co-occurring species in depths greater than 240 ft (73 m). Rather than retain and monitor speckled hind and warsaw grouper discards, the intent of the area closure is to reduce bycatch in an area where release mortality is expected to be very high. The relationship between depth and mortality has not been specified for speckled hind and warsaw grouper. However, as previously discussed, speckled hind and warsaw grouper share similar biological characteristics to gag; therefore, if depth related release mortality of speckled hind and warsaw grouper is similar to gag, release mortality would be expected to be approximately 70 percent in depths of 240 ft (73 m).

Actions were taken to end overfishing of golden tilefish, snowy grouper, and black sea bass in Amendment 13C to the



FMP. It will not be known if the measures were successful in ending overfishing until new assessments are conducted for these species. New benchmark assessments will be conducted for golden tilefish and black sea bass in 2011, and snowy grouper will be assessed in 2013. Amendment 17B specifies ACLs and AMs for speckled hind, warsaw grouper, snowy grouper, gag, vermilion snapper, black sea bass, golden tilefish, black grouper, and red grouper, to ensure overfishing of these species does not occur.

The National Standard 1 Guidelines states that "if catch exceeds the ACL for a given stock or stock complex more than once in the last 4 years, the system of ACLs and AMs should be re-evaluated, and modified if necessary, to improve its performance and effectiveness." Amendment 17B follows this guidance for performance measures with an action to update the framework procedure to allow for adjustments to OFL, ABC, and ACL based on SEDAR reports or other new information. Under the updated framework procedure, the SSC would examine the social and economic impact analyses for a specific allocation, ACL, ACT, AM, quota, bag limit, or other fishing restriction. If it is determined by the Council and its SSC that the management measures in place are not constraining catch to a target level, adjustments could be made through a future regulatory amendment.

*Comment 29:* One commenter stated Amendment 17B does not adequately demonstrate that speckled hind and warsaw grouper are undergoing overfishing.

*Response:* According to the most recent Report to Congress on the Status of U.S. Fisheries, warsaw grouper and speckled hind are undergoing overfishing and have been identified as experiencing overfishing every year since the Report was initiated in 1997. Status determinations in the Report to Congress on the Status of U.S. Stocks are generally made during a formal review of a scientific stock assessment using the best available scientific information and status determination criteria specified in a fishery management plan. However, many resources can be used to make status determinations, including final peer-reviewed documents such as Stock Assessment Review Committee reports and recommendations of each Council's Scientific and Statistical Committee. The Council and NMFS are mandated to end overfishing by the Reauthorized Magnuson-Stevens Act, and to specify ACLs and AMs for species undergoing overfishing and to implement management measures to ensure

overfishing does not continue to occur. New SEDAR benchmark assessments for speckled hind and warsaw grouper are scheduled for 2012 or 2013.

*Comment 30:* Three commenters felt the Finding of No Significant Impact (FONSI) for Amendment 17B erroneously concluded that there are no significant impacts as a result of this amendment. One commenter requests that an environmental impact statement (EIS) be prepared for Amendment 17B.

*Response:* An environmental assessment (EA) was conducted for Amendment 17B, instead of an EIS, because most of the ACLs and AMs implemented through this final rule are based on previously implemented quotas and allocations, and the deepwater closure was concluded to result in a low to moderate level of socioeconomic impact to the snapper-grouper fishery. The deepwater closure is expected to primarily affect commercial fishermen who target blueline tilefish off North Carolina, and commercial and recreational fishermen in areas of the Florida Keys where the 240-ft (73-m) depth boundary is close to shore.

The significance of an action under NEPA is determined by considering the action's context and intensity. In the case of the deepwater area closure, the impacts are not considered significant because select groups of snapper-grouper fishery participants are expected to be impacted, and those impacts are anticipated to be low to moderate relative to the entire snapper-grouper fishery. For the entire South Atlantic, the prohibition on harvest and possession of six deepwater snapper-grouper species beyond a depth of 240 ft (73 m) is expected to reduce annual overall net operating revenues in the commercial snapper-grouper fishery by about \$292,000, or by 3.3 percent. For the State of North Carolina alone, the action is expected to reduce net operating revenue in the commercial sector by approximately 7 percent. As such, the FONSI appropriately concludes the actions in Amendment 17B are not expected to result in significant impacts on the human environment; and therefore, an EIS was not prepared.

*Comment 31:* Several commenters stated that the amendment would have severe economic impacts on commercial and recreational fishing opportunities and operations, including their support industries and local communities. Many comments especially singled out the ban on fishing for, retaining, and possessing of six deepwater species in waters beyond 240 ft (73 m) deep as a major

factor that would put many people out of work.

*Response:* The economic analysis of the actions and alternatives considered concluded that, with the exception of the no action alternatives, practically all management measure alternatives would result in restricted fishing opportunities and short-term adverse economic effects on fishers, support industries, and associated communities. However, it is imperative that we take some action to protect species undergoing overfishing. The actions adopted are expected to be those which best achieve the Council's objectives while minimizing, to the extent practicable, the adverse economic and social effects on fishing participants and associated communities.

*Comment 32:* One commenter stated that no consideration was made of potential differences in economic impacts based on differences in fishing practices and economic activities along the coast.

*Response:* The economic analysis evaluated the effects of the various measures in Amendment 17B on vessels by gear type used and geographic area in the South Atlantic. Thus, the analysis addressed, to the extent possible using available data, the differential economic effects of the alternatives based on gear type and geographic location.

*Comment 33:* One commenter stated that once the Council and NMFS decided what the economic impacts are, public comments would not count at all.

*Response:* The Council and NMFS have taken multiple steps to solicit comments from the public through meetings, public hearings, and dissemination of written materials on the various issues considered in the amendment. The law, as well as the policies of the Council and NMFS, requires consideration of public comments as an integral part of the regulatory process even after the economic analysis is completed. However, economic impacts are not the only factor the Council and NMFS must take into account.

*Comment 34:* Two commenters noted that the 97 percent commercial and 3 percent recreational allocation of golden tilefish neglects the contribution of the recreational sector into the local economy.

*Response:* The commercial/recreational allocation for golden tilefish took into account the past and present landing records of both the commercial and recreational sectors. The economic effects of the various allocation measures were evaluated independently and in conjunction with the other alternatives in the amendment.

The economic analysis concluded that the allocation ratio was not expected to introduce severe dislocations of commercial and recreational fishing activities.

*Comment 35:* One commenter mentioned the lack of analysis of the cumulative economic impacts of the amendment.

*Response:* The economic analysis evaluated the cumulative effects of past and present regulatory measures affecting the snapper-grouper recreational and commercial sectors. Both quantitative and qualitative discussions of cumulative economic effects were presented.

*Comment 36:* One commenter remarked that serious attention to socioeconomic aspects of fisheries management is grossly overlooked as real science.

*Response:* NMFS has always recognized the important role of social science in fisheries management, as specifically required by the Magnuson-Stevens Act, Regulatory Flexibility Act, and Executive Order 12866. Although the overriding objective of Amendment 17B has been to protect or rebuild the subject snapper-grouper species, the socioeconomic effects of the various alternatives were evaluated and considered in the choice of preferred alternatives.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that Amendment 17B is necessary for the conservation and management of South Atlantic snapper-grouper and is consistent with 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, as required by section 604 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule is expected to have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for, this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the NMFS (see **ADDRESSES**). The FRFA follows.

No public comments specific to the IRFA were received. However, 22 of the 175 comments contained statements regarding the economic effects of the amendment, and they are addressed in comments/responses section, specifically comments/responses number 31 through 36.

NMFS agrees with the Council's choice of preferred alternatives as those which would be expected to best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

No changes to the proposed rule were made in response to public comments.

The final rule introduces several changes to the management of the South Atlantic snapper-grouper fishery. This rule establishes an ACL of zero for speckled hind and warsaw grouper, and this prohibits the harvest and possession of speckled hind and warsaw grouper. The rule prohibits fishing for and possession of snowy grouper, blueline tilefish, yellowedge grouper, warsaw grouper, speckled hind, misty grouper, queen snapper, and silk snapper beyond a depth of 240 ft (73 m).

This rule establishes a 97-percent commercial and 3-percent recreational allocation of golden tilefish. This rule establishes a commercial ACL (quota) for golden tilefish of 282,819 lb (128,284 kg) gutted weight and a recreational ACL of 1,578 fish based on the chosen allocation for golden tilefish. The commercial AM for golden tilefish prohibits the harvest, possession, purchase, and sale of golden tilefish after the quota is met or projected to be met. The recreational AM is specified as follows: If the ACL is exceeded, the Regional Administrator (RA) shall publish a notice to reduce the length of the following fishing season by the amount necessary to ensure landings do not exceed the sector ACL in the following fishing year. The recreational ACL would be compared to recreational landings using only 2010 landings for 2010, an average of 2010 and 2011 landings for 2011, and a 3-year average of landings for 2012 and beyond.

This rule establishes a recreational daily bag limit of one snowy grouper per vessel, with a recreational ACL of 523 fish and a recreational AM specified as follows: If the ACL is exceeded, the RA shall publish a notice to reduce the length of the following fishing season by the amount necessary to ensure landings do not exceed the sector ACL in the following fishing year. The recreational ACL would be compared to recreational landings using only 2010 landings for 2010, an average of 2010 and 2011 landings for 2011, and a 3-year average of landings for 2012 and beyond.

This rule establishes an aggregate ACL (quota) for gag, black grouper, and red grouper of 662,403 lb (300,461 kg) gutted weight (commercial) and 648,663 lb (294,229 kg) gutted weight (recreational), but retains the commercial ACL (quota) for gag or

352,940 lb (160,091 kg) gutted weight and recreational ACL for gag of 340,060 lb (154,249 kg) gutted weight. This rule prohibits the commercial possession of shallow-water groupers (gag, black grouper, red grouper, scamp, red hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney) when the gag ACL (currently at 352,940 lb (160,091 kg) gutted weight) or the aggregate gag, black grouper, and red grouper ACL is met or projected to be met. This rule implements recreational AMs for black grouper, black sea bass, gag, red grouper, and vermilion snapper as follows: If a species is overfished and the sector ACL is met or projected to be met, prohibit the harvest and retention of the species or species group. If the ACL is exceeded, independent of stock status, the RA shall publish a notice to reduce the sector ACL in the following fishing season by the amount of the overage. The recreational ACL would be compared to recreational landings using only 2010 landings for 2010, an average of 2010 and 2011 landings for 2011, and a 3-year running average of landings for 2012 and beyond.

Finally, this rule updates the framework procedure for specification of Total Allowable Catch (TAC) for the FMP to incorporate ACLs, ACTs, and AMs. Such modifications are based upon new scientific information indicating such modifications are prudent.

The Magnuson-Stevens Act provides the statutory basis for the final rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. The final rule does not alter existing reporting, recordkeeping, or other compliance requirements.

The final rule is expected to directly affect commercial fishers and for-hire operators. The SBA has established size criteria for all major industry sectors in the U.S. including commercial fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2003–2007, an average of 944 vessels per year was permitted to operate in the commercial sector of the snapper-grouper fishery. Of these vessels, 749 held transferable permits and 195 held non-transferable permits.

As of December 17, 2010, there are 604 vessels with transferable permits and 138 vessels with non-transferable permits. On average, 890 vessels landed 6.43 million lb (2.92 million kg) of snapper-grouper species and 1.95 million lb (0.88 million kg) of other species on snapper-grouper trips. Total dockside revenues from snapper-grouper species stood at \$13.81 million and at \$2.30 million from other species. Considering revenues from both snapper-grouper and other species, the revenues per vessel were approximately \$18,101. An average of 27 vessels per year harvested more than 50,000 lb (22,680 million kg) of snapper-grouper species per year, generating dockside revenues of at least \$107,500, at an average price of \$2.15 (2007 dollars) per pound. Commercial vessels that operate in the snapper-grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

Although a vessel that possesses a commercial snapper-grouper permit can harvest any snapper-grouper species, not all permitted vessels or vessels that landed snapper-grouper landed all of the major species in this amendment. The following average number of vessels landed the subject species in 2003–2007: 292 vessels landed gag, 253 vessels landed vermilion snapper, 32 vessels landed speckled hind, 64 vessels landed golden tilefish, 160 vessels landed snowy grouper, 323 vessels landed black grouper, 237 vessels landed black sea bass, and 402 vessels landed red grouper. Combining revenues from snapper-grouper and other species on the same trip, the average revenue per vessel for vessels landing the subject species were \$20,551 for gag, \$28,454 for vermilion snapper, \$6,250 for speckled hind, \$17,266 for golden tilefish, \$7,186 for black grouper, \$19,034 for black sea bass, and \$17,164 for red grouper.

Based on revenue information, all commercial vessels that would be affected by the final action are considered to be small entities.

For the period 2003–2007, an average of 1,635 vessels were permitted to operate in the snapper-grouper for-hire sector, of which 82 are estimated to have operated as headboats and 1,553 as charter boats. As of December 17, 2010, there are 1,474 permitted for-hire vessels. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Within the total number of vessels, 227 also possessed a commercial snapper-grouper permit and

would be included in the summary information provided on the commercial sector. The charterboat annual average gross revenue is estimated to range from approximately \$62,000–\$84,000 for Florida vessels, \$73,000–\$89,000 for North Carolina vessels, \$68,000–\$83,000 for Georgia vessels, and \$32,000–\$39,000 for South Carolina vessels. For headboats, the appropriate estimates are \$170,000–\$362,000 for Florida vessels, and \$149,000–\$317,000 for vessels in the other States.

Based on average revenue figures, all for-hire operations that would be affected by the final action are considered to be small entities.

Some fleet activity (*i.e.*, multiple vessels owned by a single entity) may exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown and all vessels are treated as independent entities in this analysis.

The measure to establish an ACL of zero for speckled hind and warsaw grouper, together with the ban on fishing for deepwater species co-occurring with these two species beyond 240 ft (73 m), is expected to reduce net operating revenues of commercial vessels by about \$292,000. This measure is also expected to reduce net operating revenues of for-hire vessels by less than \$102,000.

Establishing a 97 percent commercial and 3 percent recreational allocation of golden tilefish would maintain the long-term and short-term proportional landings history of the commercial and recreational sectors, with possible small short-term changes (depending on the ACL) in net operating revenues of both commercial and for-hire vessels. At this allocation ratio, the corresponding commercial ACL (quota) would be 282,819 lb (128,284 kg) gutted weight and the recreational allocation would be 1,578 fish (8,747 lb (3,968 kg) gutted weight). The golden tilefish commercial quota in combination with the AM of closing the fishery after the quota is met is expected to reduce net operating revenues of vessels with snapper-grouper commercial permits by about \$8,000. The recreational allocation is expected to result in net revenue reductions of for-hire snapper-grouper vessels by about \$7,000. It is worth noting, however, that the reduction in net operating revenues of for-hire vessels is not immediate because the recreational AM would shorten only the subsequent year's fishing season and only when recreational landings over a number of years (except for 2010) exceed the ACL.

Establishing a daily bag limit of one snowy grouper per vessel is expected to reduce net operating revenues of for-hire snapper-grouper vessels by about \$7,000. This reduction in net operating revenues would not be immediate because the recreational AM would shorten only the subsequent year's fishing season and only when recreational landings over a number of years (except for 2010) exceed the ACL.

The combined measures of retaining the commercial ACL for gag of 352,940 lb (160,091 kg) gutted weight, to establish an aggregate commercial ACL for gag, red grouper, and black grouper of 662,403 lb (300,461 kg) gutted weight, and to close the fishery when the gag ACL or the aggregate ACL is reached is expected to reduce net operating revenues of commercial vessels by about \$103,000. For the recreational component of the snapper-grouper fishery, the combined measures of retaining the recreational ACL for gag of 340,060 lb (154,249 kg) gutted weight and establishing an aggregate recreational ACL for gag, red grouper, and black grouper of 648,663 lb (294,229 kg) gutted weight are not expected to affect the net operating revenues of for-hire snapper-grouper vessels because these are the expected landings from implementation of previous amendments, notably Amendment 16 to the FMP. There is a possibility that the recreational AM of prohibiting the harvest and retention of an overfished species when the sector ACL is met or projected to be met would have negative impacts on for-hire snapper-grouper vessels fishing for black sea bass. Under this AM, for-hire snapper-grouper vessels as a whole could potentially lose about \$860,000 in net revenues. This reduction is likely to be an overestimate for at least two reasons. First, the method used in estimating the economic effects on the recreational sector likely overestimated the number of headboat angler trips affected by the measure. Second, the trend of recreational black sea bass landings has been downward due to the implementation of more restrictive measures provided in previous amendments. Therefore, using average landings over the period 2005–2008 inflated the landings when compared to the ACL.

Updating the framework procedure for specification of TAC has no direct effects on the net operating revenues of commercial and for-hire snapper-grouper vessels.

Five alternatives, including the final action, were considered for establishing an ACL for speckled hind and warsaw grouper. The first alternative to the final

action, the no action alternative, would not conform to the requirements of the Magnuson-Stevens Act, as reauthorized in 2006, to establish an ACL for the subject species. The second alternative to the final action would establish an ACL of zero for speckled hind and warsaw grouper but would not close any areas to fishing for deepwater species that co-occur with these two species. Although this alternative would have smaller negative economic effects on small entities than the final action, it would not be sufficient to end overfishing of speckled hind and warsaw grouper due to discard mortality from fishing for other co-occurring deepwater species. The third alternative to the final action is the same as the final action, except that the fishing prohibition for other co-occurring deepwater species would apply to all depths. In this case, this alternative would result in greater negative economic effects on small entities than the final action. The fourth alternative to the final action is similar to the final action, except that the prohibition on fishing for other co-occurring deepwater species would be beyond 300 ft (92 m). With smaller closed areas, this alternative would result in slightly smaller negative economic effects on small entities. On the other hand, the protection this alternative provides for adult speckled hind and warsaw grouper would be less than that of the final action. The possibility of continued overfishing for the subject species may still occur under this alternative.

Four alternatives, including the final action, were considered for the golden tilefish allocation. The first alternative to the final action, the no action alternative, would not establish a commercial and recreational allocation for golden tilefish. Without a defined sector allocation, it would be difficult to define sector ACLs and to take corrective actions should the sector ACLs or overall ACL be exceeded. This would weaken the ability of fishery managers to effectively manage the stock. The second alternative to the final action would establish a 96-percent commercial and 4-percent recreational allocation. This allocation is very close to that provided under the final action, and thus its economic effects would only minimally differ from those of the final action. This alternative uses only the most current landings records (2006–2008) while the final action uses both the long-run (1986–2008) and short-run (2006–2008) landings history. The third alternative to the final action would establish a 50-percent

commercial and 50-percent recreational allocation. This alternative would create significant disruptions to the commercial sector operations, and thus would impose relatively large costs to this sector. The recreational sector would stand to gain from this allocation, but whether or not the gains to the recreational sector would outweigh losses to the commercial sector cannot be determined. At least in the short-term and given the current bag limit of one fish per person per day, benefits to the recreational sector would be relatively small and would not compensate for the losses in the commercial sector. Thus, the expected net economic effects of this alternative in the short-term would be negative.

Five alternatives, including the final action, were considered for the golden tilefish ACL and AM. The first alternative to the final action, the no action alternative, would retain the current ACL (quota) for the commercial sector based on  $F_{MSY}$  and would not establish an ACL for the recreational sector. The current AM would close all fishing for golden tilefish once the commercial quota is reached. This alternative would not add any more fishery restrictions and economic losses to the fishery participants, but it would be less conservative than the final action in rebuilding the stock as to potentially lengthen the recovery of the stock beyond the specified rebuilding period. In addition, it would provide less flexibility in implementing sector-specific AMs. The second alternative to the final action would establish a single commercial and recreational ACL which would combine the commercial ACL at the  $F_{OY}$  level and the recreational allowable harvest at the OY level. The AM would prohibit commercial and recreational harvest when the ACL is projected to be met. This alternative would result in approximately the same economic losses to the commercial sector as the final action. There is some potential for this alternative to result in smaller economic losses to the recreational sector than the final action, especially if only the commercial landings were effectively monitored because then the recreational fishing season would remain open longer. But to the extent that the AM under this alternative would be imposed in-season while that of the final action would become effective only in subsequent years, the economic effects of this alternative over time could very well exceed those of the final action. The third alternative to the final action would establish a recreational AM of one golden tilefish per vessel per day

when the single ACL (sum of the commercial ACL at the  $F_{OY}$  level and recreational harvest at the OY level) is met or projected to be met. This alternative offers potential for smaller economic losses to the recreational sector than the final action by maintaining a year-round recreational fishing season although at a very limited bag limit. However, because this alternative requires an in-season adjustment in lieu of subsequent-year adjustments, as under the final action, the resulting economic losses over time due to this alternative could exceed those of the final action. The fourth alternative to the final action would establish a commercial and recreational ACL based on the yield at  $F_{OY}$  for the commercial fishery. The AM for both sectors would be to prohibit harvest, possession, and retention of golden tilefish when commercial landings exceed the ACL. This alternative would have the same economic effects on the commercial sector as the final action, but losses to the recreational sector would likely exceed those of the final action.

Four alternatives, including the final action, were considered for establishing a snowy grouper ACL and AM. The first alternative, the no action alternative, to the final action would retain the commercial ACL (quota) of 82,900 lb (37,603 kg) gutted weight as the ACL based on the current TAC of 87,254 lb (39,578 kg) gutted weight; would retain the commercial AM which is to prohibit harvest, possession, and retention of snowy grouper when the quota is met or projected to be met; would maintain the recreational ACL of 523 fish; and, would not implement a recreational AM. This alternative would not add any restrictions to either the commercial or recreational sector. The absence of an AM for the recreational sector would make it difficult to implement sector-specific adjustments. The second alternative to the final action would establish a single commercial/recreational ACL based on the current TAC of 87,254 lb (39,578 kg) gutted weight, and the AM for both sectors would be a closure of the fishery when the ACL is met or projected to be met. This alternative may result in slightly better economic effects on the commercial sector than the final action or the no action alternative, but this slight advantage of the commercial sector would come at the expense of the recreational sector. In effect, this alternative would have slightly larger short-term economic losses on the recreational sector than the final action. In addition, this alternative would not

allow for sector-specific adjustments should ACL overages occur. The third alternative to the final action would establish a recreational AM of one fish per vessel per day when the commercial quota is met or projected to be met. The commercial AM would be a fishery closure when the quota is met. This alternative would have similar economic effects for the commercial sector as the no action alternative and slightly lower short-term negative effects on the recreational sector than the final action. However, unlike the final action, this alternative could result in overages in the recreational sector without a possible compensating adjustment in succeeding years, thereby potentially resulting in less protection to the stock.

Five alternatives, two of which comprise the final action, were considered for the black grouper, black sea bass, gag, red grouper, and vermilion snapper ACL, AM, and ACT. The alternative for establishing commercial and recreational ACLs consisted of two sub-alternatives, one of which is the final action. The ACT alternative for the recreational sector consisted of three sub-alternatives, none of which were selected as the final action. The AM alternative for the recreational sector consisted of three sub-alternatives, one of which is the final action. The first alternative to the final action, the no action alternative, would retain the commercial and recreational ACLs (quotas) for black sea bass, gag, and vermilion snapper and would not establish commercial and recreational ACLs for black grouper and red grouper. This alternative would not comply with the requirements of the Magnuson-Stevens Act, as reauthorized in 2006. The second alternative to the final action for commercial and recreational ACLs would establish black grouper commercial and recreational ACLs of 86,886 lb (39,411 kg) gutted weight and 31,863 lb (14,453 kg) gutted weight, respectively. It would also establish red grouper commercial and recreational ACLs of 221,577 lb (100,505 kg) gutted weight and 276,740 lb (125,527 kg) gutted weight, respectively. This alternative would have similar biological effects as the final action. However, it could result in slightly worse economic effects as the final action because it would allow less flexibility for small entities in adjusting their fishing operations with respect to gag, black grouper, and red grouper. The third alternative to the final action for the recreational AM consisted of two sub-alternatives. The first sub-alternative would require the RA to

reduce the length of the following fishing year if the ACL were exceeded in the current year. Although this alternative would provide less negative effects in the short-term, it would provide less biological benefits than the final action, particularly with respect to overfished species, so as to delay further the generation of economic benefits from the fishery. The second sub-alternative would close the fishery if the sector ACT were exceeded for an overfished species or species group and would require the RA to reduce the sector ACT the following year. By not selecting any ACT, this alternative would not be a viable alternative. If ACTs were selected, this alternative would likely result in larger short-term economic losses than the final alternative.

Two alternatives, including the final action, were considered for updating the framework procedure for specification of TAC in the FMP to incorporate ACLs, ACTs, and AMs. The only alternative to the final action, the no action alternative, would delay the implementation or modification of ACLs, ACTs, and AMs when new scientific information becomes available because this would require the FMP amendment process which would incur more administrative costs than the final action.

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

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

Dated: December 22, 2010.

**Samuel D. Rauch III,**  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, 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 § 622.2, the definitions of “Deep-water grouper (DWG)” and “Shallow-water grouper (SWG)” are revised and definitions of “Deep-water snapper-grouper (DWSG)” and “South Atlantic shallow-water grouper (SASWG)” are added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Deep-water grouper (DWG)* means, in the Gulf, yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, scamp are also included as DWG as specified in § 622.20(b)(2)(vi).

*Deep-water snapper-grouper (DWSG)* means, in the South Atlantic, yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, blueline tilefish, queen snapper, and silk snapper.  
\* \* \* \* \*

*Shallow-water grouper (SWG)* means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as SWG as specified in § 622.20(b)(2)(v).  
\* \* \* \* \*

*South Atlantic shallow-water grouper (SASWG)* means, in the South Atlantic, gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney.  
\* \* \* \* \*

■ 3. In § 622.4, the first sentence of paragraph (a)(2)(vi) is revised to read as follows:

**§ 622.4 Permits and fees.**

- (a) \* \* \*
- (2) \* \* \*
- (vi) \* \* \*

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 sell 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 between 35°15.19' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. \* \* \*

■ 4. In § 622.9, the first sentence of paragraph (a)(1) is revised to read as follows:

**§ 622.9 Vessel monitoring systems (VMSs).**

- (a) \* \* \*
- (1) \* \* \*

An owner or operator of a vessel that has been issued a limited

access endorsement for South Atlantic rock shrimp (until January 27, 2010) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) must ensure that such vessel has an operating VMS approved by NMFS for use in the South Atlantic rock shrimp fishery on board when on a trip in the South Atlantic. \* \* \*

■ 5. In § 622.32, paragraph (c)(3) is removed and paragraph (b)(3)(vii) is added to read as follows:

**§ 622.32 Prohibited and limited-harvest species.**

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*

(vii) Speckled hind and warsaw grouper may not be harvested or possessed in or from the South Atlantic EEZ. Such fish caught in the South Atlantic EEZ must be released immediately with a minimum of harm. These restrictions also apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, *i.e.*, in State or Federal waters.

\* \* \* \* \*

■ 6. In § 622.35, the first sentence of paragraph (j) is revised and paragraph (o) is added to read as follows:

**§ 622.35 Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(j) \* \* \* During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any SASWG (gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney). \* \* \*

\* \* \* \* \*

(o) *Depth closure for deep-water snapper-grouper (DWSG).* No person may fish for or possess DWSG (yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, blueline tilefish, queen snapper, and silk snapper) in or from the South Atlantic EEZ offshore of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A .....	36°31'01"	74°48'10"
B .....	35°57'29"	74°55'49"
C .....	35°30'49"	74°49'17"
D .....	34°19'41"	76°00'21"
E .....	33°13'31"	77°17'50"
F .....	33°05'13"	77°49'24"
G .....	32°24'03"	78°57'03"
H .....	31°39'04"	79°38'46"

Point	North lat.	West long.
I .....	30°27'33"	80°11'39"
J .....	29°53'21"	80°16'01"
K .....	29°24'03"	80°16'01"
L .....	28°19'29"	80°00'27"
M .....	27°32'05"	79°58'49"
N .....	26°52'45"	79°58'49"
O .....	26°03'36"	80°04'33"
P .....	25°31'03"	80°04'55"
Q .....	25°13'44"	80°09'40"
R .....	24°59'09"	80°19'51"
S .....	24°42'06"	80°46'38"
T .....	24°33'53"	81°10'23"
U .....	24°25'20"	81°50'25"
V .....	24°25'49"	82°11'17"
W .....	24°21'35"	82°22'32"
X .....	24°21'29"	82°42'33"
Y .....	24°25'37"	83°00'00"

■ 7. In § 622.39, paragraph (d)(1)(ii)(B) is revised to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*

(B) No more than one fish per vessel may be a snowy grouper;

\* \* \* \* \*

■ 8. In § 622.42, paragraph (e)(1)(ii) is removed; paragraphs (e)(1), (e)(2), (e)(5), and (e)(6) are revised; and paragraph (e)(8) is added to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

- (e) \* \* \*

(1) *Snowy grouper*—82,900 lb (37,603 kg).

(2) *Golden tilefish*—282,819 lb (128,284 kg).

\* \* \* \* \*

(5) *Black sea bass*—309,000 lb (140,160 kg).

(6) *Red porgy*—190,050 lb (86,205 kg).

\* \* \* \* \*

(8) *Gag, black grouper, and red grouper, combined*—662,403 lb (300,461 kg).

\* \* \* \* \*

■ 9. In § 622.43, the heading for paragraph (a)(5) and paragraph (a)(5)(iii) are revised to read as follows:

**§ 622.43 Closures.**

(a) \* \* \*

(5) *South Atlantic gag, black grouper, red grouper, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, and red porgy.*

\* \* \* \* \*

(iii) For gag and for gag, black grouper, and red grouper, combined, when the appropriate commercial quota is reached, the provisions of paragraphs (a)(5)(i) and (ii) of this section apply to gag and all other SASWG.

\* \* \* \* \*

■ 10. In § 622.44, paragraph (c)(3) is revised to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

- (c) \* \* \*

(3) *Snowy grouper.* Until the quota specified in § 622.42(e)(1) is reached—100 lb (45 kg). *See* § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

\* \* \* \* \*

■ 11. In § 622.48, paragraph (f) is revised to read as follows:

**§ 622.48 Adjustment of management measures.**

\* \* \* \* \*

(f) *South Atlantic snapper-grouper and wreckfish.* Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, annual catch limits (ACLs), target catch levels, accountability measures (AMs), trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

\* \* \* \* \*

■ 12. In § 622.49, paragraph (b) is added to read as follows:

**§ 622.49 Accountability measures.**

\* \* \* \* \*

(b) *South Atlantic snapper-grouper.* (1) *Golden tilefish*—(i) *Commercial fishery.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(2), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year.

(ii) *Recreational fishery.* If recreational landings, as estimated by the SRD, exceed the recreational annual catch limit (ACL) of 1,578 fish, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing

years, the most recent 3-year running average recreational landings will be compared to the ACL.

(2) *Snowy grouper*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(1), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year.

(ii) *Recreational fishery*. If recreational landings, as estimated by the SRD, exceed the recreational ACL of 523 fish, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(3) *Gag*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(7), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for gag and all other SASWG for the remainder of the fishing year.

(ii) *Recreational fishery*. (A) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 340,060 lb (154,249 kg), gutted weight, and gag are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the gag recreational fishery for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit for gag in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters.

(B) Without regard to overfished status, if gag recreational landings exceed the ACL, the AA will file a

notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(C) Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(4) *Gag, black grouper, and red grouper, combined*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(8), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for gag, black grouper, red grouper and all other SASWG for the remainder of the fishing year.

(ii) *Recreational fishery*. (A) If recreational landings, as estimated by the SRD, reach or are projected to reach the combined recreational ACL of 648,663 lb (294,229 kg), gutted weight, and gag, black grouper, or red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the recreational fishery for gag, black grouper, and red grouper for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of gag, black grouper, and red grouper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters.

(B) Without regard to overfished status, if gag, black grouper, and red grouper recreational landings exceed the combined ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the combined ACL for that fishing year by the amount of the overage.

(C) Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year

running average recreational landings will be compared to the ACL.

(5) *Black sea bass*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(e)(5), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for the remainder of the fishing year.

(ii) *Recreational fishery*. (A) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 409,000 lb (185,519 kg), gutted weight, and black sea bass are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the recreational fishery for black sea bass for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of black sea bass in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters.

(B) Without regard to overfished status, if black sea bass recreational landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(C) Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

(6) *Vermilion snapper*—(i) *Commercial fishery*. If commercial landings, as estimated by the SRD, reach or are projected to reach a quota specified in § 622.42(e)(4)(i) or (ii), the AA will file a notification with the Office of the Federal Register to close the commercial fishery for that portion of the fishing year applicable to the respective quota.

(ii) *Recreational fishery*. (A) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 307,315 lb (139,396 kg), gutted weight, and vermilion snapper are overfished, based



on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the recreational fishery for vermilion snapper for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of vermilion snapper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in State or Federal waters.

(B) Without regard to overfished status, if vermilion snapper recreational landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(C) Recreational landings will be evaluated relative to the ACL as follows. For 2010, only 2010 recreational landings will be compared to the ACL; in 2011, the average of 2010 and 2011 recreational landings will be compared to the ACL; and in 2012 and subsequent fishing years, the most recent 3-year running average recreational landings will be compared to the ACL.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0908191244-91427-02]

RIN 0648-XA073

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2010 commercial summer flounder quota to the Commonwealth of Virginia. In addition, the State of Maine is transferring a portion of its 2010 commercial summer flounder quota to the State of Rhode Island. By this action, NMFS adjusts the quotas and announces

the revised commercial quota for each state involved.

**DATES:** Effective December 27, 2010, through December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sarah Heil, Fishery Management Specialist, 978-281-9257.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 11,815 lb (5,359 kg) of its 2010 commercial quota to Virginia. This transfer was prompted by summer flounder landings of two North Carolina vessels that were granted safe harbor in Virginia due to mechanical problems on November 19, 2010, and December 6, 2010. In addition, Maine has agreed to transfer 6,000 lb (2,722 kg) of its 2010 commercial quota to Rhode Island. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2010 are: North Carolina, 3,358,231 lb (1,523,268 kg); Virginia, 2,922,226 lb (1,325,499 kg); Maine, 126 lb (57 kg); and Rhode Island, 2,025,915 lb (918,940 kg).

**Classification**

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 27, 2010.

**Emily H. Menashes,**

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

[FR Doc. 2010-32947 Filed 12-27-10; 4:15 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100204079-0199-02]

RIN 0648-XA084

#### Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that the Commonwealth of Virginia is transferring commercial bluefish quota to the State of North Carolina from its 2010 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quotas for Virginia and North Carolina.

**DATES:** Effective December 27, 2010 through December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sarah Heil, Fishery Management Specialist, (978) 281-9257.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal States from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each State is described in § 648.160.

Two or more States, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia has agreed to transfer 250,000 lb (113,398 kg) of its 2010 commercial quota to North Carolina. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2010 are: Virginia, 963,280 lb (436,937 kg); and North Carolina, 3,524,441 lb (1,528,860 kg).

**Classification**

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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