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50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Amendments to the Queen Conch and Reef Fish Fishery Management

Plans of Puerto Rico and the U.S. Virgin Islands; Final Rule

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

[Docket No. 100120037–1626–02]

RIN 0648–AY55

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Queen Conch and Reef Fish Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands**

**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 2 to the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands, and Amendment 5 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Amendments 2 and 5), prepared by the Caribbean Fishery Management Council (Council). This final rule: Establishes annual catch limits (ACLs) and accountability measures (AMs) for queen conch and for all reef fish units or sub-units that are classified as undergoing overfishing (*i.e.*, snapper, grouper and parrotfish); allocates ACLs among island management areas; revises the composition of the snapper and grouper complexes; prohibits fishing for and possession of three parrotfish species; establishes recreational bag limits for snappers, groupers, and parrotfishes; and establishes framework procedures for the queen conch and reef fish fishery management plans. Amendments 2 and 5 also revise management reference points and status determination criteria. The intended effect of the rule is to prevent overfishing of queen conch and reef fish species while maintaining catch levels consistent with achieving optimum yield (OY).

**DATES:** This final rule is effective January 30, 2012.

**ADDRESSES:** Electronic copies of Amendments 2 and 5, which include an Environmental Impact Statement (EIS), a final regulatory flexibility analysis (FRFA), a regulatory impact review (RIR), and a fishery impact statement may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sf/pdfs/2010\\_Caribbean\\_ACL\\_Amendment\\_FEIS\\_092011.pdf](http://sero.nmfs.noaa.gov/sf/pdfs/2010_Caribbean_ACL_Amendment_FEIS_092011.pdf).

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**SUPPLEMENTARY INFORMATION:** In the exclusive economic zone (EEZ) of the U.S. Caribbean, the queen conch fishery is managed under the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (USVI) (Queen Conch FMP), and the reef fish fishery is managed under the Reef Fish Fishery Management Plan of Puerto Rico and the USVI (Reef Fish FMP). These FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

NMFS' 2011 Report on the Status of U.S. Fisheries classifies Caribbean queen conch, Grouper Units 1 and 4, Snapper Unit 1, and parrotfishes as undergoing overfishing.

On September 26, 2011, NMFS published a notice of availability for Amendments 2 and 5 and requested public comment (76 FR 59375). On October 27, 2011, NMFS published a proposed rule for Amendments 2 and 5 and requested public comment (76 FR 66675). The proposed rule and Amendments 2 and 5 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This final rule amends the composition of stock complexes within the Reef Fish FMP. Grouper and snapper unit complexes are being revised to include two species of commonly harvested fish that were previously excluded, remove the creolefish from the Reef Fish FMP since the Council decided the species is no longer in need of Federal conservation and management due to no reported landings in the EEZ in recent years, and aggregate species in an ecologically consistent manner within the Reef Fish FMP.

This final rule revises and establishes management reference points for snapper, grouper, parrotfish and queen conch in the following manner: (1) Establishes average catch as a proxy for calculating the MSY for all units or complexes; (2) calculates the MSY proxy for each species or unit using average catch from commercial landings data from 1999–2005 for Puerto Rico and St. Croix, and from 2000–2005 for St. Thomas/St. John, and recreational catch data from 2000–2005 for Puerto Rico only; (3) sets the ABC for queen

conch and parrotfish equal to the fishing level recommendation specified by the Council's Scientific and Statistical Committee (SSC) for those species; (4) defines the overfishing threshold of all species as the OFL, which would equal the MSY proxy; setting the OY and the ACL as equal values; (5) sets the OY equal to the OFL multiplied by a reduction factor of 0.85 to account for uncertainty in the scientific and management process for snapper and grouper in all three management areas. The OY of queen conch was not reduced below the ABC; (6) sets the ACL for parrotfish as a 0.85 reduction of the SSC's ABC recommendation to account for uncertainty, ecological factors and other concerns for all three island groups; and (7) sets the OY/ACL equal to zero for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish.

This final rule also establishes island-specific management to enable application of AMs in response to harvesting activities on a single island (Puerto Rico, St. Croix) or island group (St. Thomas/St. John) without necessarily affecting fishing activities on the other islands or island groups. This final rule establishes geographic boundaries between islands/island groups based upon an equidistant approach that uses a mid-point to divide the exclusive economic zone (EEZ) among islands. The three island management areas are: Puerto Rico, St. Croix, and St. Thomas/St. John.

This final rule establishes ACLs and AMs for queen conch and for all snapper, grouper, and parrotfish units or complexes in the Caribbean Reef Fish FMP. The ACLs include reductions in catch to buffer allocations to account for scientific and catch-level uncertainty. Each ACL is sub-divided among the three islands/island groups, and for Puerto Rico only, separate sector ACLs (commercial and recreational) are established because commercial and recreational sector landings data are both available. For the St. Croix and St. Thomas/St. John island management areas, only commercial data are available; therefore, ACLs are established for the St. Croix and St. Thomas/St. John management areas based on commercial landings data only. The final rule specifies an ACL of zero for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish.

The AMs are designed to prevent fishermen from exceeding the ACLs. The AMs for queen conch are described in the 2010 regulatory amendment (May 26, 2011, 76 FR 30554) to the Queen Conch FMP, and state that when the

USVI closes its territorial waters off St. Croix to the harvest and possession of queen conch, NMFS will concurrently close the EEZ in the area of Lang Bank until the start of the next territorial fishing season. For Puerto Rico and St. Thomas/St. John, the applicable ACL will be set at zero and so the harvest prohibition will function as the AM in the EEZ for those areas.

This final rule triggers AMs if an ACL has been exceeded based on a moving multi-year average of landings as described in the FMP. If the ACL is exceeded, this final rule reduces the length of the fishing season for the affected species the year following an overage by the amount needed to prevent such an overage from occurring again. The AM is triggered unless NMFS' Southeast Fisheries Science Center, in consultation with the Council and its Scientific and Statistical Committee (SSC), determines the overage occurred because data collection and monitoring improved, rather than because catches actually increased. In such circumstances NMFS and the Council would review the relevant information and take further action as appropriate.

To maintain the role of parrotfish with respect to the health and ecological protection of threatened *Acropora* coral, this final rule prohibits the harvest of the three largest species of parrotfish that occur on Caribbean coral reefs. The harvest of blue, midnight, and rainbow parrotfish will be prohibited.

Additionally, this final rule establishes an aggregate bag limit for the recreational harvest of snapper, grouper and parrotfish. The daily recreational bag limit for snapper, grouper, and parrotfish combined will be five fish per person per day, with no more than two parrotfish per person within the aggregate. This rule also establishes a vessel limit on snapper, grouper, and parrotfish of 15 fish per day, including no more than 6 parrotfish per vessel per day.

To facilitate timely adjustments to harvest parameters and other management measures, this final rule establishes framework procedures for both the Reef Fish and Queen Conch FMPs. Management measures to be adjusted through framework amendments include but are not limited to quotas, closures, trip limits, bag limits, size limits, gear restrictions, fishing years, and reference points.

#### Comments and Responses

The following summarizes the comments NMFS received on Amendments 2 and 5 and the proposed rule, and NMFS' respective responses.

Nine submissions were received on the amendments and the proposed rule, including comments from individuals, state and Federal agencies, environmental organizations, and fishing associations. Several commenters were generally supportive of the actions included in Amendments 2 and 5. A Federal agency had no specific comments and a non-governmental organization was supportive and recommended approval. Comments that pertain to specific actions addressed in Amendments 2 and 5 or the proposed rule are summarized and responded to below.

*Comment 1:* The boundary lines defining the EEZ subdivisions should take into account the distribution of marine biotopes and an additional (unquantified) buffer be added to the 15 percent uncertainty reduction in the setting of ACLs.

*Response:* Although state and Federal efforts are underway to map and define biological communities throughout the U.S. Caribbean, suitable information is not yet available to support allocation of subdivisions by biotope. However, input from fishers with regard to their fishing locations were taken into consideration when establishing the boundary lines. Additionally, those boundary lines do not prevent fishers from fishing in any area of the U.S. Caribbean EEZ. Instead, the boundary lines only become restrictive when the ACL has been met for a species or species group within the EEZ subdivision for a particular island or island group. Then, AMs will be applied for that EEZ subdivision.

With respect to the additional buffer for setting ACLs, the 15-percent reduction serves as a buffer between the overfishing level and the ACL, thus minimizing the likelihood that overfishing will occur. Other "buffers," including more stringent ones (*i.e.*, buffers that reduce allowable catch to an even greater degree), were considered by the Council but not implemented. The Council determined that these more stringent buffers were not necessary to prevent overfishing of snapper, grouper, and parrotfish. The Council also determined that the 15 percent reduction would more effectively encourage the development of compatible regulations by territorial and commonwealth governments and increase data collection efforts, which would bring more stability to the management regime. The Council further reduced allowable parrotfish harvest in St. Croix EEZ waters by 15,000 lb (6,804 kg) to address ecological considerations as described in Amendments 2 and 5.

*Comment 2:* There is a need to reduce emphasis on fisheries management and to instead increase emphasis on restocking, preservation, establishment of defined shipping lanes, and deployment of fish attraction devices to better protect the environment and improve fishing opportunities.

*Response:* The amendment and associated rule are designed to address the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act is focused on the Federal management of fishing activities. While an ecosystem based approach to fisheries management is a principle of NMFS' overall management strategy, achieving that goal requires the cooperation by a host of local, state, and Federal agencies and the constituencies upon which those agencies depend. These efforts are ongoing.

*Comment 3:* There is no rationale for the Council's SSC to establish a specific parrotfish quota for St. Croix, St. Thomas/St. John, and Puerto Rico.

*Response:* The SSC's rationale for establishing the ABC levels from which ACLs were derived for each of the islands or island groups, was that those levels are roughly equal to the average catch during the reference years chosen by the Council (1999–2005 for Puerto Rico and St. Croix commercial landings, 2000–2005 for Puerto Rico recreational and St. Thomas/St. John commercial landings). Those year sequences were chosen by the Council based on outcomes from working group meetings of the Annual Catch Limit Working Group (ACLG), Technical Monitoring and Compliance Team (TMCT), and Southeast Data Assessment and Review (SEDAR), whose task was to identify and analyze available data in the U.S. Caribbean. The SEDAR findings, along with those of the ACLG, were presented to the SSC for development of OFL and ABC limits. Using those year sequences, the SSC established ABC values separately for St. Croix, St. Thomas/St. John, and Puerto Rico. The Council chose to reduce by 15 percent from each ABC when setting the ACL for each island, with an additional 5.8822 percent reduction (equal to 15,000 lb whole weight (6,804 kg)) for St. Croix, due the intense and directed nature of the parrotfish fishery on that island. That 15 percent reduction acts to ensure that the OFL is not exceeded as a result of both scientific and management uncertainty.

*Comment 4:* The prohibition on harvest of midnight, blue, and rainbow parrotfish would have little biological impact because the species are extremely rare to the point of being effectively unavailable for harvest by the

commercial and recreational sectors. It is necessary to maintain the largest-sized individuals among grazing species and the lack of species-specific parrotfish landings data would render it impossible to enforce prohibitions on the take of midnight, blue, and rainbow parrotfish.

*Response:* The Council chose to prohibit the harvest of these three parrotfish species because they are so rare on U.S. Caribbean coral reefs. Given those very low densities, it is likely that their recovery will be lengthy as the populations rebuild to densities adequate to support consistently successful reproduction. However, without this prohibition on harvest, it is probable that recovery will take much longer, so the Council and NMFS consider the harvest prohibition to be an essential first step in the process of recovering these parrotfish populations. Regarding the need to maintain the largest individuals among grazing species, this rule prohibits harvesting the three largest species of parrotfish (midnight, blue, rainbow) to accomplish that goal. Finally, regardless of how the parrotfish species are reported, they are easily identified, making it relatively straightforward to enforce the prohibition on harvest of midnight, blue, and rainbow parrotfish in Caribbean EEZ waters.

*Comment 5:* The parrotfish harvest reductions, particularly from the waters surrounding St. Croix, are inadequate to address overfishing of these species and do not ensure adequate provision of critical settlement substrate for threatened *Acroporid* corals. Parrotfish harvest in the U.S. Caribbean is unsustainable and the proposed parrotfish harvest reductions are very unlikely to significantly decrease fishing pressure on parrotfish. Since the collapse of long-spined sea urchin populations, parrotfish are the only major grazer remaining on U.S. Caribbean coral reefs.

*Response:* The NMFS Protected Resources Division developed a Biological Opinion (BiOp) in October 2011 regarding the continued authorization of the reef fish fishery in the U.S. Caribbean. The BiOp focused its analyses on impacts to various species of turtles and on the impacts of continued parrotfish harvest on the availability of critical settlement substrate for *Acroporid* corals (specifically *Acropora cervicornis* and *A. palmata*). The BiOp determined that the continued operation of the U.S. Caribbean reef fish fishery is not likely to jeopardize the continued existence of *Acroporid* corals and not likely to

destroy or adversely modify *Acropora* critical habitat in the U.S. Caribbean.

This rule reduces all parrotfish harvest levels in an effort to end overfishing of all parrotfish species. These reductions are described in detail in Amendment 5 to the Reef Fish FMP. For St. Croix, the ACL established by this final rule will adjust harvest to a level roughly 33 percent below the average of the most recent 2 years (2006 and 2007) of landings available at the time the Notice of Intent to Prepare an Environmental Impact Statement for Amendment 5 was published in April 2009 (April 17, 2009, 74 FR 17818) for. These are substantial parrotfish harvest reductions, and both NMFS and the Council believe that these reductions will substantially decrease fishing pressure on these species. NMFS agrees that parrotfish may be the only major grazer remaining on U.S. Caribbean coral reefs after the collapse of long-spined sea urchin populations. Although there are other grazers on Caribbean coral reefs (e.g., surgeonfish), NMFS and the Council acknowledge that parrotfish are an important component of Caribbean coral reef ecosystems. The level of reduction was designed to balance those ecological considerations with the cultural importance of parrotfish to U.S. Caribbean residents, particularly residents of St. Croix.

*Comment 6:* The AMs proposed in the rule are inadequate to prevent overfishing. The provision that allows the Council to not apply AMs if it is determined by the Council's SSC, in conjunction with the SEFSC, that surpassing the ACL resulted from enhanced reporting of landings, rather than by an actual increase in harvest, contradicts the intent of the Magnuson-Stevens Act with respect to the application of AMs.

*Response:* AMs included in both Amendments 2 and 5 are post-season in nature to account for the present reporting characteristics of the U.S. Caribbean fisheries. The AMs will be applied automatically unless there is a determination by the SEFSC (in consultation with the Council's SSC) that the ACL increase is due to improved reporting rather than due to an actual increase in landings. Post-season AMs are not always the preferred method of a management strategy to respond to an ACL overage, and the fishers themselves have requested that in-season monitoring schemes be developed. Regional efforts are ongoing in the U.S. Caribbean to develop better methodologies to submit, compile, distribute, and analyze landings data. Progress has already been made,

particularly in the electronic transmittal of data from state to Federal agencies. However, due to delays inherent in the present reporting process, landings data are not available within the fishing season, so only post-season AMs are presently feasible. Regarding the SSC and SEFSC review of data to determine if exceeding an ACL was the result of better reporting or increased landings, this provision allows for the best scientific information available to be applied to more effectively manage fishing activity. Thus, both the Council and NMFS decided this was a necessary approach if the long-term goal of more timely and accurate reporting was to be achieved.

*Comment 7:* The adverse economic impacts of the rule on USVI small businesses are overestimated because it assumes all of the licensed fisherman land species that are the subject of the final rule.

*Response:* It was assumed in the initial regulatory flexibility analysis (IRFA), and is assumed here that each and every one of the 383 licensed commercial fishermen of the USVI represents a small business. Hence, the final rule potentially impacts 383 small businesses in the USVI, whether they all presently fish for these species or not. The total adverse economic impacts to St. Croix and St. Thomas/St. John commercial fishermen are estimated independently of the number of small businesses, and instead by estimated reductions in historical and forecasted annual landings caused by shortened fishing seasons. The number of small businesses is used to estimate the average adverse economic impact per small business. If the number of small businesses adversely affected is lower, the average adverse economic impact per small business will be greater, but the estimates of the total adverse economic impacts do not change. The best information available was used to analyze these economic impacts.

*Comment 8:* The species of concern in this amendment should not have been considered as being "overfished or undergoing overfishing" in all of the island areas, as the incidents of overfishing are localized. As a result of previous management measures taken by both the Council and the states to address these incidents of overfishing (i.e., the 2005 Sustainable Fisheries Act Amendment (2005 Caribbean SFA Amendment); seasonal and permanent closures; size limits; quotas) along with the use of available scientific information, the species groups classified as overfishing should have been reclassified. All of these previous actions should have been considered

while setting ACLs, and these values in most cases should have been the same as for species considered not to be undergoing overfishing.

*Response:* The purpose of Amendments 2 and 5 was not to revise the status of stocks with respect to their classification as either undergoing overfishing or overfished, but to establish management reference points and ACLs based upon the previously determined status of those stocks. Overfished or undergoing overfishing designations apply to the fishery as defined in the FMP, which is Caribbean-wide. Management reference points were set U.S. Caribbean-wide, then allocated among the three island groups (St. Thomas/St. John, St. Croix, Puerto Rico) according to proportional contribution by each island group to the total average landings used to set the MSY proxy and OFL. Because of the nature of landings data in the U.S. Caribbean, where landings are commonly reported to fishery management unit (FMU) level rather than to species level (with the exception of snapper in Puerto Rico, as described in Amendment 5 to Reef Fish FMP), ACL assignments were made at the FMU level rather than at the level of the individual species.

The 2005 Caribbean SFA Amendment was taken into consideration when devising alternatives included in Amendments 2 and 5. That amendment implemented a variety of management measures for reef fish species in the U.S. Caribbean, including area closures that may have affected reported landings. A primary consideration during the development of the management reference point alternatives was the choice of the year sequence used to establish the average catch, and from that, the MSY proxy and overfishing limit (OFL) were developed. When evaluating alternatives for year sequences for average catch, the Council chose not to use data from any years more recent than 2005, due to the potential impact on landings of the previous management measures listed in the comment.

The Council chose a 0.85 reduction to set the ACLs. Before making a decision on the appropriate reduction, the Council reviewed public comments and the recommendation of its Reef Fish Advisory Panel, which functions as interface between user groups and the Council and provides insight from in-the-field observations. Fishers and the Advisory Panel supported a 0.85 reduction while an environmental organization supported a 0.75 reduction. The Council also had several discussions regarding the issue of

uncertainty and the value of choosing an uncertainty factor that would be most acceptable to the territorial and commonwealth governments. The Council determined that the 0.85 scalar would be most likely to result in the application of compatible state regulations and increased data collection efforts, thereby stabilizing the management regime.

After Amendments 2 and 5 were developed, the Council initiated development of the 2011 Caribbean ACL Amendment pertaining to those species not designated as undergoing overfishing. The Council chose to reduce by 10 percent for most of the units included in the 2011 Caribbean ACL Amendment, rather than by 15 percent as was done for the units included in Amendment 5 to the Reef Fish FMP. This 10 percent reduction was chosen because landings patterns for the species included in the 2011 Caribbean ACL Amendment were less variable than for the species included in Amendment 5 to the Reef Fish FMP. It was determined by the Council that those less variable landings required a smaller reduction to minimize the likelihood that landings in any year would exceed the OFL.

*Comment 9:* The ACLs proposed are inconsistent with National Standard (NS) 1, which requires that conservation and management measures shall prevent overfishing while achieving the OY from each fishery. Setting ACLs creates artificial limitations for the fishermen of St. Thomas, and management to an artificial buffer is not necessary because their fishery has been stable throughout the past four decades.

*Response:* The 2006 revisions to the Magnuson-Stevens Act require that ACLs be set at a level such that overfishing does not occur, regardless of the relative stability of the reported landings. Available data in the U.S. Caribbean are not sufficient to support direct estimation of MSY and other key parameters. In such cases, the NS 1 guidelines direct regional fishery management councils to estimate them using reasonable proxies, like long-term average catch, and to consider uncertainty in determining the appropriateness of alternative proxies. The NS 1 guidelines suggest that ACLs and OY should generally be reduced from the overfishing threshold and MSY, respectively, to effectively prevent overfishing. The Council chose to set OY and ACL as equal values, taking into consideration the socioeconomic and ecological components of OY when determining how far ACLs should be reduced below the overfishing threshold. An 'uncertainty' factor was

applied to reduce allowable landings below the OFL in an effort to account for uncertainty in the scientific and management processes. The uncertainty factor is designed to account for scientific uncertainty in estimating the OFL and management uncertainty in effectively constraining harvest over time. The reduction (buffer) chosen by the Council will prevent overfishing by minimizing the likelihood that annual landings will exceed the OFL, while achieving, on a continuing basis, OY.

*Comment 10:* The establishment of ACLs is not consistent with National Standard 2 (NS 2), which requires that conservation and management measures be based in the best scientific information available. ACLs are not based on the best scientific information because they were based on unreliable reported landings data (e.g. not species-specific), and that data should be obtained from port sampling and this method was not used to formulate the ACLs.

*Response:* NMFS and the Council have considered NS 2 in the development of ACLs. Although the reported landings data has areas in need of improvement, this is the best scientific information available. Those landings data are provided by the fishers on an island-specific basis. The SEFSC, along with participating state, Federal, private, and fishing interests conducted analyses of port sampling data and determined they were inadequate with respect to the requirements for randomness and temporal consistency which therefore minimizes the utility of port sampling for establishing ACLs.

*Comment 11:* The establishment of management measures in Amendments 2 and 5 is not consistent with National Standard 6 (NS 6), which requires that conservation and management measures take into account, and allow for variations among fisheries, fishery resources, and catches. The variability in the fishery of St. Thomas/St. John is low and almost entirely due to normal year-to-year fluctuations in environmental variables, and that variability should be considered in the establishment of management measures for the specific island group.

*Response:* The landings variability for all island groups was analyzed. The data used for all islands for establishing management measures has the same limitations and were therefore treated in the same manner to account for both expected and unpredictable variations. This was done by applying a buffer to reduce OY and ACL from the OFL or ABC. Management reference points were set for the U.S. Caribbean and then

allocated among the three island groups (St. Thomas/St. John, St. Croix, Puerto Rico) according to the proportional contribution by each island group to the total average landings used to set the MSY proxy and OFL.

*Comment 12:* The designation of Puerto Rico and the USVI as fishing communities under the terms of National Standard 8 (NS 8) is questionable. NS 8 requires that conservation and management measures take into account the importance of fishery resources to fishing communities by using economic and social data to provide the sustained participation of the communities and minimize adverse economic impacts to the community to the extent practicable. The passage of recent ACLs in 2010 and 2011 should have been accompanied by in-depth analysis of the impacts of those actions upon the USVI fishing communities, and no ACLs should be approved until the analyses are completed and implications are considered.

*Response:* NMFS and the Council recognize the designation of St. Thomas/St. John, St. Croix, and coastal areas of Puerto Rico as fishing communities. However, for Puerto Rico, the fishing community designation does not apply to the entire island, but instead to the northern coastal, southern coastal, eastern coastal, and western coastal municipalities combined. The impacts of the provisions of Amendments 2 and 5 are included within the analysis of the social impacts, which is found in the Social Impact Assessment (section 9) of the Final Environmental Impact Statement. Additionally, the NS 8 guidelines state that consideration of impacts to designated fishing communities be within the context of the conservation requirements of the Magnuson-Stevens Act. These requirements were considered during the development of Amendments 2 and 5. The impacts to the fishing communities were analyzed and minimized to the extent practicable while still meeting the other Magnuson-Stevens Act requirements. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP.

*Comment 13:* For ACLs and AMs to be effective, Puerto Rico and the USVI should achieve compatibility with Federal regulations, and adequate funding should be available to collect and process data, enforce regulations, and effectively manage the fishery. There is an importance to “buy in” by

the fishers with regard to the concept of a regulated, sustainable resource.

*Response:* Efforts are underway by the Council, NMFS, and the states to establish compatible regulations in both Puerto Rico and the USVI, but those regulatory changes must be effectuated by the state governments rather than by the Council or NMFS. NMFS recognizes the advantages to developing and implementing regulations to ensure the long-term sustainability of Caribbean fisheries resources and the ecosystems upon which they depend.

*Comment 14:* The cost of the prohibition on fishing for blue, rainbow and midnight parrotfish in the EEZ off the USVI, especially St. Croix, was overestimated because the species are rarely, if ever, caught in Federal waters and the adverse impacts should be minimal.

*Response:* Because parrotfish harvest data is not available at the species level in the USVI, the expected economic effects of the regulations associated with blue, rainbow, and midnight parrotfish could not be quantitatively assessed at the species level. As a result, the IRFA only provided quantitative estimates of the expected economic effects of the proposed regulations on all parrotfish species combined. Because blue, rainbow, and midnight parrotfish may not be the primary parrotfish species harvested, the estimates of the expected economic impacts on all parrotfish species may not be representative of the impacts on these three species and may, in fact, overestimate actual effects. However, overestimation of potential economic effects is not expected to be a substantive issue because the purpose of the RFA is to identify alternatives that achieve the regulatory objective while reducing or minimizing significant adverse economic effects on small entities. If the effects are minimal, as the comment suggests, then the need to reduce these effects is diminished.

*Comment 15:* Fishermen will not be able to relocate into territorial waters to mitigate for any losses of parrotfish landings because the resource is overexploited in territorial waters. It is incorrect to assume that USVI fishermen may be able to mitigate for some, but not all, of the losses incurred by the parrotfish prohibition.

*Response:* The RIR determined and the IRFA indicated that USVI fishermen could mitigate for 20 percent of the potential loss of landings by shifting effort into territorial waters. In response to this comment on the proposed rule, the FRFA includes the possibility that fishermen cannot mitigate for any losses of landings of parrotfish, snapper and grouper in the USVI as a result of new

ACLs. This new assumption indicates that the ACLs may be up to 100 percent effective in reducing ACL overages.

### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendments 2 and 5 and is consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. However, ACLs are a controversial issue in the U.S. Caribbean, which is a region with populations characterized by large percents of racial/ethnic minorities, high poverty rates, and low median household incomes. Moreover, commercial fishermen of St. Croix and St. Thomas/St. John will experience a substantially greater adverse economic impact relative to their counterparts in Puerto Rico.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, NMFS prepared a final regulatory flexibility analysis (FRFA) that includes a statement of need for, and objectives of, the rule; a summary and assessment of significant issues raised by public comments; a description and estimate of the number of small entities; a description of the compliance requirements, including estimates of the adverse economic impacts; and a description of steps taken to minimize significant adverse economic impact on small entities. The description of the action, why it is being considered, and the objectives of this action are contained in the proposed rule (76 FR 66675, Oct. 27, 2011), at the beginning of this section in the preamble, and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The final rule, which consists of several actions, will establish recreational bag limits for specified reef fish species; specify ACLs and AMs for parrotfish, grouper, snapper, and queen conch and establish framework measures to facilitate regulatory modifications. The rule will not alter existing reporting or record-keeping requirements.

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

There were no significant issues regarding the IRFA raised by public comments; however, three comments were received regarding the estimate of the adverse economic impacts on USVI fishermen. The first comment disagreed with the description of the impact of the

prohibition on fishing for blue, rainbow and midnight parrotfish in the EEZ off the USVI, especially St. Croix. The comment contends that the cost of the prohibition on fishing for and possession of blue, rainbow and midnight parrotfish in the EEZ, particularly off St. Croix, was overestimated because the species are rarely, if ever, caught in Federal waters and the adverse impact should be minimal. Because parrotfish harvest data is not available at the species level in the USVI, the expected economic effects of the regulations associated with blue, rainbow, and midnight parrotfish could not be quantitatively assessed at the species level. As a result, the IRFA only provided quantitative estimates of the expected economic effects of the proposed regulations on all parrotfish species combined. Because blue, rainbow, and midnight parrotfish may not be the primary parrotfish species harvested, the estimates of the expected economic impacts on all parrotfish species may not be representative of the impacts on these three species and, in fact, overestimate actual effects. However, overestimation of potential economic effects is not expected to be a substantive issue because the purpose of the RFA is to identify alternatives that achieve the regulatory objective while reducing or minimizing significant adverse economic effects on small entities. If the effects are minimal, as the comment suggests, then the need to reduce these effects is diminished.

The second comment disagreed with the assumption that USVI fishermen may be able to mitigate for some, but not all, losses by increasing landings of snapper, grouper, and parrotfish species taken in the EEZ by relocating into territorial waters, although it is more difficult for USVI fishermen to substitute fishing in territorial waters for fishing in Federal waters. The comment contends that fishermen would not be able to relocate into territorial waters to mitigate for any losses of parrotfish landings because the resource is overexploited in territorial waters. NMFS, in its RIR, determined and through the IRFA indicated that USVI fishermen could mitigate for 20 percent of the potential loss of landings by shifting effort into territorial waters. In response to this comment, the FRFA includes the possibility that fishermen cannot mitigate for any losses of landings of parrotfish, snapper and grouper in the USVI. That new assumption results in the ACLs being up to 100 percent effective in reducing an overage.

The third comment contended the estimate of the adverse economic

impacts to USVI small businesses was too high because it assumed all of the licensed fishermen land species that are the subject of the final rule. NMFS assumed in the IRFA, and assumes here, that every one of the 383 licensed commercial fishermen of the USVI represents a small business that may potentially be impacted by this rule, whether they all presently fish for these species or not. The total adverse economic impacts to St. Croix and St. Thomas/St. John commercial fishermen are estimated independently of the number of small businesses and instead by estimated reductions in historical and forecasted annual landings. The number of small businesses is used to estimate the average adverse economic impact per small business. If the number of small businesses adversely affected is lower, the average adverse economic impact per small business will be greater.

This final rule is expected to directly affect businesses that harvest parrotfish, snapper and grouper from Federal waters off Puerto Rico and the USVI and those that harvest queen conch in Federal waters off St. Croix. These businesses are in the finfish fishing (NAICS 114111), shellfish fishing (NAICS 114112) and charter fishing industries (NAICS 487210). A business 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 or number of employees not in excess of the Small Business Administration's (SBA's) size standards. The finfish and shellfish fishing industries have an SBA size standard of \$4.0 million in annual receipts, and the charter fishing industry's size standard is \$7.0 million in annual receipts. NMFS assumes all commercial (finfish and shellfish) and charter fishing businesses that operate in the U.S. Caribbean have annual receipts less than these size standards and are small businesses.

In 2008, there were from 868 to 874 active commercial fishermen in Puerto Rico; 74 percent of these fishermen were captains and the remaining 26 percent were crew members. NMFS assumes each captain represents a small business in the finfish fishing and shellfish fishing industries and each member of the crew an employee of one of those businesses. Therefore, NMFS concludes that there are 642 to 644 small businesses in the finfish fishing and shellfish fishing industries in Puerto Rico, and potentially all of these businesses will be directly affected by the rule. In 2008, there were 223 licensed commercial fishermen in St.

Croix and 160 in St. Thomas/St. John. There is a moratorium on increasing the number of U.S. Virgin Islands commercial fishing licenses, so the FRFA assumes the 223 commercial fishermen in St. Croix and 160 commercial fishermen in St. Thomas/St. John represent 383 small businesses in the finfish fishing and shellfish fishing industries in the U.S. Virgin Islands who will be directly affected by the rule.

There are an estimated 9 small businesses in the charter fishing industry in Puerto Rico, 12 such businesses in St. Thomas/St. John and 1 in St. Croix. The final rule will apply to all of these small businesses.

The final rule will apply to all small businesses in Puerto Rico, St. Croix and St. Thomas/St. John within the finfish fishing, shellfish fishing, and charter fishing industries. Therefore, the final rule applies to a substantial number of small entities in the U.S. Caribbean in these industries. Charter fishing operations in Puerto Rico and the U.S. Virgin Islands target pelagic species and tend not to target queen conch or reef fish species in Federal waters. Consequently, it is expected that small businesses in the charter fishing industry in Puerto Rico, St. Croix or St. Thomas/St. John will experience little to no adverse economic impact because of this final rule.

The final rule is expected to result in one shortened Federal fishing season in the Puerto Rico EEZ, three shortened fishing seasons in the St. Croix EEZ, and three shortened fishing seasons in the St. Thomas/St. John EEZ. This final rule is expected to have a substantially greater adverse economic impact on small businesses in the finfish fishing industries in St. Croix and St. Thomas/St. John than in Puerto Rico because the projected reductions in harvest of the different species, as discussed in the following paragraphs, are substantially larger in the USVI than in Puerto Rico. There is expected to be no adverse economic impact on small businesses in the shellfish fishing industry.

A comparison of the Puerto Rico commercial ACLs for parrotfish, grouper and Snapper Units 1, 3 and 4 to baseline annual commercial landings suggests the commercial ACLs for these units will not require reductions in the lengths of the Federal commercial fishing seasons for these units in the Puerto Rico EEZ. Therefore, NMFS expects no adverse economic impact on small businesses in Puerto Rico that harvest these species.

The Puerto Rico commercial Snapper Unit 2 ACL is less than the baseline annual landings, which suggests there will be an overage of Snapper Unit 2

landings of 509 lb (231 kg) and a shortened Snapper Unit 2 fishing season in the Puerto Rico EEZ. NMFS expects that Puerto Rico's small businesses will mitigate for the potentially shortened Snapper Unit 2 fishing season in the Puerto Rico EEZ by moving into territorial waters to harvest Snapper Unit 2 species during the time the Federal season is closed, because approximately 95 percent of fishable area off Puerto Rico is in territorial waters. Hence, NMFS projects that Puerto Rico small businesses would lose up to 10 percent of baseline Snapper Unit 2 landings annually with a value up to \$383. That loss represents less than a tenth of a percent of annual Snapper Unit 2 landings and on average, less than 1 lb (0.45 kg) of Snapper Unit 2 species and less than \$1 lost per small business in Puerto Rico. Another mitigating behavior would be to target alternative species in the Puerto Rico EEZ that have open seasons.

The St. Croix ACLs for parrotfish, snapper and grouper are less than baseline average annual landings, which indicates fishing seasons for these units will be reduced. St. Croix small businesses will incur annual losses of landings of up to 34 percent of parrotfish landings, 27 percent of snapper landings, and 6 percent of grouper landings each year. These reductions represent losses of ex-vessel revenue up to approximately \$0.83 million annually. The average St. Croix small business will lose up to \$3,706 annually. When estimated losses of revenues from the 2011 ACLs Amendment are added, St. Croix small businesses lose collectively up to \$1.19 million annually.

The St. Thomas/St. John ACLs for parrotfish, snapper and grouper are less than baseline average annual landings, which indicates fishing seasons for these units will be reduced. St. Thomas/St. John small businesses will lose up to 6 percent of parrotfish, 20 percent of snapper and 9 percent of grouper landings each year. These reductions represent losses of ex-vessel revenue up to approximately \$0.27 million. The average St. Thomas/St. John small business will lose up to \$1,690 annually. When estimated losses of revenues from the 2011 ACLs Amendment are added, St. Thomas/St. John small businesses lose collectively up to \$0.51 million annually.

The percent of fishable area in the U.S. Virgin Islands' territorial waters is significantly less than the percent of fishable area in Puerto Rico's territorial waters. 38 percent of fishable area off the U.S. Virgin Islands lies within the U.S. Caribbean EEZ, and a larger share

of landings in St. Croix and St. Thomas/St. John derive from fishing in the EEZ than in Puerto Rico. Therefore, it is more difficult for U.S. Virgin Islands fishermen to substitute fishing in territorial waters for fishing in Federal waters.

The final rule rejects alternatives that would have established ACLs and AMs that would have resulted in larger reductions in Federal fishing seasons and greater significant adverse economic impacts on small businesses, especially in the USVI.

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

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

Dated: December 22, 2011.

**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 § 622.32, paragraph (b)(1)(v) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) No person may fish for or possess midnight parrotfish, blue parrotfish, or rainbow parrotfish in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released with a minimum of harm.

\* \* \* \* \*

■ 3. In § 622.33, paragraph (d)(1) is revised to read as follows:

**§ 622.33 Caribbean EEZ seasonal and/or area closures.**

\* \* \* \* \*

(d) \* \* \*

(1) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources in Puerto Rico and the U.S. Virgin Islands, when the ACL, as specified in § 622.49(c)(2)(i)(A), is reached or projected to be reached, the Regional Administrator will close the Caribbean EEZ to the harvest and possession of queen conch, in the area east of 64°34' W. longitude which

includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register.

\* \* \* \* \*

■ 4. In § 622.39, paragraph (g) is added to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(g) *Caribbean reef fish*—(1) *Applicability.* Paragraph (a)(1) of this section notwithstanding, the bag limits of paragraph (g)(2) of this section do not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(2) *Bag limits.* Groupers, snappers, and parrotfishes combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

■ 5. In § 622.48, paragraph (b) is revised and paragraph (m) is added to read as follows:

**§ 622.48 Adjustment of management measures.**

\* \* \* \* \*

(b) *Caribbean reef fish.* Fishery management units (FMUs), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), overfishing limit (OFL), acceptable biological catch (ABC) control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

\* \* \* \* \*

(m) *Caribbean queen conch.* Quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing year, MSY, OY, TAC, MFMT, MSST, OFL, ABC control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

■ 6. In § 622.49, the section heading is revised and paragraph (c) is added to read as follows:

**§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).**

\* \* \* \* \*

(c) *Caribbean island management areas.* If landings from a Caribbean island management area, as specified in Appendix E to part 622, except for landings of queen conch (see § 622.33(d)), are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (c)(1) of this section for Puerto Rico management



area species or species groups, paragraph (c)(2) of this section for St. Croix management area species or species groups, or paragraph (c)(3) for St. Thomas/St. John management area species or species groups, 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 fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exceptions of Caribbean queen conch in Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section are given in round weight. (See § 622.32 for limitations on taking prohibited and limited harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands or by a person subject to the bag limits.)

(1) *Puerto Rico*—(i) *Commercial ACLs*. The following ACLs apply to commercial landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—52,737 lb (23,915 kg).

(C) *Snapper Unit 1*—284,685 lb (129,131 kg).

(D) *Snapper Unit 2*—145,916 lb (66,186 kg).

(E) *Snapper Unit 3*—345,775 lb (156,841 kg).

(F) *Snapper Unit 4*—373,295 lb (169,324 kg).

(G) *Groupers*—177,513 lb (80,519 kg).

(ii) *Recreational ACLs*. The following ACLs apply to recreational landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—15,263 lb (6,921 kg).

(C) *Snapper Unit 1*—95,526 lb (43,330 kg).

(D) *Snapper Unit 2*—34,810 lb (15,790 kg).

(E) *Snapper Unit 3*—83,158 lb (37,720 kg).

(F) *Snapper Unit 4*—28,509 lb (12,931 kg).

(G) *Groupers*—77,213 lb (35,023 kg).

(2) *St. Croix*. (i) *ACLs*. The following ACLs apply to landings of St. Croix management area species or species groups.

(A) *Queen conch*—50,000 lb (22,680 kg).

(B) *Parrotfishes*—240,000 lb (108,863 kg).

(C) *Snappers*—102,946 lb (46,696 kg).

(D) *Groupers*—30,435 lb (13,805 kg).

(ii) [Reserved]

(3) *St. Thomas/St. John*. (i) *ACLs*. The following ACLs apply to landings of St. Thomas/St. John management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—42,500 lb (19,278 kg).

(C) *Snappers*—133,775 lb (60,679 kg).

(D) *Groupers*—51,849 lb (23,518 kg).

(ii) [Reserved]

■ 7. In table 2 of Appendix A to Part 622, Lutjanidae—Snappers, units 1 and 2 are revised; In Serranidae—Sea basses and groupers, units 3 and 4 are revised;

and In Serranidae—Sea basses and groupers, unit 5 is added to read as follows:

**Appendix A to Part 622—Species Tables**

\* \* \* \* \*

**Table 2 of Appendix A to Part 622—Caribbean Reef Fish**

*Lutjanidae—Snappers*

Unit 1

Black snapper, *Apsilus dentatus*  
Blackfin snapper, *Lutjanus buccanella*  
Silk snapper, *Lutjanus vivanus*  
Vermilion snapper, *Rhomboplites aurorubens*

Wenchman, *Pristipomoides aquilonaris*

Unit 2

Cardinal, *Pristipomoides macrophthalmus*  
Queen snapper, *Etelis oculatus*

\* \* \* \* \*

**Serranidae—Sea basses and Groupers**

\* \* \* \* \*

Unit 3

Coney, *Epinephelus fulvus*  
Graysby, *Epinephelus cruentatus*  
Red hind, *Epinephelus guttatus*  
Rock hind, *Epinephelus adscensionis*

Unit 4

Black grouper, *Mycteroperca bonaci*  
Red grouper, *Epinephelus morio*  
Tiger grouper, *Mycteroperca tigris*  
Yellowfin grouper, *Mycteroperca venenosa*

Unit 5

Misty grouper, *Epinephelus mystacinus*  
Yellowedge grouper, *Epinephelus flavolimbatus*

\* \* \* \* \*

■ 8. Appendix E to part 622 is added to read as follows:

**Appendix E to Part 622—Caribbean Island/Island Group Management Areas**

Table 1 of Appendix E to Part 622—*Coordinates of the Puerto Rico Management Area*.

The Puerto Rico management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary) .....	19°37'29"	65°20'57"
B (intersects with the EEZ/Territorial boundary) .....	18°25'46.3015"	65°06'31.866"
From Point B, proceed southerly along the EEZ/Territorial boundary to Point C		
C (intersects with the EEZ/Territorial boundary) .....	18°13'59.0606"	65°05'33.058"
D .....	18°01'16.9636"	64°57'38.817"
E .....	17°30'00.000"	65°20'00.1716"
F .....	16°02'53.5812"	65°20'00.1716"
From Point F, proceed southwesterly, then northerly, then easterly, and finally southerly along the International/EEZ boundary to Point A		
A (intersects with the International/EEZ boundary) .....	19°37'29"	65°20'57"

Table 2 of Appendix E to Part 622—  
Coordinates of the St. Croix Management Area.

The St. Croix management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
G .....	18°03'03"	64°38'03"
From Point G, proceed easterly, then southerly, then southwesterly along the EEZ/Territorial boundary to Point F		
F .....	16°02'53.5812"	65°20'00.1716"
E .....	17°30'00.000"	65°20'00.1716"
D .....	18°01'16.9636"	64°57'38.817"
G .....	18°03'03"	64°38'03"

Table 3 of Appendix E to Part 622—  
Coordinates of the St. Thomas/St. John Management Area.

The St. Thomas/St. John management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary) .....	19°37'29"	65°20'57"
From Point A, proceed southeasterly along the EEZ/Territorial boundary to Point G		
G .....	18°03'03"	64°38'03"
D .....	18°01'16.9636"	64°57'38.817"
C (intersects with the EEZ/Territorial boundary) .....	18°13'59.0606"	65°05'33.058"
From Point C, proceed northerly along the EEZ/Territorial boundary to Point B		
B (intersects with the EEZ/Territorial boundary) .....	18°25'46.3015"	65°06'31.866"
A (intersects with the International/EEZ boundary) .....	19°37'29"	65°20'57"

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