

■ B. Tenth full paragraph (paragraph (2) of the definition of “Daily cost-sharing” at § 423.100), line 2, the phrase “enrollee’s Part D” is corrected to read “enrollee’s Part D plan”.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774)

Dated: May 24, 2012.

Jennifer M. Cannistra,
Executive Secretary to the Department.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120309176-2075-02]

RIN 0648-BB56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 18A

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 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This rule modifies the current system of accountability measures for black sea bass, limits effort in the black sea bass segment of the snapper-grouper fishery, and improves fisheries data in the for-hire sector of the snapper-grouper fishery. Amendment 18A also updates the rebuilding plan and modifies the acceptable biological catch (ABC) for black sea bass. This final rule is intended to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery.

DATES: This rule is effective July 1, 2012.

ADDRESSES: Electronic copies of Amendment 18A may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>. Amendment 18A includes an Environmental Impact Statement, a

Regulatory Impact Review, and a Fishery Impact Statement.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by email at OIRASubmission@omb.eop.gov, or by fax to 202-395-7285.

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

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

On January 31, 2012, NMFS published a notice of availability for Amendment 18A and requested public comment (77 FR 4754). On March 23, 2012, NMFS published a proposed rule for Amendment 18A and requested public comment (77 FR 16991).

NMFS partially approved Amendment 18A on May 2, 2012. NMFS disapproved the action establishing transferability criteria for the black sea bass pot endorsement, explaining that the amendment identified the wrong preferred alternative selected for this action, and there were discrepancies in the record regarding the Council’s discussion of the alternatives and the text describing and analyzing this alternative in the document. Because the Council’s intent was unclear from the administrative record, NMFS was unable to implement this action in compliance with the Administrative Procedure Act. The Council is addressing transferability criteria for black sea bass pot endorsements in a separate FMP amendment, which is currently under development.

The proposed rule and Amendment 18A outline the rationale for the actions contained in this final rule. The proposed rule incorrectly indicated that it would modify the black sea bass rebuilding strategy and ABC. Although these measures are included in Amendment 18A, they are not codified in the regulations. A summary of the actions implemented by this final rule is provided here.

This rule modifies the black sea bass annual catch limit (ACL); limits participation in the black sea bass pot segment of the snapper-grouper fishery through an endorsement program;

establishes an appeals process for fishermen excluded from the black sea bass pot endorsement program; limits the number of pot tags issued to participants in the black sea bass pot segment of the snapper-grouper fishery; implements measures to reduce black sea bass bycatch; modifies accountability measures (AMs) for black sea bass; establishes a commercial trip limit for black sea bass; modifies the current commercial and recreational black sea bass size limits; and improves data reporting in the for-hire sector of the snapper-grouper fishery. The intent of this rule is to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery.

Comments and Responses

A total of 28 comments were received on the proposed rule and Amendment 18A from individuals, Federal agencies, and fishing associations. NMFS received 2 comments of general support and 26 individual comments opposing one or more actions contained in Amendment 18A. Several of the comments recommended alternative management measures for black sea bass. Specific comments related to the actions contained in the amendment and the rule as well as NMFS’ respective responses, are summarized below.

Comment 1: Several commenters stated they have recently seen more black sea bass and larger black sea bass than in previous years. Additionally, several commenters stated they are seeing black sea bass in areas where they were not previously found. For these reasons the same commenters stated the commercial and recreational ACLs for black sea bass should be significantly increased to allow for more fishing of the stock.

Response: Many fishery participants have indicated they are now seeing more black sea bass and larger black sea bass than in recent years, which is consistent with the finding of the most recent Southeast, Data, Assessment, and Review (SEDAR) for black sea bass which was completed in October 2011 (SEDAR 25). SEDAR 25 indicates that black sea bass are no longer overfished, but are not yet fully rebuilt, and that black sea bass was experiencing overfishing to a small extent based on data from 2009 and 2010. Amendment 17B to the FMP (Amendment 17B), which was implemented on January 31, 2011, established ACLs and AMs for black sea bass to ensure overfishing of black sea bass does not occur (75 FR 82280).

The Magnuson-Stevens Act requires rebuilding plans to rebuild a stock within 10 years except under limited

circumstances. The rebuilding strategy for black sea bass, which was implemented in 2006 through Amendment 13C to the FMP (71 FR 55096, September 21, 2006), holds catch at a constant level as the stock size increases. The target time for rebuilding black sea bass is 2016. Because the stock is rebuilding, fishermen are encountering black sea bass more frequently than in recent years.

NMFS is implementing, through this final rule, a modified rebuilding strategy that holds the combined commercial and recreational ACL at 847,000 lb (384,200 kg), round weight [717,797 lb (325,587 kg), gutted weight] for the next 2 fishing years; then changes the ACL to the yield at $F_{Rebuild}$. The Council's Scientific and Statistical Committee (SSC) endorsed this modification to the current rebuilding strategy, but recommended the ACL not be modified until a stock assessment update is completed before the 2014/2015 fishing year. This rebuilding strategy has a 66 percent probability of rebuilding the stock by 2016 while allowing increases to the ACL, if supported by the next stock assessment.

Comment 2: One commenter is concerned that the continued shortening of the commercial fishing season for black sea bass has led to decreased revenues for his business.

Response: The black sea bass commercial sector has closed much earlier the past 3 fishing years than in previous years, and in each of these years the fishing season was shorter than the previous fishing season. Thus, fishermen have experienced market glut during the months of June, July, and August, and the purchase and sale of black sea bass have been prohibited for the remainder of the season. Actions in Amendment 18A are intended to extend fishing opportunities further into the fishing season to mitigate these negative socioeconomic effects.

Comment 3: One commenter states that the early in-season closures in the commercial and recreational sectors during the 2011/2012 fishing year were not necessary because the stock is no longer overfished.

Response: Results of a 2011 stock assessment indicate that black sea bass are no longer overfished but are not rebuilt, and that the stock was undergoing overfishing to a minor degree according to 2009 and 2010 data. Following this overfishing determination, Amendment 17B implemented AMs and ACLs on January 31, 2011, as required by the Magnuson-Stevens Act, to ensure that overfishing of black sea bass does not occur. In-season closures are a part of the system

of commercial and recreational AMs and ACLs for the black sea bass component of the snapper-grouper fishery. The commercial sector AM for black sea bass closes the commercial sector if commercial landings reach, or are projected to reach, the commercial quota, which serves as the functional commercial sector ACL.

The recreational sector AMs for black sea bass include closing the recreational sector when the ACL is met or projected to be met if the stock is overfished. Because the stock was still considered overfished during the 2011/2012 fishing year the sector was closed on October 17, 2011, based on projections that the recreational ACL would be reached by that time. This final rule will modify the current recreational AMs to provide the Regional Administrator with the authority to close the recreational sector when the ACL is met or projected to be met regardless of the overfished status of black sea bass.

Comment 4: One commenter states that the most recent stock assessment for black sea bass should have been delayed until 2011 data for the black sea bass segment of the snapper-grouper fishery could be included. One commenter recommends doing a new stock assessment for black sea bass as soon as possible because the species may no longer be undergoing overfishing.

Response: NMFS and the Council must schedule stock assessments several years in advance to allow time for the needed data to be compiled for use by stock assessment scientists. Stock assessment schedules are reviewed by the Council and approved by the SEDAR Steering Committee. The schedule may be found at the SEDAR Web site: http://www.safsc.noaa.gov/sedar/SEDAR_PlanSchedule_Nov2011.pdf. The next black sea bass stock assessment has not been scheduled yet.

Amendment 17B (75 FR 82280, December 30, 2010) contained ACLs and AMs to address black sea bass overfishing, and prevent future overfishing from occurring, as required by the Magnuson-Stevens Act. Delaying the assessment until 2011 data became available would have delayed the implementation of Amendment 18A by 1 to 2 years. The Council's SSC endorsed a modified rebuilding strategy, previously discussed under the response to Comment 1, but recommended that the ACL not be modified until a stock assessment update is completed prior to the 2014/2015 fishing year. The stock assessment update would include any effects the actions in Amendment 17B may have

had on ending overfishing of black sea bass.

Comment 5: One commenter inquired as to why Mid-Atlantic and New England black sea bass have been successfully rebuilt while South Atlantic black sea bass have not.

Response: Black sea bass are managed as separate stocks north and south of Cape Hatteras, North Carolina. When establishing a rebuilding plan for an overfished species, each Council must take into account many variables including the degree to which overfishing is occurring, Magnuson-Stevens Act requirements, the social and economic environment, and trends in effort which are unique to different fisheries. In 2000, black sea bass north of Cape Hatteras, North Carolina, were considered to be overfished and undergoing overfishing, and actions were taken to rebuild the stock. According to the 2010 Status of U.S. Fisheries found at: http://www.nmfs.noaa.gov/sfa/statusoffisheries/2010/2010_FSSI_non_FSSI_stockstatus.pdf, black sea bass north of Cape Hatteras, North Carolina, are no longer overfished and are not undergoing overfishing. A 2005 stock assessment indicated that the black sea bass stock south of Cape Hatteras, North Carolina, was still overfished and undergoing overfishing. Amendment 15A to the FMP implemented a 10-year rebuilding plan for South Atlantic black sea bass in 2008, designating 2006 as year one of the plan. The most recent stock assessment for South Atlantic black sea bass, SEDAR 25, indicates that the stock is on track to be rebuilt by 2016.

Comment 6: Several commenters stated the amount of regulatory discards of species, such as black sea bass, caused by a low bag limit and small recreational ACL has negatively impacted for-hire businesses because paying customers are not willing to charter vessels for trips that only allow catch-and-release. Thus, the number of trips and quality of trips for some for-hire businesses has decreased. On the other hand, two recreational anglers support a reduced bag limit in order to keep the recreational fishing season open longer.

Response: Amendment 17B to the FMP implemented a recreational ACL for black sea bass of 409,000 lb (185,519 kg), gutted weight [482,620 lb (218,913 kg), round weight]. In Amendment 18A, the Council considered a range of alternatives for modifying the rebuilding plan and the combined commercial and recreational ACL. The Council decided to maintain the combined ACL established in Amendment 17B through

the 2013/2014 fishing year until a stock assessment update can be completed. At that time the Council can decide whether increasing the combined ACL is appropriate. Further, the Council and NMFS anticipate a large increase in the allowable catch when the stock is rebuilt in 2016. Regulatory Amendment 9 to the FMP and its implementing final rule (76 FR 34892, June 15, 2011) reduced the recreational bag limit from 15 fish to 5 fish per person. The recreational bag limit was not the subject of the proposed rule to implement Amendment 18A; and therefore, the comments related to the recreational bag limit are beyond the scope of this rulemaking.

Comment 7: One commenter stated it is incorrect for NMFS to partially attribute the early ACL closures in the black sea bass segment of the snapper-grouper fishery to shifting effort from other more heavily regulated species. The commenter states that anglers who would normally target species such as red snapper, for which harvest is now prohibited in the exclusive economic zone (EEZ), are not likely to shift their fishing effort to black sea bass. The commenter suggested effort would likely shift towards groupers, mutton snapper, or some other large fish species, all of which are legal to harvest June through October.

Response: The rebuilding black sea bass population, which has led to increased catch per unit effort, is likely a more significant contributor to the ACLs being met early in the fishing season than effort shifting during the past 2 fishing years. However, during the initial development of Amendment 18A, the black sea bass commercial sector of the snapper-grouper fishery was open during seasonal closures for other species (vermillion snapper and shallow-water groupers) and total prohibitions on other species (red snapper). This scenario is likely to have caused some level of effort shifting to black sea bass. Additionally, the Council determined that management restrictions placed on other snapper-grouper species could cause further effort shifting to black sea bass in the South Atlantic.

Comment 8: One commenter recommends that each state be assigned its own black sea bass quota based on historical landings, and argues that the Council process is no longer effective for the successful management of black sea bass because it does not allow for state-by-state quotas. One commenter suggests that the Council manage black sea bass off the coast of Florida separately from the other states in the South Atlantic, and another commenter

suggests that the Council manage black sea bass off the coast of North Carolina separately from the other states in the South Atlantic. One commenter recommends the creation of separate ACLs for the two gear components of the commercial black sea bass sector; namely, an ACL for the pot component and an ACL for the hook-and-line component.

Response: The Council has discussed state-by-state quotas several times in reference to various fish species including black sea bass. However, enforcement of different state quotas or ACLs along state boundary lines is likely to be very difficult. Additionally, administrative difficulties associated with monitoring very small state ACLs have prevented the Council from endorsing state-by-state quotas as a management tool. Implementing gear specific ACLs for the pot and hook-and-line components of the commercial black sea bass sector would have similar issues, and enforcement of these separate component ACLs would be difficult if fishermen used both gear types on one vessel. Again, monitoring these smaller component ACLs would be administratively difficult. However, the Council will continue to discuss these issues and explore options for implementation of state ACLs and separate gear ACLs as quota monitoring capabilities improve over time.

The Council process is effective in managing the black sea bass stock in the South Atlantic. In 2005, a stock assessment indicated that black sea bass in the South Atlantic was still overfished and undergoing overfishing. Through the Council process a rebuilding plan was implemented and the most recent stock assessment indicates that this stock is no longer overfished and is on track to be rebuilt by 2016.

Comment 9: One commenter recommends a recreational tag program where recreational anglers are issued a pre-set number of tags (similar to North Carolina swan tags) that can be used to harvest black sea bass throughout the year. The commenter believes that a tag system for black sea bass would allow recreational fishermen to participate in the black sea bass segment of the snapper-grouper fishery throughout the year, and could improve recreational data for black sea bass. One commenter recommends that NMFS use game wardens to perform dockside checks to gather recreational harvest data, or have state game wardens fill out catch reports because recreational fishermen may not accurately report their catch during dockside and phone interviews.

Response: The suggestion of tag limits to allow participation throughout the year or improve data collection, and the use of game wardens were not the subject of the proposed rule to implement Amendment 18A; the purpose of Amendment 18A is to address overcapacity in the black sea bass segment of the snapper-grouper fishery and therefore, the comments related to tag limits and game wardens are beyond the scope of this rulemaking. However, the Council is not precluded from considering a fish tag program or other ways to collect data in the future.

Comment 10: One commenter is concerned the increasing rate of recreational harvest of black sea bass is shrinking the allocation for the commercial sector. The same commenter recommends establishing a control date using a year when commercial and recreational harvest were closer to being equal and implementing a Federal recreational fishing permit with reporting requirements.

Response: As noted in response to Comment 6 above, the Council considered modifying the combined commercial and recreational ACL in Amendment 18A but chose to maintain the combined ACL established in Amendment 17B until a stock assessment update is completed. These ACLs are based on the 57 percent recreational/43 percent commercial allocation established in Amendment 13C to the FMP (71 FR 55096, September 21, 2006), which used historical landings data from 1999–2003. The Council did not consider changing this allocation formula in Amendment 18A.

The Council recommended a control date of December 4, 2008, for the black sea bass pot segment of the snapper-grouper fishery (74 FR 7848, February 20, 2009) based on concerns about a potential increase in the number of participants in the fishery that may result because of increased regulations on other species in the snapper-grouper complex. However, the Council did not use the December 4, 2008 control date because they decided that the eligibility criteria should give more weight to present participation in the fishery. The Council's eligibility criteria included average annual historical landings of at least 2,500 lb (1,134 kg), round weight [2,118 lb (961 kg), gutted weight] between January 1, 1999, and December 31, 2010, in addition to having some (at least 1 lb (0.4 kg)) reported black sea bass landings between January 1, 2008, and December 31, 2010.

A recreational permit program for private recreational anglers was also not

the subject of the proposed rule implementing Amendment 18A, and therefore, the comments related to a recreational permit program are beyond the scope of this rulemaking. However, this does not preclude the Council from considering such a program in the future.

Comment 11: Two commenters state that the Council should declare its long-term objectives for the black sea bass commercial sector in order to establish reasonable allocations. Additionally, one commenter states that NMFS is disproportionately swayed by environmental organizations in their precautionary approach to managing black sea bass, and NMFS does not adequately take into account the concerns of the recreational sector when making decisions.

Response: The Council's long-term objective for the commercial black sea bass sector within the snapper-grouper fishery is to achieve the optimum yield (OY) for the resource. The Council did not consider changing the commercial and recreational allocations in Amendment 18A. However, the Council did consider minimizing adverse socioeconomic impacts to the recreational and commercial black sea bass sectors when developing the management measures contained in Amendment 18A and this final rule.

Throughout the development of Amendment 18A and this rulemaking, the Council and NMFS considered input from all stakeholders. No one organization or entity was given a disproportionate influence in public participation during the Council and rulemaking process.

Comment 12: One commenter states that NMFS should allocate fewer funds to the Council's advisory panels (APs) and re-allocate those funds to law enforcement because the APs do not function adequately.

Response: This comment is beyond the scope of this rulemaking and, therefore, is not addressed here.

Comment 13: One commenter supports a mid-August to mid-December seasonal closure if NMFS chooses to implement a seasonal closure. These months are considered the slowest time of year for the for-hire sector in the state of Florida, and any closure that would include the months of May through July is discouraged because black sea bass are one of the only species available when bottom water off the Florida coast cools in the summer. One commenter recommended changing the opening date of the black sea bass component of the snapper-grouper fishery to coincide with the opening of the vermillion snapper fishing season, which is July 1,

in order to reduce the directed targeting of black sea bass during the month of June.

Response: The Council only considered seasonal closures during the black sea bass spawning season, which is March through May. The Council chose not to implement a spawning season closure for black sea bass based on information that indicated black sea bass do not have increased vulnerability during the spawning season like other snapper-grouper species, such as shallow-water groupers. Additionally, Amendment 18A states that peak spawning for black sea bass occurs at different times of the year in different areas of the South Atlantic, ranging from late winter/early spring off Georgia and Florida to primarily spring off North Carolina and South Carolina. The lack of a spawning season closure should not have a negative impact on spawning of black sea bass. The Council could revisit options for black sea bass seasonal closures in the future.

Amendment 13C to the FMP (71 FR 55096, September 21, 2006) established a June 1 start date for the black sea bass fishing year for both the commercial and recreational sectors with the intent that, if a closure should occur, it would most likely coincide with the black sea bass spawning season. The Council again considered a change in the black sea bass fishing year as a possible means to extend the black sea bass season during the development of Regulatory Amendment 9 to the FMP (76 FR 34892, June 15, 2011), although they decided not to change the starting date for the fishing year at that time. Furthermore, the Council considered two 6-month fishing seasons (June–November and December–May) for black sea bass in Regulatory Amendment 9. However, NMFS disapproved this action due to concerns this action could result in the presence of numerous vertical black sea bass pot buoy lines within the endangered northern right whale migration route during the time of year when the whales are transiting off the Southeast coast.

The Council recognizes that the timing of the opening and closing dates of the fishing season affects South Atlantic states differently. For this reason, the Council has discussed the possibility of state-by-state quotas for black sea bass and could consider such a regional approach to management in a future amendment. Additionally, the Snapper-Grouper AP has expressed its support for this type of a regional approach to the management of black sea bass.

Comment 14: Four commenters state that an in-season closure of the black

sea bass segment of the snapper-grouper fishery during the winter is not an appropriate management measure because the winter months are the time when black sea bass are most prolific off the coast of North Carolina, and fishing during the winter would help maximize profitability of for-hire operations.

Response: Regulations implementing Amendment 17B included AMs for black sea bass to ensure that the ACL is not exceeded and to correct for an ACL overage should one occur. One component of the system of AMs implemented through Amendment 17B is that the recreational sector will close when the recreational sector ACL is met or projected to be met, but it only applies if the stock is overfished. Regardless of overfished status, the ACL would be reduced by the amount of the overage in the following year. The Council determined that an in-season closure is needed for the recreational sector regardless of the overfished status because catches have increased for black sea bass as the stock rebuilds. Thus, the overage could be very large, and a substantial reduction in the ACL could occur in the following year if there is no in-season closure of black sea bass. Therefore, the Council selected the alternative that provides the RA authority to close the recreational sector when the ACL is met or projected to be met regardless of the overfished status of the stock. The timing of a commercial or recreational in-season closure will depend on the fishing effort and when landings reach the appropriate level to trigger the AMs.

Comment 15: Two recreational anglers state that the two main issues that negatively impact the black sea bass stock are inadequate Federal management and continuing to allow the use of black sea bass pots.

Response: For reasons articulated in Amendment 4 to the FMP, black sea bass pots are an allowable and appropriate gear type for black sea bass. The final rule implementing Amendment 4 to the FMP contained a prohibition on the use of fish traps in the South Atlantic EEZ based on concerns related to ghost fishing by lost traps, habitat damage, enforcement difficulties, and bycatch mortality issues. Page 71 of Amendment 4 outlines the rationale for the Council's choice to prohibit all fish traps, except black sea bass pots, north of 28°35.1'N latitude because black sea bass pot construction specifications make them highly selective for black sea bass, and bycatch is minimal.

Federal management of black sea bass includes a rebuilding plan and commercial and recreational ACLs and

AMs. Currently, when the commercial ACL is reached or projected to be reached, commercial harvest and sale of the species is prohibited and the black sea bass pots must be removed from the water. This rule implements an endorsement program that limits the number of commercial permit holders allowed to fish for black sea bass with pot gear. This rule also limits the number of black sea bass pot tags issued to each endorsement holder each permit year; specifies a commercial trip limit; increases the commercial minimum size limit; and requires that all black sea bass pots be brought back to shore at the conclusion of each trip. The Council and NMFS believe that these measures, together with the existing measures, comprise an appropriate conservation and management program for black sea bass in the South Atlantic.

Comment 16: Two commenters support the actions contained in Amendment 18A that update the rebuilding plan for black sea bass based on the most recent stock assessment. One commenter states that the rebuilding strategy should be based upon a constant fishing mortality rate, rather than a constant catch rate.

Response: NMFS agrees that the actions updating the rebuilding plan based on the most recent stock assessment are appropriate.

The Council considered various rebuilding plans based on either a constant fishing mortality rate or on a constant catch rate. Originally, the Council chose to define a rebuilding strategy for black sea bass that maintains a constant fishing mortality rate throughout the remaining years of the rebuilding timeframe, which would allow the greatest amount of harvest possible, while still having a 50 percent chance of rebuilding by 2016. However, at its December 2011 meeting, the Council determined a more conservative rebuilding strategy alternative that incorporates a higher probability of rebuilding by the start of the 2016/2017 fishing year is more appropriate for the stock. Therefore, the preferred rebuilding strategy alternative was changed from a constant fishing mortality rate to a rebuilding strategy that would hold catch at the current level for the 2012/2013 and 2013/2014 fishing years, and then change to a constant catch rebuilding strategy. The Council's preferred rebuilding strategy has a 66 percent chance of rebuilding the stock by 2016.

Comment 17: A number of commenters expressed concerns regarding the eligibility criteria for the black sea bass pot endorsement. Two commenters oppose the landings

qualification because it will exclude some fishermen who have invested in the black sea bass commercial sector of the snapper-grouper fishery. Another commenter believes too many Unlimited South Atlantic Snapper-Grouper Permit holders will qualify for the endorsement. Two commenters are concerned that the endorsement program favors older fishermen with a more established catch history for black sea bass. One commenter states that the Council's choice of qualifying criteria for the endorsement program is not fair and equitable.

Response: The objective of the black sea bass endorsement program is to reduce the rate of harvest and limit the number of the participants in the black sea bass pot segment of the snapper-grouper fishery to curtail derby fishing conditions, which have caused the commercial fishing season to close early for the past 3 fishing years. In determining which eligibility criteria were most appropriate, the Council considered this objective and the requirements for establishing a limited access system set forth in section 303(b)(6) of the Magnuson-Stevens Act (16 U.S.C. 1853(b)(6)), which include present participation in the fishery and historical fishing practices in, and dependence on the black sea bass segment of the snapper-grouper fishery, and the fair and equitable distribution of fishing privileges.

Regarding the number of permit holders who will qualify for the endorsement, prior to the Council finalizing Amendment 18A at its December 2011 meeting, the preferred endorsement eligibility criteria required that fishermen have average annual historical landings greater than 3,500 lb (1,588 kg), round weight [2,966 lb (1,345 kg), gutted weight] between January 1, 1999, and December 31, 2010. Under the 3,500-lb (1,588-kg), round weight criterion, 24 fishery participants would be eligible to receive black sea bass pot endorsements.

After reviewing public comments during its December 2011 meeting, the Council determined that limiting the number of black sea bass pot endorsements to 24 participants would eliminate too many fishermen from the black sea bass pot segment of the snapper-grouper fishery who had historically fished large quantities of black sea bass with pot gear. Therefore, the Council chose to change its preferred eligibility criteria to average annual historical landings of at least 2,500 lb (1,134 kg), round weight [2,118 lb (961 kg), gutted weight] between January 1, 1999, and December 31, 2010, in addition to having some (at least 1 lb

(0.4 kg)) reported black sea bass landings between January 1, 2008, and December 31, 2010. This addressed both historical fishing practices as well as current participation in the black sea bass pot segment of the snapper-grouper fishery. Applying these new criteria will result in the issuance of 31 endorsements. The Council determined that this resulted in the fair and equitable distribution of fishing privileges.

Comment 18: Two commenters recommend that the Council allow management measures such as the commercial trip limit and the limit on the number of black sea bass pot tags issued to each permit holder each permit year, to work before reducing capacity in the pot segment of the fishery through an endorsement program.

Response: As noted in the response to comment 17, the objective of the black sea bass endorsement program is to reduce the rate of harvest and limit the number of the participants in the black sea bass pot segment of the snapper-grouper fishery to curtail derby fishing conditions, which have caused the commercial fishing season to close early for the past 3 fishing years. The Council does not believe that a commercial trip limit and limitation on the number of black sea bass pots alone will be sufficient to ease derby fishing conditions.

Comment 19: One commenter states that only two black sea bass pot fishermen in the state of Florida would qualify for the endorsement.

Response: NMFS estimates that six fishermen from Florida (identified by the address on record with the NMFS Permits Office) will qualify for a black sea bass endorsement.

Comment 20: One commenter suggests that a catch share program for black sea bass is a more appropriate means of managing the commercial sector rather than an endorsement program. The commenter cites the need to provide black sea bass to consumers year round and prevent market gluts when the black sea bass season opens.

Response: This comment is beyond the scope of this rulemaking. However, the Council previously considered an action to establish a catch share program for black sea bass in Amendment 21 to the FMP but tabled that amendment due to lack of public support. The Council may decide to again consider a catch share program for black sea bass in the future.

Comment 21: Two commenters support the endorsement program appeals process included in Amendment 18A.

Response: NMFS agrees that setting aside a period of time for those who feel they may have been inappropriately excluded from the black sea bass pot endorsement program to appeal their exclusion from the program is important and consistent with appeals processes for limited access programs implemented by NMFS.

Comment 22: Three commenters support limiting the number of black sea bass pot tags issued to each endorsement holder per permit year to 35.

Response: NMFS agrees that limiting the number of black sea bass pot tags issued to each endorsement holder to 35 tags per permit year will be an effective means of reducing the rate of harvest of black sea bass in the commercial sector, improve in-season management of the species, reduce the amount of vertical-line gear in the water to reduce entanglement risks to protected species in the area, reduce the chance that pots could be lost and that ghost fishing could occur, and limit overall effort in the black sea bass pot segment of the snapper-grouper fishery.

Comment 23: Two commenters support the provision to require black sea bass traps to be brought back to shore at the end of each trip. One commenter opposes this provision because some fishermen may fish differently in other regions of the South Atlantic and one commenter opposes this provision because the same is not required for spiny lobster traps, which are fished in much greater abundance than black sea bass pots. One commenter states that ghost fishing can be addressed through the use of improved biodegradable escape panels. This same commenter is concerned that traps would be required to be pulled from the water during foul weather events.

Response: Currently, black sea bass fishermen can leave black sea bass pots in the water for the duration of the commercial fishing season. Although approximately 62 percent of black sea bass pot fishermen currently bring their black sea bass pots back to shore at the conclusion of each trip, others may leave unintended gear in the water for the entire season. Allowing this practice to continue would perpetuate the problem of ghost fishing by lost traps.

However, ghost fishing by lost black sea bass pots is not the only rationale for requiring that the pots be brought back to shore at the end of every trip. The longer the black sea bass pots remain in the water the greater the risk of lost pots, unintended bycatch of black sea bass, and the amount of vertical-line gear in the water. This is true regardless

of where black sea bass pot fishing takes place within the South Atlantic Region.

Weather is always a factor that must be considered in planning fishing trips. NMFS believes that fishers will make informed decisions about when to fish and when to end a trip and pull traps from the water.

The Council recognized that there are similar concerns with spiny lobster traps and addressed the issue of removing derelict spiny lobster traps in Amendment 10 to the Spiny Lobster FMP (76 FR 75488, December 2, 2011).

Comment 24: Four commenters support the 1,000-lb (454-kg), gutted weight, commercial trip limit for black sea bass.

Response: NMFS supports the 1,000-lb (454-kg), gutted weight, commercial trip limit for black sea bass as a means of extending the commercial fishing opportunities further into the fishing year, while still allowing commercial black sea bass pot fishermen to have economically profitable trips.

Comment 25: Two commenters support requiring selected for-hire vessels to report landings information electronically.

Response: NMFS supports the requirement that selected for-hire (both charter and headboat) vessels report landings information electronically on a weekly or daily basis. Currently, selected charter vessels are required to report on a weekly basis, and selected headboat vessels are required to report at the end of each month. Increased reporting frequency for selected for-hire vessels will improve in-season management of the recreational sector for snapper-grouper.

Comment 26: Four commenters support increasing the commercial and recreational minimum size limits for black sea bass. Several commenters noted a disparity between commercial and recreational restrictions on fishing for black sea bass. Specifically, several commenters oppose increasing the recreational minimum size limit without increasing the commercial minimum size limit to the same size. One commenter states that the increase of the recreational minimum size limit is too large and would guarantee increased discards. Two commenters state the recreational minimum size limit should be 12 inches (30 cm), TL. Two commenters oppose the use of minimum size limits as a management measure for black sea bass.

Response: NMFS is increasing the minimum size limit for black sea bass in the commercial sector from 10 inches (25 cm), TL, to 11 inches (28 cm), TL, and in the recreational sector from 12 inches (30 cm), TL, to 13 inches (33 cm),

TL. Public hearing comments were divided on the usefulness of increasing minimum size limits for black sea bass. The Snapper-Grouper AP supported increasing the minimum size limits to slow the rate of harvest of black sea bass. The SSC also supported increasing the recreational and commercial black sea bass minimum size limits because larger fish are economically more valuable.

The Council determined that it was unnecessary for the commercial and recreational minimum size limits to be the same because the commercial and recreational sectors for black sea bass are managed differently. The commercial and recreational sectors are each allocated their own portion of the allowable catch and each sector will close when their respective ACLs are met or are projected to be met.

The most recent stock assessment for black sea bass (SEDAR 25) indicates release mortality of black sea bass is very low (7 percent for hook-and-line; 1 percent for black sea bass pot) if fish are returned to the water quickly. The Council chose an 11-inch (27.9 cm) size limit for the commercial sector because pots catch a large number of fish and the Council was concerned that a substantial increase in the minimum size limit for the commercial sector could cause an increase in dead discards if there was an increase in the time undersized black sea bass were out of the water. The current minimum size limit in the commercial sector is 10 inches (25 cm), TL, and the 2-inch (5-cm) back panel of the pots culls out a large portion of fish less than 11-inches (28-cm), TL.

Recreational sector participants use hook-and-line gear, which generally catches one or two fish at a time. Therefore, regulatory discards in the recreational sector are more likely to be released quickly and alive, when compared to the commercial sector if there are large numbers of undersized fish to cull out.

Comment 27: Several commenters oppose implementing a 1,000-lb (454-kg), gutted weight, commercial trip limit, while the recreational sector is limited to only 5 fish per person per day.

Response: The Council did not address the recreational bag limit for black sea bass in Amendment 18A. The 5-fish bag limit was implemented through Regulatory Amendment 9 in 2011. Previously, the commercial sector had no trip limit, which contributed to derby fishing conditions that negatively affect profitability and safety of fishermen. The 1,000-lb (454-kg), gutted weight, trip limit is expected to reduce

the rate of harvest and help constrain harvest to the ACL.

Comment 28: One commenter states that commercial trip limits and the requirement that pots be brought to shore each day is not necessary to reduce the risk of right whale interactions with black sea bass pots. This commenter believes that gear modifications could reduce the risk of interactions with right whales and notes that there has never been a documented interaction between black sea bass pot gear and right whales.

Response: NMFS completed a biological opinion on the South Atlantic snapper-grouper fishery on June 7, 2006. The biological opinion concluded that the continued authorization of the snapper-grouper fishery was not likely to adversely affect marine mammals, in part, because there has never been a documented interaction between black sea bass pot gear and large whales in the South Atlantic. However, for a majority of large whale entanglements, the actual fishery involved in the interaction cannot be determined and entanglements in trap gear similar to black sea bass pots have occurred in the South Atlantic. Thus, there is the risk of large whale entanglements in black sea bass pot gear.

The management measures contained in Amendment 18A, including the commercial trip limit and the requirement to return black sea bass pot gear to shore at the conclusion of each trip, lessen that risk. The Atlantic Large Whale Take Reduction Team (ALWTRT) has identified reducing the entanglement of North Atlantic right whales in vertical lines (i.e., trap lines), particularly in the Southeast during the winter calving season (November-April), as a conservation priority. As part of their objective of large whale conservation, the ALWTRT may consider the use of modified vertical line gear that decreases the risk of entanglement of large whales.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the FMP, Amendment 18A, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Council and NMFS prepared a final environmental impact statement (FEIS) for Amendment 18A. The FEIS was filed with the EPA on February 10, 2012. A notice of availability was published on February 17, 2012 (77 FR 9652). In partially approving Amendment 18A, NMFS issued a Record of Decision identifying the selected alternatives. A copy of the

record of decision (ROD) is available from NMFS (see **ADDRESSES**).

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. However, several comments with socioeconomic implications were received and are addressed in the Comments and Responses section in the responses to comments #2, 6, and 17. No changes in the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble to the final rule provides a statement of the need for and objectives of this rule, and it is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This final rule will introduce certain changes to current reporting, record-keeping, and other compliance requirements. In particular, a sample of the 1,985 vessels with for-hire snapper-grouper permits would be required to electronically report their harvest. Because all headboats are currently subject to logbook reporting, the incremental professional skill needed under the new requirement would be relatively small. The incremental professional skill required of charterboats would be relatively higher because only about 10 percent of charter captains are currently contacted on a weekly basis to collect trip level information.

NMFS expects this final rule to directly affect commercial fishers and for-hire operators. The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$4.0 million (NAICS code

114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2005–2010, an annual average of 247 vessels with valid permits to operate in the commercial snapper-grouper fishery landed black sea bass, generating dockside revenues of approximately \$1.103 million (2010 dollars). Each vessel, therefore, generated an average of approximately \$4,465 in gross revenues from black sea bass. Vessels that operate in the black sea bass segment of the snapper-grouper fishery may also operate in other segments of the snapper-grouper fishery, the revenues of which are not reflected in these totals.

Based on revenue information, all commercial vessels affected by the rule can be considered small entities.

From 2005–2010, an annual average of 1,985 vessels had valid permits to operate in the for-hire sector of the snapper-grouper fishery, of which 85 are estimated to have operated as headboats. The for-hire fleet consists of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (2010 dollars) 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 corresponding estimates are \$170,000–\$362,000 for Florida vessels, and \$149,000–\$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered 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 to an unknown extent, and NMFS treats all vessels as independent entities in this analysis.

NMFS expects the final rule to directly affect all federally permitted commercial vessels harvesting black sea bass and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that this final rule will affect a substantial number of small entities.

NMFS considers all entities expected to be affected by the rule as small

entities, so the issue of disproportional effects on small versus large entities does not arise in the present case.

Setting the ACL, ABC, and OY equal to one another would provide an economic environment that would allow small entities to maintain or increase their profits by way of maximizing their use of the black sea bass resource.

Establishing a black sea bass pot endorsement program would likely result in profit increases to those who would qualify and profit decreases to those who would not. Out of the 50 to 60 individuals that currently fish for black sea bass using pots, approximately 31 would qualify for the endorsement. Although those who would not qualify could still fish for black sea bass using other gear types, their harvest performance could suffer. Because a limited number of individuals could fish for black sea bass using pots under the endorsement program, the fishing season for the commercial sector would likely remain open longer than it has in the last few years. This could cause overall industry profits to increase or at least remain stable.

Establishing an appeals process for fishermen initially excluded from the black sea bass pot endorsement program would provide opportunities for those qualified to receive their endorsement. Given the narrow basis for appeals, only a limited number of appeals would likely be successful.

Limiting the number of pots per vessel would likely decrease the short-term profits of small entities. The maximum number of 35 pots allowed per vessel is lower than the current average of 45 pots per vessel fished, and would affect about 48 percent of the trips. Vessels that have historically used more than 35 pots per trip would generate lower revenues per trip or higher overall fishing costs to maintain the same overall revenues. However, because the endorsement program would limit the number of participants in the black sea bass pot segment of the snapper-grouper fishery, fishermen who would be adversely affected by the limit on the number of pot tags per vessel could take more trips to recoup their losses. Thus, overall industry profits, which are expected to increase or remain stable under the endorsement program, may remain unaffected by the potential losses to fishermen adversely affected by the limit on pot tags.

Requiring that black sea bass pots be brought back to shore at the conclusion of each trip as a means to reduce bycatch may restrict the fishing operations of some vessels. Its effects on profits are relatively unknown, but

NMFS notes that in approximately 65 percent of trips, pots are brought back to shore. If vessels undertake longer trips to allow their pots to fish longer, costs could rise because no restriction exists on the length of each trip. If this practice results in maintaining the same revenues per trip, vessel profits could decrease. If, however, this requirement results in less ghost fishing and less interaction with protected species, future restrictions imposed on the fishery may lessen, such that long-term profits of small entities would remain sustainable.

The recreational AMs, consisting of the in-season harvest and possession restriction if the recreational ACL is met or projected to be met and the post-season reduction in the sector's ACL if the recreational ACL is exceeded in the current year, would likely reduce the short-term profits of for-hire vessels. Similarly, the commercial AMs consisting of the in-season prohibition on the purchase and sale of black sea bass and the post-season reduction in the sector's ACL, would likely result in profit reductions to the commercial vessels. To the extent that this provision allows the rebuilding target to be reached within the rebuilding period, long-term profits to for-hire and commercial fishing operations would increase. In addition, the projected increases in the aggregate (commercial and recreational) ACL under the rebuilding strategy, as long as the prior year's combined ACL is not exceeded, would tend to negate some or all of the adverse profit effects of the post-season AM applied to either the commercial or recreational sector. If either sector, but not both, exceeds its ACL in the current year, that sector's ACL would be reduced the following year. The combined commercial and recreational ACL, and therefore the sector ACLs, would still increase so long as the combined ACL is not exceeded in the prior year.

Establishing a commercial vessel trip limit of 1,000 lb (454 kg), gutted weight [1,180 lb (535 kg), round weight], would tend to adversely affect the catch and revenue per trip of vessels that generally land over this limit. Based on the 2010–2011 fishing season data, this alternative would adversely affect approximately 8.4 percent of trips accounting for a total of about 83,000 lb (37,648 kg), valued at about \$203,000. NMFS notes, though, that this trip limit could lengthen the fishing season, allowing opportunities for some vessels to recoup some of their revenue losses for the year. At any rate, NMFS expects that some of these revenue reductions would filter into the bottom line of some vessels and

potentially the bottom line of the entire industry. The actual extent of industry profit reduction cannot be estimated based on available information.

Increasing the recreational minimum size limit from 12 inches (30 cm), TL, to 13 inches (33 cm), TL, could reduce the black sea bass harvests of headboats from 20.9 percent to 22.6 percent and black sea bass harvests of other fishing modes (*i.e.* charterboats and private vessels) from 18.8 percent to 20.3 percent. These harvest reductions could lead to trip cancellations because the quality of the fishing experience would decrease. However, these harvest reductions could be recouped through additional trips with a lengthened season. The actual effects on for-hire vessel profits depend on whether there would be trip cancellations, which is uncertain based on available information.

Increasing the commercial size limit from 10 inches (25 cm), TL, to 11 inches (28 cm), TL, could reduce the black sea bass harvests of commercial vessels by slightly over 9 percent. Actual reductions in harvest would partly depend on whether vessels take additional or longer trips to recoup potential harvest losses. Although additional or longer trips would maintain total revenues, either by maintaining the same harvest or by generating more revenue per fish since a bigger black sea bass generally commands a higher price, costs would also increase. The net effects on per vessel and industry profits cannot be determined with available information.

Requiring selected for-hire vessels to report electronically would affect some of the 1,985 vessels with for-hire snapper-grouper permits. This requirement would add costs to these vessels' operations. The incremental costs to selected headboats would not likely be as much as for charterboats because headboats are currently subject to logbook reporting. Charterboats are not currently subject to logbook reporting although NMFS now routinely contacts some charter captains to collect trip level information. The resulting effects to for-hire vessel profits are indeterminable.

Amendment 18A contains other provisions that could eventually have effects on the operations of small entities. First, modifying the rebuilding strategy and setting the ABC for black sea bass would retain the current economic status of small entities for the next 2 years of the rebuilding period. Thereafter, profits to small entities may increase with a shift from a constant catch strategy to a constant fishing mortality strategy that would allow the

ABC to increase over time depending on the results of future stock assessments. Second, as part of modifying the rebuilding strategy, overfishing for black sea bass will be determined on an annual basis using the maximum fishing mortality threshold and the overfishing limit. This provision alone would not affect the profits of small entities. Third, an ACT for the recreational sector would account for management uncertainty in the recreational sector, related in part to the timely accounting of this sector's harvests. Currently, this ACT does not trigger application of AMs, so short-term profits to small entities would remain unaffected. If the Council decides in the future to use the ACT as the trigger for application of AMs, profits to small entities may be adversely affected. However, because this measure is designed to help ensure that the rebuilding strategy stays on track, long-term profitability would be sustainable.

Five alternatives, including the preferred alternative, were considered for modifying the rebuilding strategy and ABC. The preferred alternative has a relatively high probability of rebuilding the stock so that it is more likely to result in ABC increases after the first 2 years. The actual ABC levels after 2 years are currently unknown but would be specified based on future stock assessments. The first alternative, the no action alternative, would maintain the constant catch rebuilding strategy and current ABC throughout the rebuilding timeframe. This alternative has the same probability of rebuilding the stock as the preferred alternative. Because it would maintain the same ABC over time it would likely result in lower economic benefits than the preferred alternative. The second alternative would establish a new constant catch rebuilding strategy with a higher (than current) ABC throughout the remaining years of the rebuilding timeframe. Relative to the preferred alternative, the second alternative would provide for a higher ABC for 2 years and a lower or higher ABC thereafter depending on the results of future stock assessments. Thus, the sum of economic benefits over the rebuilding timeframe under this alternative could be lower or higher than that of the preferred alternative, depending on the preferred alternative's actual ABC level. It may only be noted that, being a constant catch strategy, this alternative would likely lead to the ACL being met sooner as the fish stock rebuilds, resulting in applications of in-season and post-season AMs. The third alternative, with two sub-alternatives,

would establish a constant fishing mortality rebuilding strategy throughout the remaining years of the rebuilding timeframe. Under the first sub-alternative, the fishing mortality rate would be 75 percent of the fishing mortality at MSY (75-percent F_{MSY}), and under the second sub-alternative, the fishing mortality rate that would rebuild the stock by 2016 ($F_{REBUILD}$ by 2016). These two sub-alternatives would provide for higher ABCs than the preferred alternative during the first 2 years, and thus, higher economic benefits in the short term. These two sub-alternatives would also result in higher economic benefits in the long term if the preferred alternative's future ABCs were not substantially higher than those of the two sub-alternatives. The fourth alternative would maintain the current constant catch strategy and ABC for the next 2 years of the rebuilding timeframe and switch to a constant fishing mortality strategy at $F_{REBUILD}$ throughout the remainder of the rebuilding timeframe. This alternative would provide for the same ABC as the preferred alternative during the first 2 years, but relates to a lower probability of rebuilding the stock to biomass at MSY. Because this alternative has the same ABCs as the preferred alternative during the first 2 years and adopts a constant fishing mortality rebuilding strategy thereafter, it is possible the two alternatives would result in about the same economic effects over time.

Four alternatives, including the preferred alternative, were considered for modifying the ACL for black sea bass. The first alternative, the no action alternative, would maintain the existing ACL equal to ABC and OY equal to 75 percent of the fishing mortality at MSY. This alternative is more restrictive than the preferred alternative in setting OY as the underlying goal of managing the black sea bass stock. The second alternative would set the ACL equal to 90 percent of the ABC and the latter equal to OY. The third alternative would set the ACL equal to 80 percent of the ABC and the latter equal to OY. These other alternatives would provide for a lower ACL than the preferred alternative, and thus lower economic benefits as well.

Three alternatives, including the preferred alternative, were considered for establishing an endorsement program for the black sea bass pot segment of the snapper-grouper fishery. The first alternative, the no action alternative, would not establish an endorsement program. This alternative would continue to allow anyone with an Unlimited or 225-lb (102-kg) Limited Snapper-Grouper Permit to engage in

the black sea bass pot segment of the snapper-grouper fishery. This would increase the likelihood of the derby-style fishing conditions, potentially dampening industry profitability. The second alternative includes seven sub-alternatives, of which one is the preferred sub-alternative that would require minimum landings of 2,500 lb (1,134 kg), round weight, to be eligible to participate in the endorsement program. The first sub-alternative would set the minimum landings at 500 lb (227 kg), round weight; the second sub-alternative, at 1,000 lb (454 kg), round weight; the third sub-alternative, at 2,000 lb (907 kg), round weight; the fourth, at 3,500 lb (1,588 kg), round weight; the fifth, at 5,000 lb (2,268 kg), round weight; and, the sixth, at 10,000 lb (4,536 kg), round weight. These sub-alternatives would allow varying numbers of individuals/entities to qualify for the endorsement: higher landings requirements would result in fewer qualifiers. The Council's choice of preferred alternative was based on the assessment that about 30 individuals/entities can be profitably sustained by the black sea bass pot segment of the snapper-grouper fishery. In this case, sub-alternatives requiring less than 2,500 lb (1,134 kg), round weight, of landings for endorsement eligibility would likely result in unsustainable profits. On the other end, sub-alternatives requiring higher than 2,500 lb (1,134 kg), round weight, of landings would severely restrict participation in the fishery although industry profitability would be more sustainable. In addition, a highly restrictive endorsement qualification criterion, such as 10,000 lb (4,536 kg), round weight, would tend to eliminate small scale operations that have historically characterized the black sea bass pot segment of the snapper-grouper fishery. The third alternative, with two sub-alternatives, would require that no South Atlantic state shall have fewer than two entities qualifying for the endorsement. The first sub-alternative would set a minimum landings requirement of 1,000 lb (454 kg), round weight, and the second, 2,000 lb (907 kg), round weight. This alternative, with the sub-alternatives, was intended to allow participation by all South Atlantic states in the endorsement program. Since the minimum number of qualifiers from each state would be the same under this alternative and the preferred alternative, the Council deemed this third alternative unnecessary.

Three alternatives, including the preferred alternative, were considered

for establishing an appeals process for fishermen initially excluded from the endorsement program. The first alternative, the no action alternative, would not establish an appeals process. This alternative has the potential to unduly penalize participants if they were incorrectly excluded from the endorsement program. The second alternative is the same as the preferred alternative, except that it would establish a special board, composed of state directors and designees, that would review, evaluate, and make individual recommendations to the RA. This alternative would introduce an additional administrative burden that may not improve the appeals process because the only appealable issues are eligibility and landings.

Five alternatives, including the preferred alternative, were considered for limiting effort in the black sea bass pot segment of the snapper-grouper fishery. The first alternative, the no action alternative, would not limit the number of black sea bass pots deployed or pot tags issued to holders of snapper-grouper commercial permits. Among the alternatives, this is potentially the best alternative for efficient operations in the black sea bass pot segment of the snapper-grouper fishery. But with no limit on the number of pots, a high likelihood arises that more pots may be lost and "ghost fish" for black sea bass or other species. In addition, the more pots, the more vertical lines are in the water, which increases the probability of interaction with certain protected species. Ghost fishing is likely to hinder the rebuilding of black sea bass or provide less protection to other snapper-grouper species subject to a rebuilding strategy. Both ghost fishing and interactions with protected species could lead to the implementation of more restrictive measures that would impinge on the profits of commercial vessels. The second alternative would limit black sea bass pot tags to 100 per vessel per year; the second alternative, to 50 per vessel per year; and, the third alternative, to 25 per vessel per year. These other alternatives differ from the preferred alternative only in the maximum number of pots deployed or pot tags issued per vessel, with the higher numbers providing better opportunities for higher profits per vessel trip. But as noted above, the higher number of pots, the higher the probability of ghost fishing and interaction with protected species.

Three alternatives, including the preferred alternative, were considered for reducing bycatch in black sea bass pots. The first alternative, the no action alternative, would allow pots to remain

in the water until the commercial quota is reached. This alternative would not help reduce bycatch in the black sea bass pot segment of the snapper-grouper fishery. The second alternative would allow fishermen to leave pots in the water for no more than 72 hours. This alternative would have about the same effects as the preferred alternative on pot fishing operations, because most fishing trips for black sea bass using pots last for less than 3 days. However, it would present a higher probability for ghost fishing because pots may be left in the water on short vessel trips or not retrieved during inclement weather.

Three alternatives, including the preferred alternative, were considered for modifying the AMs for black sea bass. The first alternative, the no action alternative, would maintain the current commercial and recreational AMs. The Council concluded that this alternative was not effective in constraining harvest at or below the sector ACLs. The second alternative is similar to the preferred alternative for the recreational sector, except that it would trigger in-season AMs only if the black sea bass stock is overfished. This alternative could lead to larger post-season adjustment of the recreational ACL and thus larger adverse effects on for-hire profits, particularly if the aggregate ACL is exceeded. Moreover, if overages in the recreational harvest lead to exceeding the aggregate ACL, the aggregate ACL would not automatically increase the following year, resulting in adverse effects on both the commercial and recreational sectors.

Nine alternatives, including the preferred alternative, were considered for establishing a commercial trip limit. The first alternative, the no action alternative, would not establish a commercial trip limit. In principle, this alternative would likely provide the most short-term profitability among commercial vessels on a per trip basis, because commercial vessel operations would remain unaffected. However, this alternative could lead to lower industry profitability if harvest rate is not effectively controlled and this results in a shortened fishing season. The second alternative would establish a trip limit of 500 lb (227 kg), gutted weight; the third alternative, 750 lb (340 kg), gutted weight; the fourth alternative, 1,250 lb (567 kg), gutted weight. The fifth alternative would establish a trip limit of 1,000 lb (454 kg), gutted weight, that would be reduced to 500 lb (227 kg), gutted weight, when 75 percent of the commercial ACL is met. The sixth alternative would establish a trip limit of 2,000 lb (907 kg), gutted weight; the seventh, 2,500 lb (1,134 kg), gutted

weight; and, the eighth alternative, 250 lb (113 kg), gutted weight. NMFS expects that trip limits lower than the preferred alternative of 1,000 lb (454 kg), gutted weight, would lead to larger adverse effects on per trip profitability and the opposite would occur with higher trip limits. Based on the Council's assessment, the preferred alternative would provide the best balance between per trip losses in profits and higher industry profits from a longer fishing season.

Three alternatives, including two preferred alternatives, were considered for modifying the commercial and recreational minimum size limit. The first alternative, the no action alternative, would not change the commercial or recreational size limit. In principle, this alternative would provide the best economic environment for both the commercial and recreational sectors, because their operations would remain relatively unaffected. However, this alternative would not help in constraining the rate of harvest which has been increasing in recent years, leading to early closures of both the commercial and recreational sectors of the black sea bass segment of the snapper-grouper fishery. The second alternative includes three sub-alternatives for commercial size limits, one of which is the preferred sub-alternative. The second sub-alternative would increase the commercial size limit from 10 inches (25 cm), TL, to 12 inches (30 cm), TL. This sub-alternative would lead to relatively larger adverse effects on the profits of commercial vessels but would also tend to allow a longer fishing season. However, the Council concluded that this sub-alternative would not provide the best balance between short-term profit reductions and profit increases from a longer season. The third sub-alternative would increase the commercial size limit from 10 inches (25 cm), TL, to 11 inches (28 cm), TL, in the first year and to 12 inches (30 cm), TL, thereafter. This sub-alternative would eventually lead to larger adverse effects on the profits of commercial vessels but would also tend to allow a longer fishing season. However, the Council concluded that this sub-alternative would not provide the best balance between short-term profit reductions and profit increases from a longer season.

Four alternatives, including the preferred alternative, were considered for improving for-hire data reporting. The first alternative (the no action alternative) would retain the existing data reporting systems for the for-hire sector. However, the Council concluded that modifications to existing

recreational data collection are necessary to the extent that they would not be too burdensome on for-hire vessel operations. The second alternative would require vessels operating with a Federal for-hire permit to maintain a logbook for discard characteristics (e.g., size and reason for discarding), if selected. This alternative would provide better information regarding discards, but would increase costs for for-hire vessel operations. The third alternative would require that for-hire landings and catch/effort data be submitted in accordance with the Atlantic States Cooperative Statistics Program (ACCSP) standards, using the South Atlantic Fisheries Information System (SAFIS). Although this alternative has the potential to improve recreational data collection, it would be costly to for-hire vessels. Therefore, the Council decided to wait until the new Marine Recreational Information Program (MRIP) has been in place for some time to determine whether it would be sufficient for reporting for-hire landings data.

Four alternatives, including the preferred alternative, were considered for setting the recreational annual catch target (ACT). The first alternative, the no action alternative, would not set a recreational ACT, and thus, would not meet the stated objective. The second alternative would set the recreational ACT equal to 85 percent of the recreational ACL. The third alternative would set the recreational ACT equal to 75 percent of the recreational ACL. NMFS estimates that these two alternatives would result in lower ACTs than the preferred alternative, so that if an ACT triggers management actions, these two alternatives would result in larger adverse effects on the profits of for-hire vessels.

In Amendment 18A, the Council considered several actions for which the no-action alternative was the preferred alternative.

Three alternatives, including the preferred alternative (no action alternative), were considered for setting the commercial ACT. The first alternative would set the commercial ACT equal to 90 percent of the commercial ACL. The second alternative would set the commercial ACT equal to 80 percent of the commercial ACL. Because NMFS closely tracks the commercial landings in-season through a quota monitoring system, the Council concluded that a commercial ACT as a monitoring tool was unnecessary.

Five alternatives, including the preferred alternative (no action alternative), were considered for

implementing a spawning season closure. The first alternative would implement a March 1–April 30 spawning season closure; the second alternative, an April 1–May 31 spawning season closure; the third alternative, a March 1–May 31 spawning season closure; and, the fourth alternative, a May 1–May 31 spawning season closure. These alternatives would result in short-term profit reductions to commercial and for-hire vessels. Black sea bass do not form large spawning aggregations and the peak spawning period occurs at different times of the year across the South Atlantic. Therefore, short-term profit reductions could persist in the future as the benefits from a spawning season closure are not well established.

Four alternatives, including the preferred alternative (no action alternative), were considered for improving commercial data reporting. The first alternative would require all vessels with Federal snapper-grouper commercial permits to have an electronic logbook tied to the vessel's Global Position System onboard the vessel. The second alternative would provide the option for fishermen to submit their logbook entries electronically via an electronic version of the logbook made available online. The third alternative would require submission of commercial landings and catch and effort data in accordance with the ACCSP standards, using the SAFIS. These alternatives would introduce additional cost to commercial fishing operations. In the particular case of the second alternative, fishermen would be unlikely to opt for electronic reporting because of its additional cost, thereby rendering the alternative impractical. The Council decided to address this issue in the future through a comprehensive amendment for improving data collection.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders in the South Atlantic snapper-grouper fishery.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office

of Management and Budget (OMB) under control numbers 0648–0603 and 0648–0205. Public reporting burden for the for-hire sector of the snapper-grouper fishery to submit logbook information electronically, if selected to do so, is estimated to average 30 minutes per electronic logbook installation and 1 minute per weekly download of the weekly logbook information. Public reporting burden for South Atlantic Unlimited Snapper-Grouper Permit holders to submit their logbook information if they are appealing their landings data for a black sea bass pot endorsement is estimated to average 2 hours per response. Public reporting burden for the requirement to check boxes on the Federal Permit Application Form for a new endorsement or renewal of the black sea bass pot endorsement is estimated to average 1 minute per response. Finally, the public reporting burden for the requirement to check boxes on the Federal Permit Application Form for black sea bass pot tags (Floy tags) for the endorsement program is estimated to average 1 minute per response. These estimates of the public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

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

Dated: May 29, 2012.

Alan D. Risenhoover,

Acting 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 § 622.4, paragraph (a)(2)(xv) is added and paragraph (a)(5)(i)(A) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *
(2) * * *

(xv) *South Atlantic black sea bass pot endorsement.* For a person aboard a vessel, for which a valid commercial vessel permit for South Atlantic snapper-grouper unlimited has been issued, to use a black sea bass pot in the South Atlantic EEZ, a valid South Atlantic black sea bass pot endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. NMFS will renew this endorsement automatically when renewing the commercial vessel permit for South Atlantic snapper-grouper unlimited associated with the vessel. The RA will not reissue this endorsement if the endorsement or the commercial vessel permit for South Atlantic snapper-grouper unlimited is revoked or if the RA does not receive a complete application for renewal of the commercial vessel permit for South Atlantic snapper-grouper unlimited within 1 year after the permit's expiration date.

(A) *Initial eligibility.* To be eligible for an initial South Atlantic black sea bass pot endorsement, a person must have been issued and must possess a valid or renewable commercial vessel permit for South Atlantic snapper-grouper that has black sea bass landings using black sea bass pot gear averaging at least 2,500 lb (1,134 kg), round weight, annually during the period January 1, 1999 through December 31, 2010. Excluded from this eligibility, are trip-limited permits (South Atlantic snapper-grouper permits that have a 225-lb (102.1-kg) limit of snapper-grouper) and valid or renewable commercial vessel permits for South Atlantic snapper-grouper unlimited that have no reported landings of black sea bass using black sea bass pots from January 1, 2008, through December 31, 2010. NMFS will attribute all applicable black sea bass landings associated with a current snapper-grouper permit for the applicable landings history, including those reported by a person(s) who held the permit prior to the current permit owner, to the current permit owner.

Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

(B) *Initial issuance.* On or about June 1, 2012, the RA will mail each eligible permittee a black sea bass pot endorsement via certified mail, return receipt requested, to the permittee's address of record as listed in NMFS' permit files. An eligible permittee who does not receive an endorsement from the RA, must contact the RA no later than July 1, 2012, to clarify his/her endorsement status. A permittee denied an endorsement based on the RA's initial determination of eligibility and who disagrees with that determination may appeal to the RA.

(C) *Procedure for appealing black sea bass pot endorsement eligibility and/or landings information.* The only items subject to appeal are initial eligibility for a black sea bass pot endorsement based on ownership of a qualifying snapper-grouper permit, the accuracy of the amount of landings, and correct assignment of landings to the permittee. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than October 1, 2012, and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final NMFS decision.

(1) *Eligibility appeals.* NMFS' records of snapper-grouper permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, for example, as a result of ownership changes from individual to corporate or vice versa, must document his/her continuity of ownership.

(2) *Landings appeals.* Determinations of appeals regarding landings data for 1999 through 2010 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data for the period 1999 through 2010 that were submitted in compliance with applicable Federal and state regulations on or before December 31, 2011.

(D) [Reserved]

(E) *Fees.* No fee applies to initial issuance of a black sea bass pot endorsement. NMFS charges a fee for each renewal or replacement of such endorsement and calculates the amount of each fee in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with

each application form. The handbook is available from the RA. The appropriate fee must accompany each application for renewal or replacement.

* * * * *

(5) * * *
(i) * * *

(A) An operator of a vessel that has or is required to have a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ).

* * * * *

■ 3. In § 622.5, paragraphs (b)(2)(i) and (ii) are revised to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(b) * * *
(2) * * *

(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Completed fishing records required by paragraph (b)(1)(ii) of this section for charter vessels may be required weekly or daily, as directed by the SRD. Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1)(i) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Completed fishing records required by paragraph (b)(1)(ii) of this section for headboats may be required weekly or daily, as directed by the SRD. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

■ 4. In § 622.37, paragraph (e)(3)(i) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(e) * * *
(3) * * *

(i) *Black seas bass.* (A) For a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(vii)—13 inches (33 cm), TL.

(B) For a fish taken by a person not subject to the bag limit specified in § 622.39(d)(1)(vii)—11 inches (28 cm), TL.

* * * * *

■ 5. In § 622.40, paragraph (d)(1)(i)(B) is revised and paragraphs (d)(1)(i)(C) and (D) are added to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(d) * * *
(1) * * *
(i) * * *

(B) A sea bass pot must be removed from the water in the South Atlantic EEZ and the vessel must be returned to a dock, berth, beach, seawall, or ramp at the conclusion of each trip. Sea bass pots may remain on the vessel at the conclusion of each trip.

(C) A sea bass pot must be removed from the water in the South Atlantic EEZ when the applicable quota specified in § 622.42(e)(5) is reached. After a closure is in effect, a black sea bass may not be retained by a vessel that has a sea bass pot on board.

(D) A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper and a South Atlantic black sea bass pot endorsement that fishes in the South Atlantic EEZ on a trip with black sea bass pots, may possess only 35 black sea bass pots per vessel per permit year. Each black sea bass pot in the water or onboard a vessel in the South Atlantic EEZ, must have a valid identification tag issued by NMFS attached. NMFS will issue new identification tags each permit year that will replace the tags from the previous permit year.

* * * * *

■ 6. In § 622.42, paragraph (e)(5) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(5) *Black sea bass*—309,000 lb (140,160 kg), gutted weight; 364,620 lb (165,389 kg), round weight.

* * * * *

■ 7. In § 622.44, paragraph (c)(8) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(8) *Black sea bass*. Until the applicable quota specified in § 622.42(e)(5) is reached, 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight. See § 622.43(a)(5) for the limitations regarding black sea bass after the applicable quota is reached.

* * * * *

■ 8. In § 622.49, paragraph (b)(5) is revised to read as follows:

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

* * * * *

(b) * * *

(5) *Black sea bass*—(i) *Commercial sector*. (A) 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 sector for the remainder of the fishing year.

(B) If commercial landings exceed the quota specified in § 622.42(e)(5), 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 following year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

(ii) *Recreational sector*. (A) If recreational landings for black sea bass, as estimated by the SRD, are projected to reach the recreational ACL of 409,000 lb (185,519 kg), gutted weight; 482,620 lb (218,913 kg), round weight; the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit 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) If recreational landings for black sea bass, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

* * * * *

[FR Doc. 2012-13342 Filed 5-31-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No.110722404-1073-02]

RIN 0648-BA56**Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery**

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

ACTION: Final rule.

SUMMARY: With this final rule, NMFS implements new Federal American lobster regulations that will limit entry into the lobster trap fishery in Lobster Conservation Management Area 1 (Area 1), located in the Federal inshore waters of the Gulf of Maine. Eligibility will be based on specific eligibility criteria designed to identify active Federal Area 1 lobster trap permits. If a permit meets the eligibility criteria, the permit holder will be authorized to fish in the Federal waters of Area 1 with up to 800 lobster traps. The limited entry program responds to the recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP, Lobster Plan).

DATES: This final rule is effective July 2, 2012.

Applicability Dates: Applications for Area 1 Lobster trap fishery eligibility are due by November 1, 2012. Eligibility decisions will become effective no earlier than the start of the 2013 Federal lobster fishing year which begins May 1, 2013; however, those who submit an application prior to September 1, 2012, will be assured, to the extent practicable, of a final decision on their eligibility in time for the 2013 Federal lobster fishing year.

ADDRESSES: Copies of the American Lobster Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this regulatory action are available upon written request to Robert Ross, Supervisory Fishery Policy Analyst, Sustainable Fisheries Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281-9234. The documents also are available online at <http://www.nero.noaa.gov>.

You may submit written comments regarding the burden-hour estimates or