

TABLE 161.70(g)—OFFSHORE SAFETY FAIRWAY

Designator	Geographic name	Geographic description	Latitude/Longitude	Notes
1 .....	Sabine Pass Safety Fairway—East ..	East Dogleg .....	29°35.00' N., 093°28.00' W.	
2 .....	Sabine Pass Safety Fairway—West	West Dogleg .....	29°28.00' N., 093°58.00' W.	

Dated: September 4, 2012.

**Mark E. Butt,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Capability.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 120718253-2367-01]

RIN 0648-BC30

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Transferability of Black Sea Bass Pot Endorsements

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement a revision of a disapproved action from Amendment 18A (the Resubmittal) 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). If implemented, this rule would allow black sea bass pot endorsements to be transferred under specific conditions. The intent of this rule is to implement the transferability action originally submitted in Amendment 18A, as clarified in the Resubmittal.

**DATES:** Written comments must be received on or before September 25, 2012.

**ADDRESSES:** You may submit comments on the proposed rule identified by “NOAA-NMFS-2012-0128” by any of the following methods:

- **Electronic Submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• **Mail:** Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA-NMFS-2012-0128” in the search field and click on “search”. After you located the proposed rule, click on “Submit a Comment” link in that row. This will display the comment web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the “Commenting” section at <http://www.regulations.gov/#!faqs> or the Help section at <http://www.regulations.gov>.

Electronic copies of Amendment 18A and the Resubmittal 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 (EIS), an Initial Regulatory Flexibility Act Analysis (IRFA), a Regulatory Impact Review, and a Fishery Impact Statement. The Resubmittal includes a RIR and a FIS.

**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).

## Background

Amendment 18A, implemented through final rulemaking on July 1, 2012, (77 FR 32408, June 1, 2012), includes a provision to limit participation in the black sea bass pot segment of the snapper-grouper fishery through the establishment of an endorsement program. In order to qualify for a black sea bass pot endorsement, an entity must have held a valid South Atlantic snapper-grouper unlimited permit on the effective date of the final rule implementing Amendment 18A (or July 1, 2012). In addition to this requirement, qualifying permit holders must have had average annual black sea bass landings of at least 2,500 lb (1,134 kg), round weight, using black sea bass pot gear between January 1, 1999 and December 31, 2010. Those permit holders with no reported commercial landings of black sea bass using black sea bass pot gear between January 1, 2008, and December 31, 2010, did not qualify for an endorsement. The number of South Atlantic snapper-grouper unlimited permit holders that meet these criteria as of September 10, 2012 is 32, and more endorsements could be issued after the appeals process finalizes. Only those vessels associated with a valid endorsement can legally fish for black sea bass in the South Atlantic using black sea bass pot gear.

Amendment 18A also contained an action to allow for the transfer of black sea bass pot endorsements. However, NMFS disapproved this action because Amendment 18A and the supporting EIS incorrectly described the preferred alternative as allowing transfer of landings history without transfer of the permit. However, the following analysis of alternatives applied a correct understanding of what the preferred alternative was, i.e. that landings history would not be transferred independently of the permit. Therefore, NMFS disapproved that measure, and the Council revised and resubmitted the action addressing transferability of black sea bass pot endorsements in an amendment (the Resubmittal). All reasonable alternatives for the transferability action were correctly characterized in the supporting analysis in Amendment 18A pursuant to the National Environmental Policy Act, including biological, economic, social,

administrative, and cumulative impacts of the action, and that analysis was incorporated by reference in the Resubmittal. The only possible impact not discussed was any economic impact that could result from assigning landings history to the endorsement or to the permit. However, the only condition under which the assignment of landings history would make a difference is if permit/endorsement holders and potential buyers of endorsements/permits expect the endorsement system to be converted to a catch share program. Amendment 18A did not consider a catch share program and it is too speculative to consider the economic effects of a catch share program at this time.

This rule would allow transfer of a black sea bass pot endorsement to an individual or entity that holds or simultaneously obtains a valid South Atlantic snapper-grouper unlimited permit. In order to be transferred, a black sea bass pot endorsement must be valid or renewable. Black sea bass pot endorsements may be transferred independently from the South Atlantic snapper-grouper unlimited permit with which it is associated. Landings history would not be transferred with the endorsement. NMFS will attribute black sea bass landings to the associated South Atlantic snapper-grouper unlimited permit regardless of whether the landings occurred before or after the endorsement was issued. Black sea bass pot endorsements would not be renewed automatically with the South Atlantic snapper-grouper permit with which it is associated. The endorsement must be renewed separately from the permit on the Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone (EEZ).

#### Other Changes to Codified Text

This rule also proposes to revise codified text in § 622.40, regarding issuance of the identification tags for black sea bass pots. In the final rule for Amendment 18A (77 FR 32408, June 1, 2012), the regulations incorrectly stated that NMFS would issue the identification tags for black sea bass pots and new identification tags would be issued each year. Endorsement holders order identification tags through NMFS, however, a supplier actually issues the identification tags. Endorsement holders must apply for new tags each permit year at the same time they renew their permit and endorsement. The regulations would be revised to clarify these points.

This rule would also remove and reserve paragraph (a)(2) in § 622.43, because this paragraph was

inadvertently not removed in the final rule implementing the Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic (76 FR 82183, December 30, 2011). That rule established an annual catch limit of zero for South Atlantic octocorals, thereby, eliminating the quota from the regulations and the need for quota closure provisions. The quota closure provisions, however, were inadvertently not removed in that final rule; therefore, this rule removes the obsolete quota closure provisions.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, the Resubmitted Amendment 18A Action Amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to allow black sea bass pot endorsements, created through Amendment 18A, to be transferred among South Atlantic snapper-grouper unlimited permit holders. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

NMFS expects this rule, if implemented, to directly affect commercial vessels that landed black sea bass because snapper-grouper permit holders that have fished for black sea bass in the past are the most likely candidates to have an endorsement transferred to them. During 2005–2010, an annual average of 247 vessels with valid South Atlantic commercial snapper-grouper unlimited permits 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.

No other small entities that would be expected to be directly affected by this proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Based on the average revenue estimates provided above, all commercial vessels expected to be directly affected by this proposed rule are determined, for the purpose of this analysis, to be small business entities.

The proposed action is expected to increase individual profitability of those owning the endorsement because of the increased value of an endorsement once it becomes transferable. Also, industry profitability is expected to increase as more efficient operators enter the black sea bass commercial harvesting sector. Thirty-two endorsements have been issued as of September 10, 2012. Although more could be issued after the appeals process finalizes, there will be a limited number of endorsements. Thus, the overall profit increase would not be significant relative to the size of the black sea bass commercial sector and the entire commercial sector of the snapper-grouper fishery.

Because this proposed rule, if implemented, would not be expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

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

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

Dated: September 5, 2012.

#### Alan D. Risenhoover,

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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, the introductory paragraph in paragraph (a)(2)(xv) is revised, paragraph (a)(2)(xv)(D) is added, and the first sentence in paragraph (g)(1) 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 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 South Atlantic black sea bass pot endorsement must have been issued to the vessel and it must be valid and on board the vessel, and the commercial vessel permit for South Atlantic snapper-grouper unlimited must be valid and on board the vessel. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for South Atlantic snapper-grouper unlimited or if the endorsement and associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

\* \* \* \* \*

(D) Transferability. A valid or renewable black sea bass pot endorsement may be transferred between any two entities that hold, or simultaneously obtain a valid South Atlantic snapper-grouper unlimited permit. Endorsements may be transferred independently from the South Atlantic snapper-grouper unlimited permit. NMFS will attribute black sea bass landings to the associated South Atlantic snapper-grouper unlimited permit regardless of whether the landings occurred before or after the endorsement was issued. Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

\* \* \* \* \*

(g) \* \* \*
(1) \* \* \* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(b) for a commercial vessel permit for South

Atlantic snapper-grouper, in § 622.19(b) for a commercial vessel permit for South Atlantic rock shrimp, in § 622.4(a)(2)(xiv)(D) for an eastern Gulf reef fish bottom longline endorsement, and in § 622.4(a)(2)(xv)(D) for a South Atlantic black sea bass pot endorsement.

\* \* \*

\* \* \* \* \*

3. In § 622.40, paragraph (d)(1)(i)(D) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

\* \* \* \* \*

- (d) \* \* \*
(1) \* \* \*
(i) \* \* \*

(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 attached. Endorsement holders must apply for new tags each permit year through NMFS to replace the tags from the previous year.

\* \* \* \* \*

§ 622.43 [Amended]

4. In § 622.43, paragraph (a)(2) is removed and reserved.

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