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Dated: May 6, 2013.

**Rowan W Gould,**

Deputy Director, U.S. Fish and Wildlife Service.

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

[Docket No. 120924488-3473-01]

RIN 0648-BC60

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 15****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 Regulatory Amendment 15 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). Regulatory Amendment 15 would revise the optimum yield (OY) and the annual catch limit (ACL) for yellowtail snapper. If implemented, this rule would increase the commercial and recreational ACLs and recreational annual catch target (ACT) for yellowtail snapper harvested in or from the South Atlantic exclusive economic zone (EEZ). This rule would also modify the commercial ACL and the accountability measure (AM) for gag that requires a closure of all other South Atlantic shallow-water grouper (SASWG) when the gag commercial ACL is met or projected to be met. This rule also proposes several administrative changes to regulatory text, which are unrelated to the measures contained in Regulatory Amendment 15. The intent of this rule is to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the snapper-grouper resource, while maintaining fishing mortality at sustainable levels according to the best scientific information available.

**DATES:** Written comments must be received on or before June 24, 2013.**ADDRESSES:** You may submit comments on the amendment identified by “NOAA-NMFS-2013-0088” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0088](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0088), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Regulatory Amendment 15, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/pdfs/SGRegAmend15.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, Southeast Regional Office, telephone: 727-824-5305, or email: [rick.devictor@noaa.gov](mailto:rick.devictor@noaa.gov).**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic, which includes yellowtail snapper and SASWG species (i.e., gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney), 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***Yellowtail Snapper*

The state of Florida completed a stock assessment for yellowtail snapper in May 2012. The yellowtail snapper stock is neither overfished nor currently undergoing overfishing. The assessment results suggest the yellowtail snapper catch levels could be increased without jeopardizing the health of the population. Both the Gulf of Mexico and South Atlantic Fishery Management Councils’ Scientific and Statistical Committees (SSCs) reviewed the assessment in October 2012 and determined the assessment to be based upon the best scientific information available and provided a new acceptable biological catch (ABC) recommendation that is greater than the previous recommendation.

While the Council and NMFS were developing Regulatory Amendment 15, the Council requested an emergency rule under the Magnuson-Stevens Act to temporarily increase the yellowtail snapper commercial ACL. On November 7, 2012, NMFS implemented a temporary rule to increase the commercial ACL in the South Atlantic to prevent unnecessary adverse socioeconomic impacts on snapper-grouper fishermen (77 FR 66744). The temporary rule was effective through May 6, 2013, and was extended through November 28, 2013 (78 FR 25213, April 30, 2013), unless superseded by other rulemaking.

*Gag and Other South Atlantic Shallow-Water Grouper*

The final rule to implement Amendment 16 to the FMP established a suite of management measures to end the overfishing of gag (74 FR 30964, June 29, 2009). These measures included reducing the aggregate bag limit for groupers and tilefishes, reducing the bag limit for gag and black grouper combined, establishing a commercial quota for gag, and establishing a 4-month seasonal closure for SASWG species. The final rule also implemented a management measure that closes the commercial sector for gag and all other SASWG for the remainder of the fishing year when the gag quota (now called an ACL) is met. This measure was implemented to reduce bycatch of gag. However, new information suggests the closure of gag and all other SASWG is not as effective as previously thought at reducing bycatch of gag. Recent studies suggest that, with the exception of red grouper and scamp, gag are not as closely associated in landings with the other SASWG species.

In addition, the closure of gag and all other SASWG species was implemented at a time when the SASWG complex did not have ACLs and AMs to prevent overfishing from occurring. The final rule to implement Amendment 17B to the FMP established ACLs and AMs for gag, and the closure of gag and all other SASWG species when the gag ACL is met became a commercial AM for gag (75 FR 82280, December 30, 2010). The red grouper ACLs and AMs were established through the final rule to implement Amendment 24 to the FMP (77 FR 34254, June 11, 2012), and ACLs and AMs were established for the other SASWG species in the final rule to implement the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012).

Because of the new information that SASWG species, except for red grouper and scamp, do not co-occur with gag, NMFS has determined that the closure of all other SASWG species when the gag ACL is met is no longer necessary to help reduce any overfishing of gag. Also, because of the implementation of ACLs and AMs for the other SASWG species, the closure of gag and all other SASWG species when the gag ACL is met is no longer necessary to protect the other SASWG species because they now have their own catch limits.

#### Management Measures Contained in This Proposed Rule

This rule would implement management measures affecting yellowtail snapper, gag and other SASWG harvested in or from the South Atlantic EEZ.

##### *Yellowtail Snapper*

This rule would increase the commercial ACL, recreational ACL, and recreational ACT for yellowtail snapper. The commercial ACL would increase from 1,142,589 lb (518,270 kg), round weight, to 1,596,510 lb (725,686 kg), round weight. The recreational ACL would increase from 1,031,286 lb (467,783 kg), round weight, to 1,440,990 lb (653,622 kg), round weight. And the recreational ACT would increase from 897,160 lb (406,945 kg), round weight, to 1,253,661 lb (568,651 kg), round weight.

##### *Gag and Other South Atlantic Shallow-Water Grouper*

This rule would modify the commercial AM for gag so that only the commercial sector for gag would close when the gag commercial ACL is met or projected to be met. The ACLs and AMs for all other SASWG species would remain unchanged. This proposed rule would also reduce the gag commercial

ACL from 353,940 lb (160,544 kg), gutted weight, to 326,722 lb (148,199 kg), gutted weight, to account for projected gag discard mortality from commercial trips that target co-occurring species (*i.e.*, red grouper and scamp) during a gag closure.

##### *Other Changes to Codified Text*

This rule would make several changes to the regulatory text in 50 CFR part 622 that are administrative in nature and unrelated to Regulatory Amendment 15. In two paragraphs within § 622.183, “fishery” would be changed to “sector” to clarify that it is a commercial sector or recreational sector within a specific fishery and to be consistent with other regulations in part 622.

Black grouper and red grouper would be removed from the heading of § 622.190(c)(1), restrictions applicable after a commercial quota closure, because black grouper and red grouper no longer have quotas, only ACLs and AMs.

In several paragraphs within § 622.193, “fishery” would be changed to “sector”, for clarification and consistency purposes. Also in § 622.193, the specific years for evaluating the recreational landings relative to the ACL would be removed from the regulatory text because these years will keep changing. Instead, more general language would be included in the regulatory text, specifically “recreational landings would be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.” In addition, closure provisions are included in the regulatory text for snowy grouper when the recreational post-season AM is implemented, because these closure provisions were inadvertently not included in the final rule to implement the Comprehensive ACL Amendment.

In Table 4 of Appendix A to Part 622, “Grass pogy, *Calamus arctifrons*” would be removed from the table because this species was removed from the South Atlantic snapper-grouper fishery management unit in the Comprehensive ACL Amendment, however, it was inadvertently not removed from the regulations during implementation of that amendment.

##### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with Regulatory Amendment 15, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This 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 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 purposes of the rule and Regulatory Amendment 15 are to modify the existing specification of OY and the ACL for yellowtail snapper in the South Atlantic and modify the existing gag commercial ACL and the AM for gag that requires a closure of all other SASWG in the South Atlantic when the gag commercial ACL is met or projected to be met. The Magnuson-Stevens Act serves as the legal basis for the rule.

This rule is expected to directly affect commercial fishing vessels that possess commercial snapper-grouper permits and for-hire vessels that possess for-hire snapper-grouper permits for the South Atlantic. 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. For for-hire vessels, the other qualifiers apply and the receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

A commercial snapper-grouper permit is required to commercially harvest yellowtail snapper or SASWG, including gag, in the South Atlantic EEZ. As of October 30, 2012, 690 vessels had a commercial snapper-grouper permit. As a result, this rule would be estimated to directly affect 690 commercial fishing businesses. The average annual gross revenue per commercial vessel in the snapper-grouper fishery for 2008 through 2011 was approximately \$28,000 (2011 dollars). The maximum annual gross revenue for these vessels was approximately \$618,000. On July 9, 2012, 1,524 vessels had a South Atlantic for-hire snapper-grouper permit. For-hire permits do not distinguish charter vessels from headboats but an estimated 75 headboats are believed to possess a for-hire snapper-grouper permit. In 2009, South Atlantic charter vessels

received an average of approximately \$109,000 (2011 dollars) in revenue and headboats received an average of \$195,000 (2011 dollars).

Based on the information above, all commercial and for-hire fishing vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

The proposed revision to the yellowtail snapper ACL and OY would increase the commercial yellowtail snapper ACL by 453,921 lb (206,328 kg) and the recreational yellowtail snapper ACL by 409,704 lb (186,229 kg), round weight. The increase in the commercial ACL is expected to result in an increase in total gross revenue of approximately \$1.3 million per year for the commercial sector, or approximately \$2,790 per vessel per year for the estimated 465 vessels expected to commercially harvest yellowtail snapper. This change represents an increase of approximately 8.5 percent in annual gross revenue per vessel, on average. The proportional effect on average annual profit for these vessels cannot be determined with available data.

With respect to the proposed increase in the recreational yellowtail snapper ACL, the current recreational yellowtail snapper ACL is not harvested. As a result, an increase in the ACL would not be expected to result in an increase in angler demand, and associated for-hire revenue or profit in the short term. However, increased demand, and associated revenue and profit, may occur in the future.

The proposed changes in the commercial AM and ACL for gag are expected to result in a gain in annual gross revenue of \$263,843 from other SASWG and a reduction in annual gross revenue of \$142,102 from gag, respectively. Combined, these proposed actions would be expected to result in a net gain in total annual gross revenue of \$121,741. This increase would represent approximately \$320 per affected vessel, or approximately 1 percent in annual gross revenue.

In addition to the actions considered in Regulatory Amendment 15 and included in this proposed rule, this proposed rule would make several changes to the regulatory text in 50 CFR part 622. These proposed changes are described in the preamble. These changes clarify language associated with prior regulatory action or are revised for consistency purposes and are therefore administrative in nature. These administrative changes would not generate any direct economic effects.

As a result of the information above, a reduction in profits for a substantial

number of small entities is not expected. Because this rule, if implemented, is not expected to have a significant adverse economic effect on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

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

Fisheries, Fishing, Gag, Shallow-Water Grouper, South Atlantic, Yellowtail snapper.

Dated: May 21, 2013.

**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 § 622.183, the introductory heading in paragraph (b)(1) is revised and the introductory heading and first sentence in paragraph (b)(4) are revised to read as follows:

#### § 622.183 Area and seasonal closures.

\* \* \* \* \*

(b) \* \* \*

(1) *Seasonal closure of the commercial and recreational sectors for gag and associated grouper species.*

\* \* \*

\* \* \* \* \*

(4) *Seasonal closure of the recreational sector for vermilion snapper.* The recreational sector for vermilion snapper in or from the South Atlantic EEZ is closed from November 1 through March 31, each year. \* \* \*

\* \* \* \* \*

■ 3. In § 622.190, paragraph (a)(7) and the heading of paragraph (c)(1) are revised to read as follows:

#### § 622.190 Quotas.

\* \* \* \* \*

(a) \* \* \*

(7) *Gag—326,722 lb (148,199 kg).*

\* \* \* \* \*

(c) \* \* \*

(1) *South Atlantic gag, greater amberjack, snowy grouper, golden*

*tilefish, vermilion snapper, black sea bass, red porgy, and wreckfish.* \* \* \*

\* \* \* \* \*

■ 4. In § 622.193, paragraphs (b), (c), and the first sentence in paragraphs (n)(1)(i) and (n)(2) are revised to read as follows:

#### § 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

\* \* \* \* \*

(b) *Snowy grouper—(1) Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(1), the AA will file a notification with the Office of the Federal Register to close the commercial sector for snowy grouper for the remainder of the fishing year.

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the recreational ACL of 523 fish, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. When NMFS reduces the length of the following recreational fishing season, the following closure provisions apply: the bag and possession limit for snowy grouper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or 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. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(c) *Gag—(1) Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(7), the AA will file a notification with the Office of the Federal Register to close the commercial sector for gag for the remainder of the fishing year.

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 340,060 lb (154,249 kg), gutted weight, and gag are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the gag recreational sector for the remainder of the fishing year. On

and after the effective date of such notification, the bag and possession limit for gag in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or 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.

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

(iii) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

\* \* \* \* \*

(n) \* \* \*  
(1) \* \* \*

(i) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,596,510 lb (724,165 kg), round weight, 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. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. 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.

\* \* \* \* \*

(2) \* \* \* If recreational landings for yellowtail snapper, as estimated by the SRD, exceed the recreational ACL of

1,440,990 lb (653,622 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \* \*

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■ 5. In Appendix A to part 622, Table 4 is revised to read as follows:

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

\* \* \* \* \*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER

Balistidae—Triggerfishes
Gray triggerfish, <i>Balistes capriscus</i>
Carangidae—Jacks
Blue runner, <i>Caranx bartholomaei</i>
Bar jack, <i>Caranx ruber</i>
Greater amberjack, <i>Seriola dumerili</i>
Lesser amberjack, <i>Seriola fasciata</i>
Almaco jack, <i>Seriola rivoliana</i>
Banded rudderfish, <i>Seriola zonata</i>
Ephippidae—Spadefishes
Spadefish, <i>Chaetodipterus faber</i>
Haemulidae—Grunts
Margate, <i>Haemulon album</i>
Tomtate, <i>Haemulon aurolineatum</i>
Sailor's choice, <i>Haemulon parrai</i>
White grunt, <i>Haemulon plumieri</i>
Labridae—Wrasses
Hogfish, <i>Lachnolaimus maximus</i>
Lutjanidae—Snappers
Black snapper, <i>Apsilus dentatus</i>
Queen snapper, <i>Etelis oculatus</i>
Mutton snapper, <i>Lutjanus analis</i>
Blackfin snapper, <i>Lutjanus buccanella</i>
Red snapper, <i>Lutjanus campechanus</i>
Cubera snapper, <i>Lutjanus cyanopterus</i>
Gray snapper, <i>Lutjanus griseus</i>
Mahogany snapper, <i>Lutjanus mahogoni</i>
Dog snapper, <i>Lutjanus jocu</i>
Lane snapper, <i>Lutjanus synagris</i>
Silk snapper, <i>Lutjanus vivanus</i>
Yellowtail snapper, <i>Ocyurus chrysurus</i>

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER—Continued

Vermilion snapper, <i>Rhomboplites aurorubens</i>
Malacanthidae—Tilefishes
Blueline tilefish, <i>Caulolatilus microps</i>
Golden tilefish, <i>Lopholatilus chamaeleonticeps</i>
Sand tilefish, <i>Malacanthus plumieri</i>
Percichthyidae—Temperate basses
Wreckfish, <i>Polyprion americanus</i>
Serranidae—Groupers
Rock hind, <i>Epinephelus adscensionis</i>
Graysby, <i>Epinephelus cruentatus</i>
Speckled hind, <i>Epinephelus drummondhayi</i>
Yellowedge grouper, <i>Epinephelus flavolimbatus</i>
Coney, <i>Epinephelus fulvus</i>
Red hind, <i>Epinephelus guttatus</i>
Goliath grouper, <i>Epinephelus itajara</i>
Red grouper, <i>Epinephelus morio</i>
Misty grouper, <i>Epinephelus mystacinus</i>
Warsaw grouper, <i>Epinephelus nigritus</i>
Snowy grouper, <i>Epinephelus niveatus</i>
Nassau grouper, <i>Epinephelus striatus</i>
Black grouper, <i>Mycteroperca bonaci</i>
Yellowmouth grouper, <i>Mycteroperca interstitialis</i>
Gag, <i>Mycteroperca microlepis</i>
Scamp, <i>Mycteroperca phenax</i>
Yellowfin grouper, <i>Mycteroperca venenosa</i>
Serranidae—Sea Basses
Black sea bass, <i>Centropristis striata</i>
Sparidae—Porgies
Jolthead porgy, <i>Calamus bajonado</i>
Saucereye porgy, <i>Calamus calamus</i>
Whitebone porgy, <i>Calamus leucosteus</i>
Knobbed porgy, <i>Calamus nodosus</i>
Red porgy, <i>Pagrus pagrus</i>
Scup, <i>Stenotomus chrysops</i>

The following species are designated as ecosystem component species:

- Cottonwick, *Haemulon melanurum*
- Bank sea bass, *Centropristis ocyurus*
- Rock sea bass, *Centropristis philadelphica*
- Longspine porgy, *Stenotomus caprinus*
- Ocean triggerfish, *Canthidermis sufflamen*
- Schoolmaster, *Lutjanus apodus*

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