

be honored, the FOIA Officer must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain the requesting party's right of appeal.

(b) *Appeal.* If the FOIA Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(b), an appeal from such ruling may be addressed to the Chairman. The Chairman's decision shall be administratively final and shall state the specific exemption(s) contained in 5 U.S.C. 552(b) relied upon for any denial. Such an appeal must be filed within 90 days of the date of the FOIA Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made as provided for in 49 CFR 1002.1.

(c) *Alternative dispute resolution services.* Requesters may seek dispute resolution services from:

(1) The Board's FOIA Public Liaison by Email at [FOIA.Privacy@stb.gov](mailto:FOIA.Privacy@stb.gov) or by mail, telephone, or facsimile as provided on the Board's Web site located at <https://www.stb.gov/stb/foia.html>; or

(2) The Office of Government Information Services (OGIS) by mail to Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland, 20740—6001, by facsimile at (202) 741-5769, or by Email at [ogis@nara.gov](mailto:ogis@nara.gov).

**PART 1002—FEES**

■ 3. Revise the authority citation for part 1002 to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(g)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 4. Amend § 1002.1 by adding paragraphs (g)(15), (16), (17) and (18) to read as follows:

**§ 1002.1 Fees for records search, review, copying, certification, and related services.**

\* \* \* \* \*  
(g) \* \* \*

(15) No fees will be assessed if the FOIA Officer fails to comply with any time limit under the FOIA or these regulations, and has not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely, written notice is given to the requester, the failure to meet the time limit may be excused an additional 10 working days before fees are automatically waived under this paragraph (g)(15).

(16) If the FOIA Officer determines that unusual circumstances apply and more than 5,000 pages are necessary to respond to a request, fees may be charged if timely, written notice to the requester is provided and discussed with the requester via mail, Email, or telephone (or if at least three good-faith attempts are made to do so) regarding how the requester could effectively limit the scope of the request.

(17) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

(18) Fees may not be avoided by filing multiple requests at the same time. When the FOIA Officer reasonably believes that a requester, alone or with others, is breaking down one request into a series of requests to avoid fees, the requests will be combined, and the requester or requesters will be charged accordingly.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 141107936-5399-02]

RIN 0648-XF081

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2016 Commercial Accountability Measure and Closure for South Atlantic Gray Triggerfish; July through December Season**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures for commercial

gray triggerfish in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial landings for gray triggerfish will reach the commercial annual catch limit (ACL) (commercial quota) for the period July through December by December 16, 2016. Therefore, NMFS is closing the commercial sector for gray triggerfish in the South Atlantic EEZ on December 16, 2016. This closure is necessary to protect the gray triggerfish resource.

**DATES:** This rule is effective 12:01 a.m., local time, December 16, 2016, until January 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [mary.vara@noaa.gov](mailto:mary.vara@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes gray triggerfish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 29 to the FMP divided the commercial ACL (commercial quota) for gray triggerfish in the South Atlantic into two 6-month commercial fishing seasons and allocated 50 percent of the total commercial quota of 312,324 lb (141,668 kg), round weight, to each fishing season, January 1 through June 30, and July 1 through December 31 (80 FR 30947, June 1, 2015), as specified in 50 CFR 622.190(a)(8). As a result, the commercial quota is divided into two equal seasonal quotas of 156,162 lb (70,834 kg), round weight.

The commercial sector for gray triggerfish closed on April 2, 2016, as landing reports indicated the January through June commercial quota would be met by that date. However, as of May 5, 2016, only 83 percent of the commercial quota was caught, and NMFS subsequently reopened the January through June commercial fishing season on June 13, 2016. The 2016 July through December quota includes 16,016 lb (7265 kg), round weight, that was not harvested during the January through June fishing season. As set forth in 50 CFR 622.190(a)(8)(iii), the unused portion of the January through June quota was added to the July through December quota, for a seasonal quota of 172,178 lb (78,099 kg), round weight.

Under 50 CFR 622.193(q)(1)(i), NMFS is required to close the commercial sector for gray triggerfish when the commercial quota specified in § 622.190(a)(8)(i) or (ii) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic gray triggerfish will be reached by December 16, 2016. Accordingly, the commercial sector for South Atlantic gray triggerfish is closed effective 12:01 a.m., local time, December 16, 2016, until the start of the next commercial fishing season on January 1, 2017.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having gray triggerfish onboard must have landed and bartered, traded, or sold such gray triggerfish prior to 12:01 a.m., local time, December 16, 2016. During the closure, the bag limit specified in 50 CFR 622.187(b)(8), and the possession limits specified in 50 CFR 622.187(c), apply to all harvest or possession of gray triggerfish in or from the South Atlantic EEZ. Also, during the closure, the sale or purchase of gray triggerfish taken from the South Atlantic EEZ is prohibited. The prohibition on the sale or purchase does not apply to gray triggerfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 16, 2016, and were

held in cold storage by a dealer or processor.

For a person onboard a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limits and sale and purchase prohibitions applicable after the commercial quota closure for gray triggerfish apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.193(q)(1)(i).

#### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of gray triggerfish and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(q)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The NOAA Assistant Administrator for Fisheries (AA), finds that the need to immediately implement this action to close the commercial sector for gray

triggerfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing Amendment 29, which established the split commercial seasons with split quota for gray triggerfish, and the accountability measures have already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect gray triggerfish since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: December 12, 2016.

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

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