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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110511280-1727-01]

RIN 0648-BB10

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Snapper-Grouper Fishery off the Southern Atlantic States;  
Snapper-Grouper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes this proposed rule to implement a regulatory amendment (Regulatory Amendment 11) 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). If implemented, this rule would remove the harvest and possession prohibition of six deep-water snapper-grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper) from depths greater than 240 ft (73 m) in the South Atlantic exclusive economic zone (EEZ). The intent of this rule is to reduce the socio-economic impacts to fishermen harvesting

deep-water snapper-grouper as well as maintain the biological protection to speckled hind and warsaw grouper in the South Atlantic.

DATES: Written comments on this proposed rule must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2011-0209" 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: Rick DeVictor, 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>, click on "submit a comment," then enter "NOAA-NMFS-2011-0209" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

Electronic copies of documents supporting this proposed rule, which include an environmental assessment and a regulatory impact review (RIR), may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, telephone: 727-824-5305, or e-mail: [Rick.DeVictor@noaa.gov](mailto:Rick.DeVictor@noaa.gov).

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

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing of federally managed

fish stocks, while minimizing bycatch and bycatch mortality to the extent practicable. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to establish a mechanism of specifying Annual Catch Limits (ACLs) at a level that prevents overfishing and does not exceed the fishing level recommendation of the respective Council's Scientific and Statistical Committee (SSC) or other established peer review processes. An ACL is the level of annual catch of a stock or stock complex that is set to prevent overfishing from occurring.

In the South Atlantic snapper-grouper fishery, speckled hind and warsaw grouper are currently undergoing overfishing and an ACL of zero was established through Amendment 17B to the FMP (December 30, 2010, 75 FR 82280). This ACL prohibits all harvest and possession of speckled hind and warsaw grouper in the South Atlantic regardless of the depth where they are caught. Despite a prohibition of the harvest and possession of speckled hind and warsaw grouper, bycatch mortality of these two species was anticipated to continue as a result of fishing effort for other deep-water snapper-grouper species. In order

to reduce the bycatch mortality of speckled hind and warsaw grouper, Amendment 17B to the FMP prohibited all fishing for and possession of deep-water snapper-grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper) beyond a depth of 240 ft (73 m), beginning January 31, 2011.

However, recent analysis of landings data (June 1, 2011, SERO-LAPP-2011-06 Report) indicate that speckled hind and warsaw grouper are rarely caught with snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, or silk snapper. The low association between speckled hind and warsaw grouper landings and blueline tilefish may be attributable to the unique habitat preferences of speckled hind and warsaw grouper compared to blueline tilefish. Speckled hind and warsaw grouper generally prefer hard bottom structure with habitat features such as steep cliffs, notches, and rocky ledges of the continental shelf break. Blueline tilefish, which is targeted for harvest by the deep-water component of the snapper-grouper fishery, inhabit irregular bottoms composed of troughs and terraces inter-mingled with sand, mud, or shell hash bottom where they live in burrows. In addition, the majority of snowy grouper landings in the South Atlantic are from waters deeper than 500 ft (152 m), where landings of speckled hind and warsaw

grouper are extremely rare. Based on this information, at its August 2011 meeting, the Council concluded that allowing the harvest of deep-water species, including blueline tilefish and snowy grouper, beyond a depth of 240 ft (73 m), would not likely result in significant increases in the bycatch mortality of speckled hind or warsaw grouper, although low levels of bycatch of these species might occur. Even though yellowedge grouper, misty grouper, queen snapper, and silk snapper primarily share the same hard bottom habitat preference as speckled hind and warsaw grouper, these four species are rarely encountered and are not targeted by commercial or recreational fishermen.

The purpose of the removal of the deep-water snapper-grouper harvest and possession prohibition in Regulatory Amendment 11 is to reduce the socio-economic impacts expected from the Amendment 17B deep-water closure while maintaining the biological protection to speckled hind and warsaw grouper in the South Atlantic. At its August 2011 meeting, the Council voted to approve Regulatory Amendment 11 based upon the recent data analyses, to remove the deep-water snapper-grouper harvest and possession prohibition implemented through Amendment 17B.

The speckled hind and warsaw grouper harvest and possession prohibition, implemented through Amendment 17B, is not being changed and is expected to reduce fishing mortality of these two

species even without the additional deep-water snapper-grouper harvest and possession prohibition. Therefore, if implemented, Regulatory Amendment 11 would seek to prevent significant direct economic loss to snapper-grouper fishermen and continue to achieve optimum yield for the fishery, without subjecting the speckled hind and warsaw grouper resource to overfishing.

The Council will continue to explore management alternatives to enhance the biological protections for speckled hind and warsaw grouper.

#### 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 Regulatory Amendment 11, 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 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:

A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This rule would directly affect businesses that fish for, possess, and retain snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper in the South Atlantic EEZ. Under the North American Industry Classification System (NAICS), these businesses are in the finfish fishing (NAICS 11411) and charter fishing (NAICS 487210) industries. The Small Business Administration size standards for these businesses are \$4.0 million and \$7.0 million in annual receipts, respectively. NMFS estimates that from 890 to 944 businesses in the finfish fishing industry and up to 1,754 businesses in the charter fishing industry participate in the affected snapper-grouper fishery. All businesses expected to be directly affected by this rule are determined, for the purpose of this analysis, to be small entities.

Since January 31, 2011, fishing for, possession, and retention of snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper in the

South Atlantic EEZ beyond a depth of 240 ft (73 m) has been prohibited. This rule would eliminate this prohibition and would be expected to result in a restoration of landings and associated ex-vessel revenue of approximately \$348,000 annually, as detailed in the RIR contained in Regulatory Amendment 11 to the FMP.

As a result, this rule would have a beneficial economic impact on small entities and would not result in a significant direct adverse economic impact on a substantial number of small entities.

Because this rule, if implemented, is not expected to have a direct adverse 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: December 14, 2011

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Samuel D. Rauch III,  
Deputy Assistant Administrator  
For Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is 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.

§ 622.35 [Amended]

2. In § 622.35, paragraph (o) is removed and reserved.

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