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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120501426-2426-01]

RIN 0648-BB98

Temporary Rule to Delay Start Date of 2012-2013 South Atlantic Black Sea Bass Commercial Fishing Season

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule to delay the start date of the 2012-2013 fishing season for the commercial black sea bass sector of the snapper-grouper fishery from June 1, 2012 to July 1, 2012 to allow for the implementation of the final rule for Amendment 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A). The final rule for Amendment 18A modifies black sea bass accountability measures, establishes an endorsement program for black sea bass pot fishermen, modifies size limits for commercial and recreational black sea bass, and improves fisheries data collection in the for-hire sector of the snapper-grouper fishery. Amendment 18A also updates the black

sea bass rebuilding plan and modifies the acceptable biological catch (ABC) for black sea bass. The intent of Amendment 18A is to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery. The final rule implementing management measures in Amendment 18A is not expected to be effective until after June 1, the start of the black sea bass fishing season. Therefore, this temporary rule is necessary to delay the start of the commercial black sea bass season to allow NMFS to finalize rulemaking for Amendment 18A. The intent of this temporary rule is to reduce the rate of black sea bass harvest and help ensure black sea bass landings remain below the annual catch limit (ACL).

DATES: This temporary rule is effective [insert date of publication in the FEDERAL REGISTER], through December 31, 2012.

ADDRESSES: Electronic copies of Amendment 18A and the documents in support of this temporary rule, which include a supplemental environmental assessment, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the

snapper-grouper fishery of the South Atlantic under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

#### Background

The final rule for Amendment 17B to the FMP (75 FR 82280, December 30, 2010), effective on January 31, 2011, implemented ACLs and accountability measures (AMs) to end overfishing of black sea bass and prevent future overfishing from occurring, as required by National Standard 1 of the Magnuson-Stevens Act. The ACLs and AMs implemented through Amendment 17B for black sea bass resulted in in-season closures for the commercial and recreational sectors as well as a reduction in the recreational ACL for the 2011-2012 fishing year.

A new stock assessment for black sea bass was completed in October 2011, and indicates the stock is no longer overfished, but is not yet fully rebuilt. According to 2009 and 2010 data, black sea bass were undergoing overfishing "to a minor degree." Although the black sea bass stock is increasing in magnitude, too many black sea bass were being removed from the population

too quickly in 2009 and 2010. As overfishing ends for black sea bass, and its biomass increases, the commercial ACL is likely to be met earlier each fishing season as a result of the increased amount of the stock available for harvest. This result could increase the likelihood of derby-style harvesting, which is undesirable from economic, vessel safety, and social perspectives. Derby-style harvesting, also termed "the race for fish," consists of a short duration of increased effort where harvest is maximized prior to reaching an ACL. Additionally, in 2009 and 2010, vessels increased their fishing effort into the black sea bass segment of the commercial snapper-grouper sector as other snapper-grouper species became subject to more stringent restrictions. This increase in effort resulted in the commercial ACL being reached relatively early in the fishing season. During the June 2009 to May 2010 fishing year, the commercial quota was met in December 2009. During the June 2010 to May 2011 fishing year, the commercial quota was met in October 2010, and during the June 2011 to May 2012 fishing year, the commercial quota was met in July 2011.

Currently, the black sea bass rebuilding plan specifies a constant catch rebuilding strategy as the stock rebuilds, which also contributes to increased rates of harvest and early in-season closures as more fish become available through rebuilding

efforts. In an effort to extend fishing opportunities for black sea bass further into the fishing year, and to improve fisheries data reporting in the for-hire sector of the snapper-grouper fishery, the Council voted to approve Amendment 18A at its December 2011 meeting.

The Council submitted Amendment 18A for Secretarial Review on January 5, 2012. Amendment 18A was partially approved on May 2, 2012. The Secretary of Commerce (Secretary) disapproved one management measure in Amendment 18A regarding the transferability of black sea bass pot endorsements. The Council and NMFS will address this action in a separate amendment.

Amendment 18A contains a new ABC for black sea bass, which takes into account the degree to which the 2011 stock assessment report indicates overfishing was occurring in 2009 and 2010, as well as the magnitude of landings during the 2011-2012 fishing year. The Council's Scientific and Statistical Committee (SSC) was provided with data from the NMFS Southeast Fisheries Science Center (SEFSC), in November 2011, from the 2011-2012 fishing year (June - August data), which indicated the commercial ACL of 309,000 lb (140,160 kg), gutted weight, had been exceeded by at least 5 percent, and the recreational ACL of 409,000 lb (185,519 kg), gutted weight, had been exceeded by at least 10 percent. Since recreational data received by the SSC at that time was

still incomplete (the recreational quota was reached in October, and September and October data were not yet available), the SSC supported a new ABC for black sea bass which assumes the commercial and recreational combined ACL was exceeded by 50 percent in the 2011-2012 fishing year. Furthermore, the SSC stated the ABC should be specified for only the 2012-2013 and 2013-2014 fishing seasons, and indicated an assessment update should be conducted before any adjustments are made to the ACL after the 2013-2014 fishing season.

Currently, commercial black sea bass fishermen harvest black sea bass with great efficiency as biomass has increased under rebuilding efforts, and effort in the black sea bass pot segment of the snapper-grouper fishery has grown. These factors lead to the fishery reaching the commercial ACL very quickly once the season opens. When fish are landed quickly, there is a greater chance the fishery will exceed its ACL, and overfishing can occur. Because black sea bass are undergoing overfishing and are currently subject to a rebuilding plan, maintaining landings below the ACL is imperative to allow biomass to increase to target levels within the rebuilding timeframe. Under the rebuilding plan, the black sea bass stock must be rebuilt by 2016.

Amendment 18A contains several management measures intended

to slow the rate of harvest of black sea bass and help ensure black sea bass landings remain below the ACL to allow the biomass to increase. The management measures also address the derby-style fishery (the race to fish) that has developed in the commercial sector. Commercial management measures contained in Amendment 18A include: A black sea bass pot endorsement program; a limit on the number of black sea bass pot tags issued to each endorsement holder each permit year; a requirement to return black sea bass pots to shore at the end of each fishing trip; a 1,000-lb (454-kg), gutted weight, commercial trip limit for black sea bass; and an increase in the minimum commercial size limit for black sea bass.

#### Need for This Temporary Rule

At its March 2012 meeting, the Council requested that, if Amendment 18A is approved, NMFS promulgate emergency regulations to delay the start date of the commercial black sea bass fishing season until after Amendment 18A is implemented, but no later than July 1, 2012. The Secretary partially approved Amendment 18A on May 2, 2012, and implementation of Amendment 18A will occur after June 1, 2012.

Delaying the start of the commercial sector until the actions in Amendment 18A become effective would reduce the rate of harvest and help to ensure the commercial black sea bass

sector closes in a timely manner. Delaying the start of the 2012-2013 fishing season to allow Amendment 18A to become effective will also reduce the risk of potential safety-at-sea issues presented when fishermen under pressure to harvest a profitable portion of the quota fish in foul weather or other unsafe conditions. Therefore, delaying the start of the fishing season to allow for the implementation of the measures in Amendment 18A will ease derby fishing conditions and relieve some of the pressure on fishermen to make unsafe trips, preserve a significant economic opportunity that otherwise might be foregone, and prevent further overfishing of black sea bass from occurring that would result from the delay in implementation of Amendment 18A.

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists. This emergency rule is promulgated under these criteria. Specifically, to promulgate an emergency rule, NMFS' policy guidelines require that an emergency:

- (1) Result from recent, unforeseen events or recently discovered circumstances; and
- (2) Present serious conservation or management problems in the fishery; and
- (3) Can be addressed through emergency regulations for

which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The unforeseen circumstance is that NMFS did not foresee the 2011 stock assessment report would indicate overfishing was occurring in 2009 and 2010, and that the magnitude of landings during the 2011-2012 fishing year would be so high. To compound these circumstances, the Council submitted Amendment 18A for Secretarial Review on January 5, 2012, which provides little time for the Amendment 18A rulemaking to be implemented prior to the June 1 start of the commercial fishing season. The notice of availability for Amendment 18A published on January 31, 2012 (77 FR 4754), with a 60-day comment period ending April 2, 2012. The proposed rule for Amendment 18A did not publish until March 23, 2012 (77 FR 16991), with a 30-day comment period ending April 23, 2012, due to confusion over one action in the amendment (transferability of black sea bass endorsements). This action was ultimately not included in the proposed rule and was disapproved by the Secretary. The Council is developing a separate amendment to address this disapproved action.

If the start of the commercial fishing season is not delayed to allow time for the implementation of provisions in

Amendment 18A, the snapper-grouper fishery will be faced with serious conservation and management problems. Under current management practices, the commercial black sea bass sector experiences derby-style harvesting, also termed "the race for fish." Derby fishing has led to the ACL being reached and exceeded in a short amount of time, contributing to the overfishing of black sea bass. Derby fishing also produces safety-at-sea issues due to the short periods of increased effort where vessels compete to maximize harvest prior to the ACL being reached. Amendment 18A will implement an endorsement program for black sea bass pot fishermen, which will reduce the race to fish, because fewer permit holders will be fishing for the same quota and the number of pots used to harvest black sea bass will be restricted. Also, the 1,000-lb (454-kg), gutted weight, commercial trip limit will restrict the amount of fish harvested per trip. Therefore, the management measures contained in Amendment 18A, intended to end derby-style fishing, will reduce the risk of black sea bass overfishing and eliminate the associated safety-at-sea issues, consistent with National Standards 1 and 10 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(1) and (10)).

During the past three fishing seasons, derby fishing resulted in commercial sector closures on December 20, 2009;

October 7, 2010; and July 15, 2011. These short derby commercial fishing seasons caused negative social and economic impacts as too many black sea bass entered the market at one time. Market glut can drive the price of the fish down and compromise the quality of the fish. If the commercial sector opens on June 1, 2012, without the provisions in Amendment 18A, NMFS expects that the 2012-2013 fishing season will be shorter than the 45-day 2011-2012 fishing season. Delaying the start of the commercial fishing season to allow for the implementation of the Amendment 18A endorsement program will allow the commercial fishing season to remain open longer, because there will be fewer fishermen harvesting black sea bass with pots, the number of pots that can be fished will be reduced, and the catch per trip will be restricted to 1,000 lb (454 kg), gutted weight. A longer fishing season will also allow for better monitoring of landings data and a better estimate of the date for an inseason commercial closure.

Additionally, delaying the start of the commercial fishing season is necessary to ensure the black sea bass rebuilding plan remains on track. A short commercial fishing season caused by derby conditions can increase the risk of exceeding the ACL and overfishing could occur. National Standard 1 of the Magnuson-Stevens Act states that "Conservation and Management measures

shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the United States fishing industry" (16 U.S.C. 1851(a)(1)). Black sea bass landings must stay below the ACL to allow biomass to increase to target levels within the rebuilding timeframe.

Finally, the immediate benefit of implementing this emergency action outweighs the value of advance notice and public comment. The final rule for Amendment 18A, currently under review, would implement management measures for black sea bass that would reduce the rate of harvest and help to ensure the commercial black sea bass sector closes in a timely manner. Not implementing this temporary rule would likely lead to negative biological and economic impacts for the snapper-grouper fishery due to the delay in implementing the management measures contained in Amendment 18A. As stated above, if the commercial sector were to open before the effort-limiting provisions contained in Amendment 18A are implemented, the commercial ACL would likely be reached very quickly and the commercial sector could close even earlier than last year. Too many black sea bass flooding the market simultaneously creates market gluts which can affect overall profitability for snapper-grouper fishermen and create unstable market conditions for dealers. Management measures contained in Amendment 18A should help

lengthen the commercial fishing season for black sea bass, stabilize the market, and preserve a significant economic opportunity for snapper-grouper fishermen.

Industry representatives have expressed support for this temporary rule for emergency action. Many black sea bass commercial fishermen also fish for vermilion snapper, which opens on July 1, 2012. Opening black sea bass and vermilion snapper on the same day would allow fishery participants to maximize fishery opportunities for both species concurrently.

Measures Contained in this Temporary Rule

This temporary rule delays the start date of the 2012-2013 commercial fishing season for black sea bass from June 1, 2012 to July 1, 2012. Opening the commercial fishing season July 1 instead of June 1 could allow the commercial fishing season to stay open until sometime between August and October, instead of sometime between July and September. The recreational fishing season is not changed and will start on June 1, 2012.

#### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is necessary to reduce the rate of South Atlantic black sea bass harvest and help ensure black sea bass landings

remain below the ACL and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because they are impracticable and contrary to the public interest. This temporary rule delays the start date of the 2012-2013 commercial fishing season for black sea bass from June 1, 2012 to July 1, 2012, to allow NMFS to finalize and implement the final rule for Amendment 18A. Amendment 18A contains several management measures intended to slow the black sea bass harvest rate and help ensure black sea bass landings remain below the ACL to allow the biomass to increase. The management measures also address the derby-style fishery (i.e., the race to fish) that has developed in the commercial sector.

If the start date to the snapper-grouper fishery is not delayed, then the fishery will likely experience negative biological and economic impacts. As stated above, if the commercial sector opens before the effort-limiting provisions contained in Amendment 18A are implemented, the commercial ACL will likely be reached very quickly, and the commercial sector could close even earlier than last year. Too many black sea

bass flooding the market simultaneously gluts markets, which can affect the overall profitability for snapper-grouper fishermen and create unstable market conditions for dealers. NMFS expects management measures contained in Amendment 18A will help lengthen the commercial fishing season for black sea bass, which should help to stabilize the market and preserve a significant economic opportunity for snapper-grouper fishermen. Moreover, if the start date is not delayed, the derby fishing conditions would continue to exist until NMFS is able to implement the provisions of Amendment 18A. As mentioned above, this style of fishing may lead to safety-at-sea issues due to the short periods of increased effort where vessels compete to maximize harvest prior to the ACL being reached.

Therefore, NMFS needs to implement this temporary rule as soon as possible to provide notice to commercial black sea bass pot fishermen that the commercial fishing season will be delayed until July 1, 2012, and to allow them time to revise their business strategies.

For similar reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3). Delaying this rules effectiveness will allow the black sea bass commercial sector to open on July 1, 2012, rather than on June 1, 2012. The earlier start to the black sea bass

commercial season could result in a race to fish, which in turn could result in safety-at-sea issues, as well as glut the market for black sea bass by flooding it with product and depressing prices. Finally, delaying this rule's effectiveness may increase the risk that black sea bass will continue to be harvested at a fast pace and could result in black sea bass exceeding its ACL. Accordingly, delaying the rule's effectiveness is contrary to the public interest, and the 30-day delay in effectiveness is hereby waived.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable.

List of Subjects in 50 CFR Part 622

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

Dated: May 9, 2012.

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Samuel D. Rauch III,  
Acting Assistant Administrator for Fisheries,  
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 § 622.30, paragraph (e) is suspended and paragraph (f) is added to read as follows:

§ 622.30 Fishing years.

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(f) South Atlantic black sea bass--(1) The fishing year for the black sea bass bag limit specified in § 622.39(d)(1)(vii) is June 1 through May 31.

(2) The fishing year for the black sea bass quota specified in § 622.42(e)(5) is July 1 through May 31.

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