



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249-2492-02]

RIN 0648-BC03

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: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment (Regulatory Amendment 12) 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 12 revises the optimum yield (OY) for golden tilefish in the South Atlantic exclusive economic zone (EEZ) and modifies the golden tilefish annual catch limit (ACL) to be equal to the OY. Regulatory Amendment 12 also revises the recreational accountability measures (AMs). This rule specifies the revised commercial and recreational ACLs for golden tilefish and the revised recreational AMs for golden tilefish. Additionally, through this final rule, NMFS announces the reopening of the golden

tilefish commercial sector with a commercial trip limit of 300 lb (136 kg) for the 2012 fishing year. The intent of this rule is to modify management measures for golden tilefish in the commercial and recreational sectors in the South Atlantic based on new stock assessment analyses.

DATES: This rule is effective [insert date of publication in the FEDERAL REGISTER], except regulations at § 622.49(b)(1)(ii) which will be effective [insert date 30 days after date of publication in the FEDERAL REGISTER]. The commercial sector for golden tilefish will reopen at 12:01 a.m. on [insert date of publication in the FEDERAL REGISTER] and will remain open until the end of the fishing year or until further notice is published in the Federal Register.

ADDRESSES: Electronic copies of Regulatory Amendment 12, which includes an environmental assessment, regulatory flexibility analysis, regulatory impact review, and fishery impact statement, may be obtained from the Southeast Regional Office Web site at

<http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

FOR FURTHER INFORMATION CONTACT: Karla Gore, Southeast Regional Office, NMFS, telephone: 727-824-5305, or e-mail:

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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).

On July 20, 2012, NMFS published a proposed rule in the Federal Register for Regulatory Amendment 12 and requested public comment (77 FR 42688). The proposed rule and Regulatory Amendment 12 explained the rationale for the actions contained in this final rule, and they are not repeated here.

Management Measures Contained in this Final Rule

This final rule increases the South Atlantic golden tilefish commercial ACL from 316,757 lb (143,679 kg), round weight, or 282,819 lb (128,285 kg), gutted weight, to 606,250 lb (274,990 kg), round weight, or 541,295 lb (245,527 kg), gutted weight, and increases the recreational ACL from 1,578 fish to 3,019 fish. The commercial and recreational ACL increases are based on the stock ACL increase in Regulatory Amendment 12 and the commercial and recreational allocations previously established in Amendment 17B to the FMP.

This final rule also modifies the AMs for the golden tilefish recreational sector of the snapper-grouper fishery. If recreational landings for golden tilefish reach, or are projected to reach the recreational ACL, NMFS will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year.

Additionally, if the ACL is exceeded, then during the following fishing year, recreational landings will be monitored and, if necessary, the length of the following recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year.

Management Measures Contained in Regulatory Amendment 12

Additionally, Regulatory Amendment 12 revises OY for golden tilefish and establishes the ACL equal to the OY and equal to the yield at 75 percent of the fishing mortality at MSY when the population is at equilibrium.

Reopening the Commercial Sector for Golden Tilefish

The golden tilefish fishing year extends from January 1 through December 31 each year. NMFS closed the commercial sector for golden tilefish on February 17, 2012, because the commercial ACL (equal to the commercial quota) was projected to have been reached by that date (77 FR 8750, February 15, 2012). However, due to the increased commercial ACL implemented through this final rule, NMFS has determined based on current information that additional golden tilefish may be harvested. Therefore, NMFS announces the reopening of the commercial sector for golden tilefish through this final rule. The commercial sector for golden tilefish will reopen at 12:01 a.m. on [insert date of publication in the FEDERAL REGISTER]. Regulations at §

622.44(c)(2)(ii) state that after 75 percent of the fishing year quota (commercial ACL) specified in § 622.42(e)(2) is reached, the trip limit for the commercial sector of golden tilefish is 300 lb (136 kg), gutted weight. NMFS has determined that 75 percent of the commercial quota (commercial ACL) has been landed and, thus, reopens the commercial sector for golden tilefish with the reduced trip limit of 300 lb (136 kg), gutted weight, for the remainder of the fishing year, or until the new ACL is reached or projected to be reached. If the new ACL is reached or projected to be reached before the end of the fishing year, NMFS will file a notification with the Office of the Federal Register to close the commercial sector for golden tilefish for the remainder of the fishing year.

NMFS closed the recreational sector for golden tilefish on June 4, 2012, because the recreational ACL was projected to have been reached by that date (77 FR 32914, June 4, 2012). NMFS has determined that the increased recreational ACL, implemented through this final rule, has been harvested. Therefore, NMFS is not reopening the recreational sector for golden tilefish for the current fishing year.

Other Changes not contained in Regulatory Amendment 12

NMFS updates regulations at § 622.49(b)(1)(i) for the golden tilefish commercial sector AMS to clarify that the commercial quota is equal to the commercial ACL.

Comments and Responses

A total of 6 comments were received on the proposed rule for Regulatory Amendment 12, including comments from individuals and two fishing associations. Specific comments related to the actions contained in Regulatory Amendment 12 and the proposed rule, as well as NMFS' respective responses, are summarized below. Similar comments are grouped together.

Comment 1: Multiple comments were received regarding the reopening of the commercial sector for golden tilefish, specifically with regards to the commercial trip limit and reopening procedures. One comment stated that the golden tilefish trip limit should be set at 300 lb (136 kg), gutted weight, rather than 4,000 lb (1,814 kg), gutted weight, to ensure that the hook-and-line component of the commercial sector has the opportunity to fish for golden tilefish and the quota is not exceeded. A second comment stated that golden tilefish should reopen for a fixed time-period based on projections of past highest weeks of landings instead of the 4,000 lb (1,814 kg), gutted weight, trip limit. A third comment stated that if 75 percent of the hook-and-line quota is not met by September 1, boats with longline endorsements should be able to participate in the hook-and-line component of the commercial sector, using bandit reels, under a 500 lb (227 kg), gutted weight, trip limit. A fourth comment stated that golden tilefish should be

open for the first 15 days of each month with a 4,000 lb (1,814 kg), gutted weight, trip limit. The fourth comment continued by stating that after 70 percent of the quota (ACL) is caught, reporting of catch should be required 24 hours after landing to ensure the ACL is not exceeded and that this procedure should continue monthly until the ACL is reached.

Response: Current regulations specify that the trip limit for the golden tilefish commercial sector is reduced from 4,000 lb (1,814 kg), gutted weight, to 300 lb (136 kg), gutted weight, after 75 percent of the quota (ACL) is met. If 75 percent of the fishing-year ACL has not been taken on or before September 1, the trip limit will not be reduced. Based on landings information for 2012, NMFS has determined that 75 percent of the revised ACL was landed before September 1. Therefore, NMFS is reopening the commercial sector with a trip limit of 300 lb (136 kg), gutted weight.

Regulatory Amendment 12 and this rule do not modify the commercial trip limit or reopening procedures. Many of the comments related to the reopening of the commercial sector appear to be directed to Amendment 18B to the FMP, which is under review by the Secretary and not part of this rulemaking. For reference, Amendment 18B considers the establishment of a longline endorsement program, allocations of the quota to the longline and hook-and-line components of the commercial sector,

and modifications to the golden tilefish trip limit, including a 500-lb (227-kg), gutted weight, trip limit for fishermen with a South Atlantic Unlimited Snapper-Grouper Permit who do not qualify for an endorsement.

Comment 2: The revised ACL and reopening of the commercial sector for golden tilefish should take effect on August 1, 2012.

Response: The comment period on the proposed rule ended on August 20, 2012. NMFS must consider all public comments before implementing the amendment.

Comment 3: The recreational allocation for golden tilefish should be increased from 3 percent to 20 percent.

Response: Sector allocations were not considered in Regulatory Amendment 12. The recreational ACL implemented in this final rule is based on the allocations previously specified by the Council in Amendment 17B to the FMP.

Comment 4: The recreational bag limit should be increased to two fish per person or six fish per vessel, whichever is fewer.

Response: The current recreational bag limit for golden tilefish is one fish per vessel. Regulatory Amendment 12 did not consider an action to modify the recreational bag limit for golden tilefish and therefore NMFS did not propose any change to the current bag limit.

Comment 5: The current ACL for golden tilefish is too low. There needs to be a new stock assessment to revise the ACL.

Response: Regulatory Amendment 12 increases the ACL for golden tilefish based on the results of a stock assessment completed in November 2011, and reviewed by the Council in December 2011. This stock assessment is the best scientific information available. When new data and information become available, a new stock assessment for golden tilefish will be completed and will be reviewed by the Council's Scientific and Statistical Committee (SSC) and considered by the Council. At the time of this final rule, the date of the next stock assessment has not been determined.

Comment 6: Regulatory Amendment 12 does not address the need to reduce participation in the golden tilefish component of the snapper-grouper fishery so that the fishing season can be extended and the ACL is not exceeded.

Response: NMFS agrees that Regulatory Amendment 12 does not address reducing participation in the golden tilefish component of the snapper-grouper fishery. Amendment 18B, under review by the Secretary, would establish an endorsement program for golden tilefish to limit participation in the longline component, and allocate a portion of the quota to the hook-and-line and longline components of the commercial sector. These

measures, if implemented, would be expected to extend the fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary to more efficiently manage the golden tilefish component of the snapper-grouper fishery and is consistent with the Magnuson-Stevens Act, and other applicable law.

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

Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. No changes to the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on

fishers, support industries, and associated communities. The preamble to the final rule provides a statement and need for, and the objectives of this rule, and is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not introduce any changes to current reporting, record-keeping, and other compliance requirements.

NMFS expects the rule to directly affect commercial fishers and for-hire operators. The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. 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 its combined annual receipts are not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

A total of 142 vessels using hook-and-line gear and 38 vessels using longline gear landed golden tilefish in any one year during 2005 - 2010. Vessels using hook-and-line gear landed an annual average of about 27,000 lb (12,247 kg), gutted

weight, of golden tilefish and 220,000 lb (99,790 kg), gutted weight, of other snapper-grouper species. Gross revenues of these vessels annually averaged \$76,000 (2010 dollars) from golden tilefish and \$567,000 (2010 dollars) from other snapper-grouper species. For 2005 - 2010, vessels using longline gear landed an annual average of about 298,000 lb (135,172 kg), gutted weight, of golden tilefish and 153,000 lb (69,400 kg), gutted weight, of other snapper-grouper species. For this period, their revenues annually averaged \$802,000 from golden tilefish and \$286,000 from other snapper-grouper species. On average, vessels using hook-and-line gear depended on other snapper-grouper species for a majority of their revenues while vessels using longline gear depended on golden tilefish as their major source of revenues. Some vessels using hook-and-line gear could be expected to be more dependent on golden tilefish as a major source of revenues. Similarly, some vessels using longline gear could be more dependent on other snapper-grouper species as a major source of revenues. These vessels, using hook-and-line or longline gear, are considered to comprise the universe of commercial vessels directly affected by actions in this regulatory amendment, including the ACL alternatives. With the ACL increase, other commercial vessels may enter or re-enter the golden tilefish portion of the snapper-grouper fishery, but

it is not reasonably possible to determine how many vessels would do so.

Based on revenue information, all commercial vessels affected by this final rule can be considered small entities.

From 2005 - 2010, an annual average of 1,985 vessels had valid permits to operate in the snapper-grouper for-hire sector, of which 85 are estimated to have operated as headboats. The for-hire fleet consists of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (2010 dollars) is estimated to range from approximately \$62,000 - \$84,000 for Florida vessels, \$73,000 - \$89,000 for North Carolina vessels, \$68,000 - \$83,000 for Georgia vessels, and \$32,000 - \$39,000 for South Carolina vessels. For headboats, the corresponding revenue estimates are \$170,000 - \$362,000 for Florida vessels, and \$149,000 - \$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

Some fleet activity, i.e., multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors to an unknown extent, and all vessels are considered as independent entities in this analysis.

NMFS expects the rule to directly affect all federally permitted commercial vessels harvesting golden tilefish and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that the rule would affect a substantial number of small entities.

Because NMFS determines that all entities expected to be affected by the rule are small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

This rule will not modify the commercial AM. Therefore, an ACL increase will result in revenue increases to the commercial vessels. It is also expected that such revenue increases would lead to profit increases, although the magnitude of profit increases cannot be estimated based on available information.

This rule will modify the current recreational post-season AM and add a new recreational in-season AM. The recreational sector has exceeded its ACL in recent years. In 2011, this sector exceeded its ACL by more than 500 percent. The ACL increase would not be enough to compensate for the expected overages in the recreational sector. Hence, with the in-season and post-season AM for the recreational sector, the for-hire entities may be expected to experience profit reductions even if

the ACL is increased. The magnitude of such profit reduction cannot be estimated based on available information.

Because the commercial sector harvests substantially more golden tilefish than the recreational sector, receiving 97 percent of the combined ACL, NMFS expects that the profit increases to the commercial sector would cumulatively outweigh the profit decreases to the for-hire sector. Hence, NMFS expects that the ACL increase would yield positive net profit to small entities that participate in the golden tilefish component of the snapper-grouper fishery.

Reopening the 2012 fishing season for the commercial harvest of golden tilefish with a 300 lb (136 kg) trip limit would result in the immediate realization of some of the benefits of the rule.

The following discussion analyzes the alternatives that were not chosen as preferred by the Council. Five alternatives, including the preferred alternative, were considered for revising the ACL and OY for golden tilefish. The first alternative, the no action alternative, would maintain the existing ACL, which is equal to OY and the OY is equal to 75 percent of the fishing mortality at MSY. This is not a viable alternative because, based on updated biomass information, it would result in an ACL that is greater than the acceptable biological catch (ABC) recommended by the Council's SSC. The

second alternative would set the ACL equal to the OY and the OY equal to the ABC. Due to its larger ACL, this alternative would result in larger short-term revenue and profit increases to commercial vessels than the preferred alternative. For the same reason, it would also result in better fishing opportunities and possibly higher profits to for-hire vessels than the preferred alternative. However, this alternative poses some risks, largely absent in the preferred alternative, of pushing the stock to an overfished level; fishery managers can overshoot the equilibrium biomass target, which could result in the population biomass dropping below both target and limit levels. In addition, this alternative provides for declining ACLs over time, which would tend to invite controversy, especially when the stock is abundant and not overfished. On the other hand, the preferred alternative would provide for stable harvest levels over time that, although lower than those of the second alternative, would still be substantially higher than current levels. The third alternative would set the ACL equal to the OY and the OY equal to 90 percent of the ABC. The fourth alternative would set the ACL equal to the OY and the OY equal to 80 percent of the ABC. These two other alternatives would provide for lower ACLs than the preferred alternative, and thus lower economic benefits as well.

Four alternatives, including the preferred alternative, were considered for revising the recreational AMs for golden tilefish. The first alternative, the no action alternative, is a post-season AM and employs a 3-year averaging method for determining ACL overages. Without an in-season AM, this alternative would not be as effective as the preferred alternative in preventing overages in the recreational sector. In addition, given the relatively large recreational harvests in recent years, the 3-year averaging method for determining ACL overages could potentially trigger the application of the AM even if no overages occurred in the current year. This would result in short-term reductions in profits and might also delay the benefits that would accrue from increasing the sector's ACL. The second alternative would specify a recreational sector AM trigger and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector AM trigger, thus possibly limiting adverse effects on the profits of small entities. However, it would not provide for a measurable index in addressing the overages in the recreational sector. The third alternative would specify a recreational sector in-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector in-season AM. This sub-alternative would likely result

in higher profits to small entities than the preferred sub-alternative. However, it would not address the overages in the recreational sector that would eventually result in more restrictive regulations and larger reductions in the profits of small entities. The fourth alternative would specify a recreational sector post-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would specify a recreational sector post-season AM in terms of paybacks for the prior year's overages if golden tilefish were overfished. This sub-alternative would likely result in larger profit reductions to small entities than the preferred sub-alternative. Moreover, this sub-alternative would be unnecessary because golden tilefish is not overfished.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) (B), there is good cause to waive prior notice and an opportunity for public comment on the reopening of the commercial sector for golden tilefish in the South Atlantic EEZ, as notice and comment would be unnecessary and contrary to the public interest. Providing prior notice and the opportunity for public comment is unnecessary because the increased commercial and recreational ACLs for golden tilefish were subject to notice and comment as part of the proposed rule for Regulatory Amendment 12 (77 FR 42688); therefore, this waiver only covers the portion of the final rule that informs

the public that additional commercial harvest is available and that the commercial sector will reopen. In addition, delaying implementation of this rulemaking to provide for prior notice and public comment is contrary to the public interest because it would reduce the likelihood of reopening the commercial sector for golden tilefish in the early fall months, when weather conditions are more favorable and fishing conditions are safer. Delaying the reopening to allow for public comment would therefore endanger the health and safety of the fishing fleets without providing any benefits to the public.

Three provisions in this final rule are exempt from the requirement to delay the effectiveness of a final rule by 30 days after publication in the Federal Register, under 5 U.S.C. 553(d)(1). Specifically, the following provisions relieve restrictions on the regulated community: the increases in the commercial and recreational ACLs for golden tilefish set forth in § 622.42(e)(2) and § 622.49(b)(1)(ii), and the reopening of the commercial sector to allow for the harvest of the new commercial ACL and achievement of OY. However, the recreational ACL is contained in the same paragraph in the regulations as the recreational AMs for golden tilefish. The provisions that implement the in-season AM and revise the post-season AM for the recreational sector for golden tilefish do not relieve a restriction and are therefore subject to the 30-day delay in

effectiveness. Further, because the increased recreational ACL has already been reached, and the recreational sector will not reopen, the increased recreational ACL does not need to be effective immediately. Therefore, the paragraph in the regulations containing both the recreational ACL and AMs for golden tilefish, § 622.49(b)(1)(ii), will be effective 30 days after publication of this final rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders in the South Atlantic snapper-grouper fishery.

List of Subjects in 50 CFR Part 622

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

Dated: October 3, 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 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 § 622.42, paragraph (e)(2) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(2) Golden tilefish--541,295 lb (245,527 kg).

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3. In § 622.49, the section heading is revised, and paragraphs (b)(1)(i) and (b)(1)(ii) are revised to read as follows:

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

* * * * *

(b) * * *

(1) * * *

(i) Commercial sector. If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.42(e)(2), 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.

(ii) Recreational sector. If recreational landings for golden tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 3,019 fish, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. If recreational landings for golden tilefish, as estimated by the SRD, exceed the recreational ACL, 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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