



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120924488-3671-02]

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: Final rule.

SUMMARY: NMFS implements management measures described in a regulatory amendment (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). This final rule increases the commercial and recreational ACLs for yellowtail snapper, decreases the commercial ACL for gag, and revises the accountability measure (AM) for gag by removing the requirement that all other South Atlantic shallow-water grouper (SASWG) are prohibited from harvest when the gag commercial ACL is met or

projected to be met. In addition, Regulatory Amendment 15 revises the optimum yield (OY) for yellowtail snapper and increases the recreational annual catch target (ACT) for yellowtail snapper harvested in or from the South Atlantic exclusive economic zone (EEZ). This final rule also includes several administrative changes to regulatory text, which are unrelated to the measures contained in Regulatory Amendment 15. The purpose of Regulatory Amendment 15 and this final 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: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Regulatory Amendment 15, which includes an environmental assessment 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 e-mail: 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).

On May 24, 2013, NMFS published a proposed rule for Regulatory Amendment 15 and requested public comments (78 FR 31511). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

Management Measures Contained in this Final Rule

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

Yellowtail Snapper

This rule increases the commercial ACL, recreational ACL, and recreational ACT for yellowtail snapper. The commercial ACL increases from 1,142,589 lb (518,270 kg), round weight, to 1,596,510 lb (725,686 kg), round weight. The recreational ACL increases from 1,031,286 lb (467,783 kg), round weight, to 1,440,990 lb (653,622 kg), round weight. The recreational ACT

increases 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 modifies the commercial AM for gag so that only the commercial sector for gag closes 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 rule also reduces 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 makes 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" is 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 are 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" is changed to "sector", for clarification and consistency purposes. Also in § 622.193, the specific years for evaluating the recreational landings relative to the ACL are removed from the regulatory text because these years will keep changing. Instead, more general language is included in the regulatory text, specifically referring to a 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 porgy, Calamus arctifrons" is 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.

Comments and Responses

A total of 14 comments were received on the proposed rule for Regulatory Amendment 15 from individuals, fishermen, and two fishing associations. Nine commenters supported the actions in

the amendment and the proposed rule. A Federal agency stated that the agency had no comments. Specific comments related to the actions contained in Regulatory Amendment 15 and the proposed rule, and NMFS' respective responses are summarized below.

Comment 1: One commenter stated that to protect shallow-water grouper species, fishery managers should remove the January through April 4-month seasonal closure and instead implement closures in March, April, July, and August until the quota is reached. The commenter indicated that shallow-water groupers are susceptible to harvest by spearfishing as cold upwelling water in July and August incapacitates the fish.

Response: The January through April prohibition on the harvest and possession of shallow-water groupers was implemented in 2009 to protect gag and other spawning groupers. Many groupers are known to begin spawning in December, with the spawning season extending through at least April. Gag and other shallow-water grouper species are slow growing, long-lived species that change sex from female to male later in life, and form spawning aggregations at locations known to fishermen. Removing the prohibition in January and February was not considered in Regulatory Amendment 15 because it would remove protections at a time when groupers are particularly vulnerable

to fishing gear. NMFS recognizes that sporadic cold, upwelling water events may increase the vulnerability of gag and other shallow-water groupers to spearfishing pressure. However, the protection of spawning fish during January through April is paramount to preventing harvest during upwelling events as fishing on spawning aggregations can affect the population age structure and sex ratio by removing the larger, older males and by disrupting spawning aggregations that form at specific times and locations.

Comment 2: A commercial fisherman favored a 50-lb (23-kg) bycatch allowance for gag after the commercial quota is reached instead of reducing the gag quota by 27,218 lb (12,346 kg), as proposed in Regulatory Amendment 15. The commenter stated that the bycatch allowance would be low enough to keep fishermen from targeting gag, allow fishermen to keep those that are caught while targeting other species, and would increase profits to commercial fisherman.

Response: The Council did not consider a specific bycatch allowance for gag in Regulatory Amendment 15 because the Council and NMFS reduced the commercial ACL for gag to account for bycatch after the quota is met. Currently, gag harvest is prohibited once the ACL is projected to be met, but gag continue to be caught after the closure and they are released. The most

recent stock assessment estimated that 60 percent of released gag in the South Atlantic survive. A 50-lb (23-kg) bycatch allowance would result in the complete mortality of all gag caught after the ACL is met, assuming that all encountered fish up to the trip limit are retained, and would then require a reduction in the current 1000-lb (454-kg) commercial trip limit to avoid a gag closure earlier in the season.

Comment 3: One commenter stated that yellowtail snapper should be prohibited for several years as he thought the stock was overfished.

Response: The stock assessment completed for yellowtail snapper in May 2012 determined that the stock is not overfished nor undergoing overfishing. The assessment results suggest yellowtail snapper catch levels could be increased to achieve OY for the fishery without jeopardizing the health of the population. Both the Gulf of Mexico and South Atlantic Councils' Scientific and Statistical Committees' reviewed the assessment in October 2012 and determined the assessment to be based upon the best scientific information available, and the Councils reviewed the assessment and accepted the results. In addition, the NMFS' Southeast Fisheries Science Center reviewed the proposed actions in Regulatory Amendment 15 and certified the actions to be based upon the best scientific information

available.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule and Regulatory Amendment 15 are necessary for the conservation and management of the snapper-grouper fishery and are consistent with the FMP, the Magnuson-Stevens Act and other applicable laws.

This final 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 SBA during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. Pursuant to the Regulatory Flexibility Act, and prior

to SBA's June 20, 2013, final rule, a certification was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013, rule, NMFS has reviewed the certification prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. No changes to the final rule were made in response to public comments. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

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

Dated: August 7, 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 amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, 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 heading of paragraph (b)(1) is 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. * * *

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

§ 622.190 Quotas.

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(a) * * *

(7) Gag--326,722 lb (148,199 kg).

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(c) * * *

(1) South Atlantic gag, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, red porgy, and wreckfish. * * *

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

§ 622.193 Annual catch limits (ACLs), annual catch targets

(ACTs), and accountability measures (AMs).

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(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

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Table 4 of Appendix A to Part 622--South Atlantic Snapper-Grouper

Balistidae--Triggerfishes

Gray triggerfish, Balistes capriscus

Carangidae--Jacks

Blue runner, Caranx bartholomaei

Bar jack, Caranx ruber

Greater amberjack, Seriola dumerili

Lesser amberjack, Seriola fasciata

Almaco jack, Seriola rivoliana

Banded rudderfish, Seriola zonata

Ephippidae--Spadefishes

Spadefish, Chaetodipterus faber

Haemulidae--Grunts

Margate, Haemulon album

Tomtate, Haemulon aurolineatum

Sailor's choice, Haemulon parrai

White grunt, Haemulon plumieri

Labridae--Wrasses

Hogfish, Lachnolaimus maximus

Lutjanidae--Snappers

Black snapper, Apsilus dentatus

Queen snapper, Etelis oculatus

Mutton snapper, Lutjanus analis

Blackfin snapper, Lutjanus buccanella

Red snapper, Lutjanus campechanus

Cubera snapper, Lutjanus cyanopterus

Gray snapper, Lutjanus griseus

Mahogany snapper, Lutjanus mahogoni

Dog snapper, Lutjanus jocu

Lane snapper, Lutjanus synagris

Silk snapper, Lutjanus vivanus

Yellowtail snapper, Ocyurus chrysurus

Vermilion snapper, Rhomboplites aurorubens

Malacanthidae--Tilefishes

Blueline tilefish, Caulolatilus microps

Golden tilefish, Lopholatilus chamaeleonticeps

Sand tilefish, Malacanthus plumieri

Percichthyidae--Temperate basses

Wreckfish, Polyprion americanus

Serranidae--Groupers

Rock hind, Epinephelus adscensionis

Graysby, Epinephelus cruentatus

Speckled hind, Epinephelus drummondhayi

Yellowedge grouper, Epinephelus flavolimbatus

Coney, Epinephelus fulvus

Red hind, Epinephelus guttatus

Goliath grouper, Epinephelus itajara

Red grouper, Epinephelus morio

Misty grouper, Epinephelus mystacinus

Warsaw grouper, Epinephelus nigritus

Snowy grouper, Epinephelus niveatus

Nassau grouper, Epinephelus striatus

Black grouper, Mycteroperca bonaci

Yellowmouth grouper, Mycteroperca interstitialis

Gag, Mycteroperca microlepis

Scamp, Mycteroperca phenax

Yellowfin grouper, Mycteroperca venenosa

Serranidae--Sea Basses

Black sea bass, Centropristis striata

Sparidae--Porgies

Jolthead porgy, Calamus bajonado

Saucereye porgy, Calamus calamus

Whitebone porgy, Calamus leucosteus

Knobbed porgy, Calamus nodosus

Red porgy, Pagrus pagrus

Scup, Stenotomus chrysops

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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[FR Doc. 2013-19605 Filed 08/12/2013 at 8:45 am;
Publication Date: 08/13/2013]