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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140214139-4799-02]

RIN 0648-BD91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Snapper-Grouper Fishery Off the Southern Atlantic States;  
Regulatory Amendment 21

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

ACTION: Final changes to management measures.

SUMMARY: NMFS issues these final changes to management measures to implement Regulatory Amendment 21 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 21), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Regulatory Amendment 21 modifies the definition of the overfished threshold for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack. The purpose of Regulatory Amendment 21 is to prevent snapper-grouper stocks with low natural mortality rates from frequently alternating between

overfished and rebuilt conditions due to natural variation in recruitment and other environmental factors.

DATES: These final changes to management measures are effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Regulatory Amendment 21, 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>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305, or e-mail: [kate.michie@noaa.gov](mailto:kate.michie@noaa.gov).

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic Region is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 1, 2014, NMFS published the proposed changes to management measures for Regulatory Amendment 21 and requested public comment (79 FR 44735). The proposed changes to management measures and Regulatory Amendment 21 outline the rationale for the actions contained herein. A summary of the actions implemented by Regulatory Amendment 21 is provided below.

Regulatory Amendment 21 redefines the minimum stock size threshold (MSST) for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack as 75 percent of spawning stock biomass at maximum sustainable yield ( $SSB_{MSY}$ ). The MSST is used to determine if a species is overfished. Redefining the MSST for these species will help prevent species from being designated as overfished when small drops in biomass are due to natural variation in recruitment or other environmental variables such as storms, and extreme water temperatures, and will ensure that rebuilding plans are applied to stocks only when truly appropriate.

#### Comments and Responses

NMFS received eight unique comment submissions on the Regulatory Amendment 21 proposed rule. The comments were submitted by six individuals and two fishing organizations. One individual and two fishing organizations expressed general support for the action in the amendment. Two individuals recommended fishery management techniques other than modifying the MSST. Three comments were not related to the actions in the rule. A summary of the comments and NMFS' responses to comments related to the rule appears below.

Comment 1: Two commenters generally agree with the action

in Regulatory Amendment 21. One commenter wrote that abundance may vary for certain species at different times, and the action may help reduce regulatory discards that are created when restrictive regulations are implemented.

Response: NMFS agrees that redefining the overfished threshold for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack is likely to prevent these species from frequently fluctuating between overfished and not overfished conditions. This will help ensure that rebuilding plans and subsequent management measures to rebuild a stock are only implemented when they are biologically necessary.

Comment 2: One commenter suggested that NMFS reexamine how fisheries data on deep-water species are determined. The commenter used snowy grouper as an example of mismanagement of deep-water snapper-grouper species, stating there are many snowy grouper in southern Florida and the bag limit should be one snowy grouper per person per day rather than one per vessel per day.

Response: Snowy grouper has a low natural mortality rate ( $M = 0.12$ ). Thus, similar to the species affected by the action in Regulatory Amendment 21, the MSST for snowy grouper was changed in 2009 to 75 percent of  $SSB_{MSY}$  (spawning stock biomass

of the stock at the maximum sustainable yield) through Amendment 15B to the Snapper-Grouper FMP. A new Southeast Data Assessment and Review (SEDAR) stock assessment was completed for snowy grouper in 2014 (SEDAR 32), which indicates that the stock is still overfished according to the MSST definition established in 2009, and that the stock is rebuilding and is no longer undergoing overfishing. The Council is developing an amendment which could change the recreational bag limit for snowy grouper.

Similar to snowy grouper, the species included in Regulatory Amendment 21 were selected because they have a natural mortality rate at or below 0.25, with an MSST defined as a function of the natural mortality rate (M) where  $MSST = SSB_{MSY} * (1 - M \text{ or } 0.5, \text{ whichever is greater})$ . When the natural mortality rate is small (less than 0.25) there is little difference between the biomass threshold for determining when a stock is overfished (MSST) and when the stock is rebuilt ( $SSB_{MSY}$ ). Thus, for species which have a low rate of natural mortality, even small fluctuations in biomass due to natural conditions rather than fishing mortality may unnecessarily cause a stock to be classified as overfished.

To prevent red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack from unnecessarily being considered

overfished, NMFS is modifying the definition of MSST for those species as 75 percent of  $SSB_{MSY}$ , which would help prevent overfished designations when small drops in biomass are due to natural variation in recruitment or other environmental variables such as extreme water temperatures, and would ensure that rebuilding plans are applied to stocks when truly appropriate.

Comment 3: One commenter disagrees with the current overfished determination for red snapper, and recommends that NMFS take into account anecdotal information when assessing whether or not red snapper is overfished. Additionally, the commenter suggests different times to harvest red snapper, but those comments are beyond the scope of this amendment.

Response: The overfished determination for red snapper is based on a stock assessment (SEDAR 24) completed in October 2010 using the previous overfished definition of  $MSST = SSB_{MSY} * (1-M \text{ or } 0.5, \text{ whichever is greater})$ . Modifying the overfished definition will make a species less likely to be categorized as overfished when reductions in biomass are actually due to natural variations in recruitment or environmental variables rather than fishing-related mortality. However, modifying the overfished definition for red snapper does not change the current overfished determination made during the last completed stock

assessment (SEDAR 24) in October 2010 because the assessment indicates that biomass is below 75 percent of  $SSB_{MSY}$ .

Anecdotal information is not used in Southeast Data Assessment and Review (SEDAR) stock assessments. SEDAR is a quantitative assessment process that uses data from fishery-dependent and fishery-independent sources to determine the health of a stock. SEDAR is organized around three workshops. First is the Data Workshop, during which fisheries monitoring and life history data are reviewed and compiled. Second is the Assessment Workshop, which may be conducted via a workshop and several webinars, during which assessment models are developed and population parameters are estimated using the information provided from the Data Workshop. Third and final is the Review Workshop, during which independent experts review the input data, assessment methods, and assessment products. The completed assessment, including the reports of all three workshops and all supporting documentation, is then forwarded to the Council's Scientific and Statistical Committee (SSC). The SSC considers whether the assessment represents the best scientific information available and develops fishing level recommendations for Council consideration. SEDAR workshops are public meetings organized by SEDAR. Workshop participants appointed by the lead Council are drawn from state and Federal

agencies, non-government organizations, Council members, Council advisors, and the fishing industry with a goal of including a broad range of disciplines and perspectives.

A new stock assessment for red snapper is currently under way (SEDAR 41) and is expected to be completed in spring 2015. The new overfished definition of 75 percent of  $SSB_{MSY}$  contained in Regulatory Amendment 21 will be used to determine the overfished status of the stock in the new assessment.

Comment 4: One commenter states that Regulatory Amendment 21 does not define the overfished criteria. Additionally, the commenter suggests other management actions that are beyond the scope of this amendment.

Response: Regulatory Amendment 21 defines criteria used for determining if a stock is overfished, and lists the MSST values established by the new overfished definition for each of the affected species. Currently the stocks addressed by Regulatory Amendment 21 would be overfished if  $MSST = SSB_{MSY} * (1-M$  or 0.5, whichever is greater). Regulatory Amendment 21 modifies the overfished definition to be 75 percent of  $SSB_{MSY}$ .

#### Classification

The Regional Administrator, Southeast Region, NMFS, has determined that these final changes to management measures are necessary for the conservation and management of the South

Atlantic snapper-grouper species contained in Regulatory Amendment 21 and are consistent with the FMP, the Magnuson-Stevens Act and other applicable law.

The final changes to the management measures have 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. 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 final regulatory flexibility analysis was not required and none was prepared.

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

Dated: October 2, 2014

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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