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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200128-0033]

RIN 0648-BJ31

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic Region; Regulatory Amendment 30

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Regulatory Amendment 30 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 30), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule modifies the spawning season closures for the commercial and recreational sectors in the exclusive economic zone (EEZ) off North Carolina and South Carolina and establishes a commercial trip limit. Additionally, Regulatory Amendment 30 revises the rebuilding schedule for

red grouper. The purpose of this final rule and Regulatory Amendment 30 is to modify the rebuilding schedule and extend protections for red grouper during the spawning season.

DATES: This final rule is effective on [*insert date 30 dates after publication in the **Federal Register***].

ADDRESSES: Electronic copies of Regulatory Amendment 30 may be obtained from the Southeast Regional Office Web site at <https://www.fisheries.noaa.gov/action/regulatory-amendment-30-red-grouper-rebuilding-plan>. Regulatory Amendment 30 includes an environmental assessment (EA), a Regulatory Flexibility Act analysis, and a regulatory impact review.

FOR FURTHER INFORMATION, CONTACT: Mary Vara, telephone: 727-824-5305; email: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP, and includes red grouper along with other snapper-grouper species. 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 October 29, 2019, NMFS published a proposed rule

for Regulatory Amendment 30 and requested public comment (84 FR 57840). The proposed rule and Regulatory Amendment 30 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Regulatory Amendment 30 and implemented by this final rule is described below.

Background

Red grouper are harvested by both commercial and recreational fishers throughout the South Atlantic. In 2010, a Southeast Data, Assessment and Review (SEDAR) benchmark assessment (SEDAR 19) was completed for South Atlantic red grouper. Based on the results of SEDAR 19, NMFS determined that red grouper was overfished and undergoing overfishing. Amendment 24 to the FMP established a 10-year rebuilding plan that began in 2011, with an end date of 2020 (77 FR 34254; June 11, 2012).

A stock assessment update (SEDAR 53) for red grouper was completed in February 2017 using data through 2015. SEDAR 53 indicated the stock was still overfished and undergoing overfishing, and that stock rebuilding would not be possible by 2020, which is the terminal year of the current rebuilding plan. Therefore, on September 27, 2017,

NMFS sent a letter to the Council stating that the South Atlantic red grouper stock was overfished and undergoing overfishing and not making adequate progress towards rebuilding. The Magnuson-Stevens Act requires the implementation of management measures to end overfishing immediately and revise or implement a rebuilding plan within 2 years of notification by NMFS to the Council of this stock status. Therefore, in Abbreviated Framework Amendment 1 to the FMP, NMFS implemented actions to immediately end overfishing of red grouper by reducing the total, commercial, and recreational annual catch limits (ACLs) based on the acceptable biological catch recommendation from the Council's Scientific and Statistical Committee (83 FR 35435; July 26, 2018).

Continued harvest at the levels specified in Abbreviated Framework Amendment 1 is expected to allow for rebuilding the red grouper stock within 10 years, but because the red grouper stock is not projected to fully rebuild by 2020 (SEDAR 53), the Council must also revise the current rebuilding plan so the stock rebuilds in the timeframe mandated by the Magnuson-Stevens Act. Regulatory Amendment 30 addresses the revision to the rebuilding plan.

Management Measures Contained in This Final Rule

For red grouper, this final rule modifies the spawning season closure for the commercial and recreational sectors in the EEZ off North Carolina and South Carolina, and establishes a commercial trip limit.

Commercial and Recreational Spawning Season Closure

Currently, the commercial and recreational spawning season closure for shallow-water groupers, which includes red grouper, is January through April each year throughout the South Atlantic EEZ. In the EEZ off North Carolina and South Carolina, red grouper spawning occurs during February through June and peaks in April. To extend protection for red grouper during spawning season, this final rule extends the January through April spawning season closure for red grouper through May in the EEZ off North Carolina and South Carolina for both the commercial and recreational sectors.

This action was developed in response to stakeholder concerns that red grouper are often found in spawning condition past the January through April shallow-water grouper spawning season closure, particularly in May, in the EEZ off North Carolina and South Carolina. This final rule also extends the prohibition on the commercial sale

and purchase of red grouper in the EEZ off North Carolina and South Carolina from January through May as part of the revised spawning season closure.

Commercial Trip Limit

There is currently no commercial trip limit for red grouper in the South Atlantic. This final rule establishes a commercial trip limit for red grouper harvested in the South Atlantic EEZ of 200 lb (91 kg), gutted weight. The trip limit is expected to help rebuild the red grouper stock by discouraging directed commercial fishing for the species, although it is not likely to substantially reduce the current level of commercial harvest of red grouper. The Council selected a commercial trip limit that in combination with extending the spawning season closure for red grouper off North Carolina and South Carolina would constrain harvest to help rebuild the stock.

Measures in Regulatory Amendment 30 Not Codified in This Final Rule

The Council selected a 10-year rebuilding plan for red grouper in Regulatory Amendment 30, which is the maximum time allowed under the Magnuson-Stevens Act, and which would begin in 2019 (Year 1) and end in 2028 (Year 10).

Implementation of reduced total and sector ACLs, beginning in 2018, which was specified in Abbreviated Framework Amendment 1, is expected to end overfishing of South Atlantic red grouper. Given that poor recruitment appears to be the primary factor currently affecting stock rebuilding, and the projections upon which the rebuilding schedules alternatives in Regulatory Amendment 30 are based assumed long-term average recruitment, the Council selected the alternative for the longest rebuilding schedule (10 years) to account for the possibility that future recruitment might be lower than assumed in the projections.

Comments and Responses

A total of 8 comments were received on Regulatory Amendment 30 and the proposed rule from individuals and fishing organizations. All but one of the comments supported the actions in the proposed rule and Regulatory Amendment 30. Some comments suggested ending fishing subsidies and creating marine protected areas where red grouper occur. The Council does not provide fishing subsidies in the snapper-grouper fishery, and because additional protected areas were not considered by the Council in Regulatory Amendment 30, NMFS is not able to

independently add them for consideration at this time; therefore, these comments are not addressed further in this final rule. Comments that specifically relate to the actions contained in the Regulatory Amendment 30 and the proposed rule, are summarized and responded to below.

Comment 1: The proposed seasonal closure is not aggressive enough to extend protection to red grouper during their spawning season. Because red grouper spawn from February to June, adding another month to the harvest prohibition would help rebuild the population.

Response: NMFS agrees that the longer the spawning season closure for red grouper, the greater the biological benefits to the stock from allowing the species to have additional spawning opportunities. Since new stock biomass can be increased through growth and recruitment, reducing fishing pressure and protecting red grouper during their vulnerable spawning stages can be expected to increase stock abundance and biomass. Therefore, a longer spawning season prohibition could create indirect, long-term, positive biological and economic effects presumably through the availability of increased numbers of fish in the future.

In the South Atlantic region, red grouper spawn from February through June off the Carolinas. The Council considered an alternative that would extend the January-April spawning season closure through June off the Carolinas but did not select it as their preferred. Instead, the Council chose to add May to the January-through-April seasonal prohibition of red grouper harvest in and from the EEZ off North Carolina and South Carolina in response to concerns that red grouper are often found in spawning condition during that month. Thus, the Council chose to realize the biological benefits of including the peak spawning month of May in the prohibition off North Carolina and South Carolina, while minimizing short-term adverse socio-economic effects to fishermen by not including June in the closure.

Studies show that red grouper spawn from January through May in Federal waters off east Florida. There was also stakeholder feedback and scientific evidence cited in Amendment 30 that red grouper spawn earlier in the year in the southern part of the Council's jurisdiction; therefore, Georgia and Florida were not included in alternatives for the action to extend the current January-through-April

spawning season prohibition. Additionally, there are minimal landings of red grouper in Georgia, which would preclude the need to extend the seasonal closure in Federal waters off that state.

The seasonal closure modification is in addition to the Council's choice of a conservative rebuilding time-frame (10 years), and a 200-lb commercial trip limit. The cumulative effects of these actions are expected to protect the spawning populations and rebuild the red grouper stock.

Comment 2: The implementation of a commercial trip limit of 200 lb (91 kg), gutted weight, is too high and may not result in any beneficial effect on the population, since commercial fishing trips for grouper are usually less than 200 lb (91 kg), gutted weight.

Response: NMFS disagrees. Currently, there is no commercial trip limit for red grouper. Although most commercial trips do land less than 200 lb (91 kg) of red grouper, the Council reviewed data (including SEDAR 53, 2017) and public input, and selected the commercial trip limit of 200 lb (91 kg) which, in combination with extending the spawning season closure for red grouper off North Carolina and South Carolina would constrain harvest

and help rebuild the stock. The limit of 200 lb (91 kg), would still be large enough to allow commercial fishers for whom red grouper are an important species (such as those in south Florida and the Florida Keys) to maintain some trip profitability. NMFS expects the trip limit to minimize adverse socio-economic effects by allowing fishers to retain some red grouper caught incidentally when fishing for other snapper-grouper species.

Classification

The Administrator, Southeast Region, NMFS, determined that the Regulatory Amendment 30 is necessary for the conservation and management of the snapper-grouper fishery and that it is 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. This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. An FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant

issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the actions.

No significant issues were raised by public comment in response to the IRFA. Moreover, there is no new information that would change the estimates and conclusions of the IRFA. The rule concerns commercial and recreational fishing for red grouper in Federal waters of the South Atlantic. It directly effects both anglers (recreational fishers) and commercial fishing businesses that harvest red grouper in the South Atlantic EEZ.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6). Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this final rule.

Any business that operates a commercial fishing vessel that harvests red grouper in the South Atlantic EEZ must have a valid Federal snapper-grouper permit assigned to that vessel.

NMFS estimates from 210 to 225 permitted vessels will be directly affected by the rule. NMFS expects all of the businesses with the 210 to 225 vessels operate primarily in

the commercial fishing industry. For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) 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 \$11 million for all of its affiliated operations worldwide. NMFS expects all of the businesses that operate permitted vessels that land red grouper are small.

This rule does not impose additional reporting or record-keeping requirements on small businesses. The action to change the rebuilding schedule has an indirect impact on small businesses and its impact will be dependent on additional action. The action has a direct impact on anglers, and as explained previously, anglers are not small entities. The action to revise the seasonal closure for the recreational sector would have a direct impact on anglers, but as explained previously, anglers are not small entities.

The action to revise the seasonal closure for the commercial sector adds the month of May to the current January through April prohibition on fishing for and possession of red grouper in Federal waters off North Carolina and South Carolina. That additional month is expected to eliminate from 6,956 lb (3,155 kg), gutted weight, to 12,477 lb (6,660 kg), gutted weight, of red grouper commercially landed in May, and the average annual loss per North and South Carolina vessel that lands red grouper in May would range from 141 lb (64 kg), gutted weight, to 210 lb (95 kg), gutted weight, and from \$649 to \$977 (2017 dollars). However, when differentiated by state, the action reduces the average North Carolina vessel's annual revenue by \$497 to \$649 (2017 dollars) (1.3 percent to 1.8 percent) and reduces the average South Carolina vessel's annual revenue by \$713 to \$977 (2017 dollars) (0.6 percent to 0.7 percent).

Finally, this final rule establishes a 200-lb (91 kg), gutted weight, commercial trip limit in Federal waters of the South Atlantic in effect when fishing is allowed. From 2013 through 2017, an annual average of nine vessels landed more than 200 lb (91 kg), gutted weight, of red grouper in

North Carolina and South Carolina from June through December. Those nine vessels represent from 9.7 percent to 11.9 percent of the vessels that land red grouper annually in North Carolina and South Carolina. The trip limit is expected to reduce average landings by 107-117 lb (49-53 kg), gutted weight, per trip and reduce average dockside revenue from \$498 to \$538 (2017 dollars). Those losses represent less than 1 percent of average annual revenues for North Carolina and South Carolina vessels.

An annual average of three vessels make seven trips that land more than 200 lb (91 kg), gutted weight, of red grouper in Georgia and Florida from May through December. Those three Georgia/Florida vessels represent from 2.1 percent to 2.2 percent of permitted vessels that land red grouper in Georgia and Florida annually. NMFS estimates that each of the three vessels will lose from \$3,441 to \$3,471 (2017 dollars) in dockside revenue annually. Those figures represent from 6.5 percent to 6.6 percent of the average Georgia/Florida vessel's dockside revenue from all landings; however, the three vessels have annual revenues substantially greater than the average for the 134 to 143 Georgia/Florida vessels that land red grouper annually.

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." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Southeast Regional Office, and the guide, *i.e.*, permit holder letter, will be sent to all holders of permits for the snapper-grouper fishery. The guide and this final rule will be available upon request.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Red grouper, Seasonal closure, South Atlantic, Trip limits.

Dated: January 28, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator,
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, revise paragraph (b)(1) 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. During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any South Atlantic shallow-water grouper (SASWG): gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing apply in the South Atlantic, *i.e.*, in state or Federal waters. Additionally, in the month of May, no person may fish for, harvest, or possess any South Atlantic red grouper in or from the South Atlantic EEZ off North Carolina or off South Carolina. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing red grouper in May apply in state waters off North Carolina and off South Carolina.

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3. In § 622.191, add paragraph (a)(15) to read as follows:

§ 622.191 Commercial trip limits.

(a) * * *

(15) *Red grouper*. Until the commercial ACL specified in § 622.193(d)(1)(iii) is reached—200 lb (91 kg), gutted weight; 236 lb (107 kg), round weight. See § 622.193(d)(1) for the limitations regarding red grouper after the commercial ACL is reached.

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4. In § 622.192, revise paragraph (h) to read as follows:

§ 622.192 Restrictions on sale/purchase.

* * * * *

(h) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, *i.e.*, in state or Federal waters. Additionally, in the month of May, no person may sell or purchase South Atlantic red grouper harvested from or possessed in the

South Atlantic EEZ off North Carolina or off South Carolina, or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested in or from the EEZ or state waters off North Carolina or off South Carolina. The prohibitions on sale and purchase during January through May do not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. These prohibitions also do not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish are accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (i) of this section.

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