



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 230914-0219]**

**RIN 0648-BM27**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Amendment 53**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 53 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). For gag, this final rule revises the sector annual catch limits (ACLs), commercial trip limits, recreational bag, vessel, and possession limits, and recreational accountability measures (AMs). For black grouper, this final rule revises the recreational bag, vessel, and possession limits. In addition, Amendment 53 establishes a rebuilding plan, and revises the overfishing levels, acceptable biological catch (ABC), annual optimum yield (OY), and sector allocations for gag. The purpose of this final rule and Amendment 53 is to end overfishing of

gag, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

**DATES:** This final rule is effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER***].

**ADDRESSES:** Electronic copies of Amendment 53, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-53-rebuilding-plan-gag-and-management-gag-and-black-grouper/*.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, telephone: 727-824-5305, or email: *frank.helies@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper fishery, which includes gag and black grouper, 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).

### **Background**

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to

providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

On June 12, 2023, NMFS published a notice of availability for Amendment 53 and requested public comment (88 FR 38011). On July 13, 2023, NMFS published a proposed rule for Amendment 53 and requested public comment (88 FR 44764). NMFS approved Amendment 53 on September 7, 2023, pursuant to section 304(a)(3) of the Magnuson-Stevens Act. The proposed rule and Amendment 53 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 53 and implemented by this final rule is described below.

All weights described in this final rule are in gutted weight, unless otherwise specified.

In 2006, the gag stock was assessed through the Southeast Data, Assessment, and Review (SEDAR) process as a benchmark assessment (SEDAR 10). The assessment indicated that the gag stock was not overfished but was undergoing overfishing. In response to SEDAR 10, management measures were modified in Amendment 16 to the FMP and its final rule, including a spawning season closure to end overfishing (74 FR 30964, July 29, 2009).

In 2014, the gag stock was assessed again through the SEDAR 10 Update as a standard assessment. The assessment

indicated that the gag stock was not overfished but was still experiencing overfishing. However, the Council's Scientific and Statistical Committee (SSC) noted that the fishing mortality rate for 2012, and the projected fishing mortality rate in 2013, based on the actual landings, suggested that overfishing did not occur in 2012 and 2013. Consequently, NMFS determined that the gag stock was not undergoing overfishing. In response to the SEDAR 10 Update, the ACLs and management measures were modified through Regulatory Amendment 22 to the FMP and its final rule (80 FR 48277, August 12, 2015).

Amendment 53 responds to the most recent stock assessment for South Atlantic gag (SEDAR 71, 2021). The Council's SSC reviewed SEDAR 71 at their June 2021 meeting. The assessment used data through 2019, and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES). The findings of the assessment indicated that the South Atlantic gag stock is overfished and undergoing overfishing. The SSC found that the assessment was conducted using the best scientific information available, was adequate for determining stock status and supporting total fishing level recommendations. NMFS notified the Council of the updated status of the gag stock via letter dated July 23, 2021.

Following a notification from NMFS to a Council that a

stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the Council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. The Council developed Amendment 53 to respond to the results of SEDAR 71.

For the gag stock, the Council's SSC recommended ABC values based on a 70 percent probability of rebuilding in 10 years and recruitment based on the long-term recruitment scenario from SEDAR 71. However, in March 2023, the NMFS Southeast Fisheries Science Center advised the Council that unless gag discards were reduced in similar proportion to the reduction in landings, the probability of rebuilding would be below the expected 70 percent probability of rebuilding but still be expected to be above 50 percent, as set forth in the Magnuson-Stevens Act National Standard 1 Guidelines (50 CFR 600.310(j)(3)(i)(A)). The Council accepted the SSC's recommended ABC values, as discussed below.

In Amendment 53, the Council is also revising the overfishing limit (OFL) for gag, and updating other biological reference points. Amendment 53 sets the OFL to 367,235 lb (166,575 kg), for 2023; 494,338 lb (224,228 kg), for 2024; 605,227 lb (274,526 kg), for 2025; 706,366 lb (320,402 kg), for 2026; 808,266 lb (366,623 kg), for 2027; 912,033 lb (413,691 kg), for 2028; 1,011,133 lb (458,642 kg), for 2029; 1,098,379 lb (498,216 kg), for 2030;

1,171,120 lb (531,211 kg), for 2031; and 1,230,363 lb (558,083 kg), for 2032 and subsequent fishing years.

The Council intends that Amendment 53 will end overfishing of South Atlantic gag, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

### **Management Measures Contained in this Final Rule**

This final rule revises the sector ACLs, commercial trip limits, recreational bag, vessel, and possession limits, and recreational AMs for gag. For black grouper, this final rule implements recreational vessel limits and a prohibition on captain and crew bag limit retention for black grouper.

#### *Total ACLs*

Through the final rule for Regulatory Amendment 22 to the FMP, the current total ACL and annual OY were set at 734,350 lb (333,095 kg), which is 95 percent of the current ABC (80 FR 48277, August 12, 2015). In Amendment 53, the Council revises the ABC based on SEDAR 71 and the recommendation of the SSC, and sets the ABC, ACL, and annual OY equal to each other.

This final rule revises the total ACL (and the annual OY) equal to the recommended ABC of 175,632 lb (79,665 kg), for 2023; 261,171 lb (118,465 kg), for 2024; 348,352 lb (158,010 kg), for 2025; 435,081 lb (197,349 kg), for 2026; 524,625 lb (237,966 kg), for 2027; 617,778 lb (280,219 kg),

for 2028; 711,419 lb (322,694 kg), for 2029; 800,088 lb (362,914 kg), for 2030; 879,758 lb (399,052 kg), for 2031; and 948,911 lb (430,419 kg), for 2032 and subsequent fishing years.

*Sector Allocations and ACLs*

Amendment 53 revises the commercial and recreational allocations for gag. The current sector ACLs for gag are based on the commercial and recreational allocations of the total ACL at 51 percent and 49 percent, respectively, that were established through Amendment 16 to the FMP (74 FR 30964, July 29, 2009). The Council used the distribution of landings from 1999 through 2003 to determine the existing allocations.

In Amendment 53, the Council is adjusting the commercial and recreational sector allocations based on a unique allocation formula ("split reduction method") that also accounts for the revisions to the calibrated recreational landings estimates from the MRIP FES. This allocation method allows for the reductions in harvest needed to achieve the new total ACL proportionally for each sector, based upon the distribution of landings under more recent time periods that the Council determined better reflect the way the fishery for gag is currently operating. The Council chose the 5-year average of commercial and recreational MRIP FES landings from 2015 through 2019, and divided the reduction needed to achieve the new ACL in 2023

proportionally among the sectors. Then in each subsequent year throughout the rebuilding plan, the ACL poundage increase is allocated equally between both sectors and added to each sector's respective ACL from the previous year. These adjustments will result in allocation percentages of 49 percent commercial and 51 percent recreational for 2023 through 2026. Each year thereafter would be a 50 percent commercial and 50 percent recreational allocation.

The preferred sector allocation method chosen by the Council in Amendment 53 more fairly deals with the initial reduction in landings that results from the updated catch levels, and reduces the proportion of each sector's allowable catch based on recent landings so that the impact on each sector is more equitable. Similarly, the Council noted that the new allocations will achieve a balance between the needs of both sectors and also increase each sector's allowable catch proportionately on a poundage basis throughout the rebuilding plan. The Council determined that the new method distributes both overfishing restrictions and recovery benefits for gag fairly and equitably among both sectors. Thus, the Council and NMFS consider this allocation method to be fair and equitable to fishery participants in both the commercial and recreational sectors. In addition, this allocation method is also reasonably calculated to promote conservation,

since it achieves OY while it remains within the boundaries of a total ACL that is based upon the SSC's ABC recommendation that would end overfishing and rebuild the stock, incorporating the best scientific information available.

The current commercial ACL for gag is 347,301 lb (157,533 kg) and was implemented through Amendment 16 to the FMP (74 FR 30964, July 29, 2009). The revised commercial ACLs in this final rule are 85,326 lb (38,703 kg), for 2023; 128,096 (58,103 kg), for 2024; 171,687 (77,876 kg), for 2025; 215,051 (97,545 kg), for 2026; 259,823 (117,854 kg), for 2027; 306,400 (138,981 kg), for 2028; 353,220 (160,218 kg), for 2029; 397,555 (180,328 kg), for 2030; 437,390 (198,397 kg), for 2031; and 471,966 lb (214,080 kg), for 2032 and subsequent years.

The current recreational ACL for gag is 359,832 lb (172,807 kg) and was implemented through Amendment 16 to the FMP (74 FR 30964, July 29, 2009). The revised recreational ACLs in this final rule are 90,306 lb (40,962 kg), for 2023; 133,075 lb (60,362 kg), for 2024; 176,665 lb (80,134 kg), for 2025; 220,030 lb (99,804 kg), for 2026; 264,802 lb (120,112 kg), for 2027; 311,378 lb (141,239 kg), for 2028; 358,199 lb (162,476 kg), for 2029; 402,533 (182,586 kg), for 2030; 442,368 lb (200,655 kg), for 2031; and 476,945 lb (216,339 kg), for 2032 and subsequent years.

*Commercial Trip Limits*

The final rule for Regulatory Amendment 14 to the FMP established the current commercial trip limit for gag of 1,000 lb (454 kg), until 75 percent of the commercial quota is met, at which time the commercial trip limit is reduced to 500 lb (227 kg) for the remainder of the fishing year or until the commercial quota is met (79 FR 66316, December 8, 2014). This final rule modifies the commercial trip limit for gag to 300 lb (136 kg), without a trip limit reduction.

The revised commercial trip limit will increase the likelihood of gag remaining open to commercial harvest and available to consumers for as long as possible during the year while reducing harvest to end overfishing and ensuring rebuilding is achieved.

#### *Recreational Vessel Limits for Gag and Black Grouper*

This final rule establishes a private recreational vessel limit for gag and also a separate private recreational vessel limit for black grouper of two fish per vessel per day for each species, not to exceed the daily bag limit of one fish per person per day (no more than one of those fish may be a gag or a black grouper), whichever is more restrictive. For charter vessel and headboat (for-hire) recreational vessels, this final rule establishes a vessel limit for gag and also a separate vessel limit for black grouper of two fish per vessel per trip, not to exceed the daily bag limit of one fish per person per day (no more than one of those fish may be a gag or a black

grouper), whichever is more restrictive.

There is currently no recreational vessel limit for gag or black grouper. Gag and black grouper are often misidentified by recreational fishermen. Because of these misidentification issues between the two species, coupled with the need to greatly reduce the harvest of gag to end overfishing and rebuild the stock, this final rule also implements recreational vessel limits for both gag and black grouper to help with harvest constraints for black grouper to indirectly benefit the gag portion of the snapper-grouper fishery. The current recreational bag and possession limits for gag and black grouper in the South Atlantic, specified by Regulatory Amendment 22 to the FMP, are one fish per person per day within the three fish aggregate for grouper and tilefish, and no more than one of those fish may be a gag or a black grouper.

Given the substantial reduction in harvest needed to end overfishing immediately and to increase the likelihood of rebuilding the gag stock, the Council decided to establish recreational vessel limits for gag that will continue to allow recreational retention and help constrain harvest to the reduced recreational ACL.

This final rule does not alter the gag or black grouper recreational bag limits, which will remain one gag or one black grouper per person per day within the three fish aggregate for grouper and tilefish. This final rule

establishes per day gag and black grouper recreational vessel limits for the private angling component and per trip gag and black grouper vessel limits for the for-hire component. These separate vessel limits are expected to constrain harvest for these two separate components of the recreational sector. Because for-hire vessels may take multiple trips in a single day, the Council determined that a per trip maximum vessel limit will ensure equal access for new customers on a second for-hire trip of the day by not requiring discarding of a gag or black grouper if one was previously caught and kept by a different customer on the first trip of a day.

*Prohibition of Captain and Crew Bag Limit Retention for Gag and Black Grouper*

The captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit may currently retain the daily bag limit of gag or black grouper as is allowed for each for-hire passenger. This final rule sets the gag and black grouper bag limit for captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit at zero. The Council determined that because of the need to constrain the harvest of gag to the reduced recreational catch levels and because of the misidentification issues previously discussed, continuing to allow captain and crew to retain a daily bag limit of gag or black grouper would increase the potential gag

harvest by recreational for-hire anglers and would prevent necessary reductions in the harvest of gag from being achieved.

#### *Recreational AMs*

The current recreational AMs for gag were established through Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The AM includes an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL, regardless of whether the stock is overfished. The recreational AM also includes post-season adjustments. If recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. Also, if the recreational ACL and total ACL are exceeded and gag are overfished, the length of the recreational fishing season and the recreational ACL are reduced by the amount of the recreational ACL overage.

This final rule revises the recreational AMs for gag. The current in-season closure AM will be retained and the post-season recreational AM is revised. If recreational landings for gag exceed the recreational ACL, the length of the following year's recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being exceeded. The revised AM removes the current potential duplicate AM application of a reduction in the

recreational season length and an overage adjustment (payback) of the recreational ACL overage if the total ACL was exceeded. Under this revised measure, the AM trigger will not be tied to the total ACL, but only to the recreational ACL. The revised AM modification will ensure that overages in the recreational sector do not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the recreational AM being implemented will apply to the recreational fishing season following the year of a recreational ACL overage. Additionally, under the revised recreational AM, the length of the recreational season will not be reduced if the Regional Administrator determines, using the best scientific information available, that such reduction is unnecessary. This final rule will not revise the commercial AMs because the Council determined that the current commercial AM remains sufficient to prevent commercial landings from exceeding either the current or revised commercial ACL.

**Management Measures in Amendment 53 Not Codified by this Final Rule**

In addition to the measures within this final rule, Amendment 53 revises the OFL for gag and updates other biological reference points. Amendment 53 also establishes a rebuilding plan, and revises the ABC, the annual OY, and the sector allocations for gag.

## *Rebuilding Plan for the South Atlantic Gag Stock*

Amendment 53 establishes a 10-year rebuilding plan, which is the longest allowable rebuilding scenario (Tmax) allowed for the gag stock by the Magnuson-Stevens Act (16 U.S.C. 1854(e)(4)(A)). In addition, the Magnuson-Stevens Act National Standard 1 Guidelines state that if the stock is projected to rebuild in 10 years or less, then Tmax is 10 years (50 CFR 600.310(j)(3)(i)(B)(1)). The Council intends that their preferred choice of the 10-year timeframe for rebuilding in Amendment 53 beginning in 2023 will reduce the severity of the management measures and thus result in fewer short-term negative social and economic impacts on fishing communities.

### *ABC and Annual OY*

The current OFL of 825,000 lb (374,214 kg) and ABC of 773,000 lb (350,627 kg) are inclusive of Coastal Household Telephone Survey (CHTS) estimates of private recreational and charter landings. The Council's SSC reviewed the latest stock assessment (SEDAR 71) and recommended new ABC levels as determined by SEDAR 71. The assessment and associated ABC recommendations incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and the updated FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the CHTS with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings

estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). SEDAR 71 used data from the MRIP FES, which is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and is more robust compared to the MRIP CHTS method. The new ABC recommendations within Amendment 53 also represent the best scientific information available as determined by the SSC.

The Council chose to specify OY for gag on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

#### **Comments and Responses**

NMFS received 10 comment submissions from individuals, commercial and recreational fishermen, and a state agency during the public comment period on the notice of availability and proposed rule for Amendment 53. NMFS acknowledges the comments in favor of the actions in the Amendment 53 and proposed rule and agrees with them. Six comment letters were in opposition to one or more actions within Amendment 53 or the proposed rule. Some comments were outside the scope of Amendment 53 and the proposed rule and are not responded to in this final rule, including one suggestion to transfer management of gag to the South Atlantic states. Comments that opposed the actions

contained in Amendment 53 and the proposed rule are summarized below, along with NMFS' responses. No changes were made to this final rule as a result of public comment.

*Comment 1:* The commercial trip limit for gag should be reduced to 100 or 150 lb (45 or 68 kg) instead of 300 lb (136 kg), which would allow the commercial fishing season to stay open longer. This would reduce regulatory discards of gag when other snapper-grouper species such as greater amberjack are targeted.

*Response:* NMFS acknowledges the importance of gag to the seafood market and commercial fishermen's preference to maintain access to as many species as possible throughout the year. The majority of commercial trips from 2017 through 2019 that landed gag with at least 1 lb (0.5 kg) of gag landed less than the 300 lb (136 kg) trip limit being implemented through this final rule. As described in Amendment 53, 83 percent of commercial trips harvested from 1 to 250 lb (0.5 to 113 kg) of gag. Limiting the commercial harvest from the current limit of 1,000 lb (454 kg) to 300 lb (136 kg) per trip increases the likelihood of the gag portion of the fishery remaining open and available to consumers for a longer time period while reducing harvest to end overfishing and ensuring rebuilding is achieved. The Council considered a trip limit of 200 lb (91 kg), but did not select it because they determined it would make trips that target gag too costly and inefficient for commercial

harvesters, and a trip limit lower than 300 lb (136 kg) would be expected to increase the potential for regulatory discards. NMFS expects the 300 lb (136 kg) trip limit to provide a better balance between season length and profitability than lower trip limits, while helping to end overfishing and rebuild the stock.

*Comment 2:* Recreational vessel limits should not be implemented for gag and black grouper. Private recreational fishing with two or fewer people is unaffordable due to the cost of fuel, bait, and ice. Each recreational angler should be able to keep their own bag limit. Also, it is not fair to implement a two fish per vessel limit for gag and black grouper on headboats that are capable of carrying up to 80 individuals.

*Response:* Approximately 75 percent of all recreational vessels that harvested gag harvested one gag or less per vessel trip from 2017 through 2019. Given the substantial reduction in harvest needed to end overfishing immediately and to increase the likelihood of rebuilding the gag stock, the Council decided to establish a vessel limit that would continue to allow recreational retention while helping constrain harvest to the reduced recreational ACL. In an effort to reduce the negative economic impact on the for-hire component of the recreational sector which may take multiple for-hire trips in a day, there is a separate per-trip vessel limit for the for-hire component and a per-day

vessel limit for private recreational vessels, to acknowledge that most private recreational vessels take a single trip in a day.

NMFS acknowledges the potential issues with implementing vessel limits on headboats. However, approximately 80 percent of headboats harvested two gag per vessel trip or less from 2017 through 2019. These data suggest a vessel limit would not have a large impact on reducing recreational harvest of gag, but would help, in combination with other measures, to constrain recreational harvest to the reduced catch levels.

Due to concerns over the misidentification of gag and black grouper among recreational anglers, the final rule will also modify black grouper management to maintain consistency in the recreational management measures between the two species in order to end overfishing of gag and rebuild the stock. As described in Amendment 53, gag and black grouper are similar in appearance, have a similar life history and may co-occur with each other, which can create confusion when trying to identify whether a fish is either a gag or black grouper. Misidentified gag and black grouper by recreational fishermen is prevalent in some areas of the South Atlantic. Currently, the recreational management measures (size and bag limits) for gag and black grouper are the same. Altering recreational management measures for gag and not for black grouper creates more

opportunity for additional gag to be harvested through misidentification and confusion among the public. NMFS determined that these recreational harvest restrictions on black grouper are necessary to ensure the rebuilding of gag is successful.

*Comment 3:* A more restrictive closed season or slot size limits for gag and black grouper should be utilized for the recreational sector instead of vessel limits.

*Response:* In developing Amendment 53, the Council considered changes to the gag and black grouper spawning season closure for both sectors. Both gag and black grouper are currently included as part of a seasonal closure for both sectors for South Atlantic shallow-water grouper during January through April each year. However, input received from the public during scoping and from the Council's Snapper-Grouper Advisory Panel noted that the month of May was a very important month to keep open for both the commercial and recreational sectors. The Council determined that the current spawning season closure of January through April for gag and black grouper encompasses peak spawning and that additional closed months in May or December would not provide enough biological benefit to outweigh the loss of access to the fishery for both sectors, and NMFS agrees.

Changes to the minimum size limit and the potential for establishing a slot limit for gag were also considered.

The current size limit for gag is 24 inches (61.0 cm), total length, for both sectors. Size limit management changes were discussed by the Council in development of Amendment 53 because of concerns of a scarcity of large, mature, male gag being available for harvest. Gag are long-lived species that change sex from female to male over their lifetime. The Council discussed the possible benefits of increasing the minimum size limit or creating a slot limit but there were other concerns about increased discards with both size limit options. Further, larger gag are caught in deep water and experience high release mortality. Ultimately, the Council decided that increased recreational discards would be detrimental to the stock and that the current minimum size limit is sufficient to allow gag a chance to spawn before being prosecuted by the fishery.

Additional management measures for black grouper, other than vessel limits, are not necessary in Amendment 53 as a result of the latest stock assessment for gag.

*Comment 4:* The recreational sector generates more revenue, economic activity, and net economic benefits than the commercial sector. Allocations for gag should not result in a 50/50 split among the sectors.

*Response:* NMFS disagrees. As stated in Amendment 53, there are a minimal number of charter trips taken in the South Atlantic that target gag, and the revenue from those

trips cannot be solely attributed to a single species. In terms of economic activity, even when accounting for all recreational modes (excluding headboats that participate in the Southeast Region Headboat Survey for which angler-level data are not collected) and attributing the entirety of expenditures on trips that target gag specifically to gag, the total sales impacts are historically far less than those estimated for the commercial sector. NMFS acknowledges that when compared to the status quo, the selected allocation percentages in Amendment 53 result in the lowest total estimated net economic benefits of the allocation alternatives considered. The current sector ACLs for gag are based on the commercial and recreational allocations of the total ACL at 51 percent and 49 percent, respectively. Amendment 53 adjusts the allocation percentages to result in 49 percent commercial and 51 percent recreational for 2023 through 2026. Each year thereafter would be a 50 percent commercial and 50 percent recreational allocation. However, while acknowledging the importance of economic benefits in the utilization of the gag resource, the Council determined that economic efficiency was not the sole objective in determining an allocation. In reviewing the allocation options, the Council evaluated the need to reduce the overall gag harvest by approximately 70 percent, when compared to the total average landings from 2015 through 2019, while

equitably balancing the initial harvest reductions and the later harvest increases between the commercial and recreational sectors. The Council determined, and NMFS agrees, that the preferred allocation method more fairly deals with the initial reduction in landings that results from the updated catch levels and reduces the proportion of each sector's allowable catch based on recent landings so the effect on each sector is more equitable. Similarly, the Council noted that the preferred allocations would strike a balance between the needs of both sectors and would increase each sector's allowable catch proportionately on a poundage basis throughout the rebuilding plan. The Council determined that this alternative allocates both overfishing restrictions and recovery benefits fairly and equitably among all sectors that target gag. Thus, NMFS agrees that this allocation method is fair and equitable to fishery participants in both the commercial and recreational sectors and would be carried out in such a manner that no particular individual, corporation, or other entity would acquire excessive shares. In addition, this allocation method is also reasonably calculated to promote conservation, since it achieves OY while it remains within the boundaries of a total ACL that is based upon an ABC recommendation that would end overfishing and rebuild the stock, incorporating the best scientific information available.

*Comment 5:* The proposed vessel limit language for gag and black grouper in the codified text is confusing and should be clarified. The recreational vessel limits for gag and black grouper should be linked to allow only two of either gag or black grouper per trip.

*Response:* NMFS disagrees with the comment. The vessel limits for gag and black grouper in Amendment 53, and in the draft proposed regulations that the Council reviewed and deemed to be necessary and appropriate to implement Amendment 53, are addressed as a separate vessel limit for gag and a separate vessel limit for black grouper, without any mention of a combined species vessel limit among the two species. Similarly, the proposed rule and this final rule also specifically describe separate vessel limits for both gag and black grouper that are not linked. After a review of all relevant information, NMFS has determined that the recreational vessel limits approved by the Council are two gag and two black grouper, unless subsequently changed in the future.

#### **Classification**

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 53, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not

significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The 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 action. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS has determined the FRFA is consistent with the RFA, and a summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

Public comments relating to social and economic implications and potential impacts on small businesses are addressed in the responses to *Comments 1, 2, and 4* in the **Comments and Responses** section of this final rule. No changes to this final rule were made in response to these public comments. No comments were received from the Office of Advocacy for the Small Business Administration.

This final rule will: (1) revise the gag total ACL and sector ACLs, (2) reduce the gag commercial trip limit, (3) revise the gag recreational bag and possession limits, and establish recreational vessel limits, (4) revise the gag

recreational AMs, and (5) for black grouper revise the recreational bag and possession limits and establish recreational vessel limits. Item (1), the gag total ACL and sector ACLs, will apply to all federally-permitted commercial vessels, federally-permitted charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest gag in Federal waters of the South Atlantic. Item (2), the gag commercial trip limit, will only apply to commercial vessels. Items (3), gag recreational bag, vessel, and possession limits; (4), gag recreational AMs; and (5), black grouper recreational bag, vessel, and possession limits, will only apply to for-hire vessels and recreational anglers. None of these changes will directly apply to federally-permitted dealers. Any change in the supply of gag available for purchase by dealers as a result of this final rule, and associated economic effects, would be an indirect effect of this regulatory action and would therefore fall outside the scope of the impacts considered under the Regulatory Flexibility Act (RFA).

Although most provisions of this final rule will apply to for-hire vessels, they are not expected to have any direct effects on these entities. For-hire vessels sell fishing services to recreational anglers. The changes to the gag catch limits and gag and black grouper management measures are not expected to directly alter the services

sold by these vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this final rule would be a consequence of a change in anglers' behavior, secondary to any direct effect on anglers and, therefore, an indirect effect of this final rule. Based on the historically-minimal level of charter mode target effort for gag and black grouper in the South Atlantic, the low retention limit for these species, and the number of substitute species available, NMFS does not expect any change in for-hire trip demand to result from this final rule; however, should it occur, any such indirect effects would fall outside the scope of the RFA. For-hire captains and crew are currently allowed to retain gag and black grouper under the recreational bag limits; however, they are not allowed to sell these fish. As such, for-hire captains and crew are only affected as recreational anglers. However, under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)-(5), and because recreational anglers are not businesses, organizations, or governmental jurisdictions, impacts on recreational anglers are outside the scope of this analysis (5 U.S.C. 603). In summary, only the impacts on commercial vessels will be discussed.

As of August 26, 2021, there were 579 valid or renewable South Atlantic Snapper-Grouper unlimited permits

and 112 valid or renewable 225-lb (102.1 kg) trip-limited permits. On average from 2015 through 2019, there were 203 federally-permitted commercial vessels with reported landings of gag in the South Atlantic. Their average annual vessel-level gross revenue from all species for 2015 through 2019 was \$67,722 (2021 dollars) and gag accounted for approximately 10 percent of this revenue. For commercial vessels that harvest gag in the South Atlantic, NMFS estimates that economic profits are \$677 (2021 dollars) or 1 percent of annual gross revenue, on average. The maximum annual revenue from all species reported by a single one of the vessels that harvested gag from 2015 through 2019 was \$638,709 (2021 dollars).

For RFA purposes only, 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 engaged in commercial fishing (North American Industry Classification System code 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 has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this final rule are believed to be small entities based on the NMFS size standard. No other small entities that are

directly affected by this final rule have been identified.

This final rule will revise the gag total ACLs based on the most recent recommendation from the SSC in response to the SEDAR 71 (2021) gag stock assessment. These new catch limits reflect a shift in recreational reporting units from the MRIP CHTS to the MRIP FES. The total ACL will be set equal to the ABC in each year of the rebuilding plan according to the values provided in Table 1. The 2032 total ACL value will remain in effect unless it is changed in the future. Relative to the current commercial ACL of 347,301 lb (157,533 kg) and applying the current commercial sector allocation of 51 percent, the changes to the gag catch limits would result in a decrease in the commercial ACL during 2023 and through 2028 and an increase thereafter, as shown in Table 1. However, as discussed below, this final rule will also modify the percentage of the total ACL that is allocated to the commercial sector, and therefore, estimated economic effects to small entities are considered as part of that discussion below.

**Table 1 -- Revised Total ACLs and Commercial ACLs, as Based on Current Allocation Percentages**

Year	Revised Total ACL in lb (kg)	Revised Commercial ACL in lb (kg)	Difference between revised and current commercial ACL in lb (kg)
2023	175,632 (79,665)	89,572 (40,629)	-257,729 (-116,904)

2024	261,171 (118,465)	133,197 (60,417)	-214,104 (-97,116)
2025	348,352 (158,010)	177,660 (80,585)	-169,641 (-76,948)
2026	435,081 (197,349)	221,891 (100,648)	-125,410 (-56,885)
2027	524,625 (237,966)	267,559 (121,363)	-79,742 (-36,170)
2028	617,778 (280,219)	315,067 (142,912)	-32,234 (-14,621)
2029	711,419 (322,694)	362,824 (164,574)	15,523 (7,041)
2030	800,088 (362,914)	408,045 (185,086)	60,744 (27,553)
2031	879,758 (399,052)	448,677 (203,516)	101,376 (45,983)
2032+	948,911 (430,419)	483,945 (219,514)	136,644 (61,981)

This final rule will set gag sector allocations and sector ACLs in 2023 proportional to each sector's share of total average landings (commercial and recreational combined) from 2015 through 2019. In subsequent years, as the total ACL increases, the total ACL poundage increase will be split equally between both sectors and added to each sector's ACL from the previous year. As a result, the allocation percentages will gradually shift over time. The 2032 values will remain in effect unless changed by future

management action. As shown in Table 2, the combined economic effects of the changes to the total ACLs in conjunction with the revisions to the commercial allocation and ACLs, are estimated to be negative from 2023 through 2028 and positive thereafter. These estimates assume the full commercial ACL is harvested each year. Dividing the change in economic profits for each year shown in Table 2 by the average number of vessels with reported landings of gag from 2015 through 2019, the estimated annual change in economic profits per vessel ranges from -\$84 (a 12 percent loss per vessel) in 2023 (2021 dollars) to \$40 (a 6 percent increase per vessel) in 2032. These estimated economic effects are changing over time, and the time value of money concept suggests money earned sooner is more valuable than money earned later because of its earning potential. Therefore, when calculating an average annual effect, it is important to discount the future stream of benefits and costs back to present time to account for an assumed rate of return on capital. The net present value (NPV) of the estimated stream of changes in ex-vessel revenue over a 10-year period (2023 through 2032), using a 3 percent discount rate, is -\$4.2 million (2021 dollars) and the annualized NPV during that period is -\$490,415. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel are -\$2,416 and -\$24, respectively. Individual fishing businesses, however, may experience varying levels

of economic effects, depending on their fishing practices, operating characteristics, and profit maximization strategies.

**Table 2 -- Commercial Allocation, With Changes in Commercial ACL, Ex-Vessel Revenue, and Economic Profits Relative to the Status Quo Commercial ACL of 347,301 lb (157,533 kg)**

Year	Commercial Allocation	Commercial ACL in lb (kg)	Change in lb (kg) relative to no action	Change in ex-vessel revenue relative to no action (2021 dollars)	Change in economic profits (2021 dollars)
2023	0.49	85,326 (38,703)	-261,975 (-118,830)	-\$1,705,457	-\$17,055
2024	0.49	128,096 (58,103)	-219,205 (-99,430)	-\$1,427,025	-\$14,270
2025	0.49	171,687 (77,876)	-175,614 (-79,657)	-\$1,143,247	-\$11,432
2026	0.49	215,051 (97,545)	-132,250 (-59,988)	-\$860,948	-\$8,609
2027	0.50	259,823 (117,854)	-87,478 (-39,679)	-\$569,482	-\$5,695
2028	0.50	306,400 (138,981)	-40,901 (-18,552)	-\$266,266	-\$2,663
2029	0.50	353,220 (160,218)	5,919 (2,685)	\$38,533	\$385
2030	0.50	397,555 (180,328)	50,254 (22,795)	\$327,154	\$3,272
2031	0.50	437,390 (198,397)	90,089 (40,864)	\$586,479	\$5,865
2032+	0.50	471,966 (214,080)	124,665 (56,547)	\$811,569	\$8,116

In addition to the changes mentioned above, this final rule will reduce the gag commercial trip limit to 300 lb (136 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 20 percent or 46,333 lb (21,016 kg) per year. This reduction in

landings would represent an estimated annual loss of \$301,630 (2021 dollars) in ex-vessel revenue and \$3,016 in economic profits to the commercial sector. However, the trip limit will be modified in conjunction with the revised commercial ACL (Table 2) and NMFS expects the commercial sector to fully harvest the revised commercial ACL, even with the reduced commercial trip limit, at least in the beginning years (2023-2025) of the rebuilding plan.

Therefore, these economic effects are initially subsumed under those described for the changes to the ACLs and allocations (Table 2). In later years (2026-2032), the reduced trip limit may prevent the full harvest of the commercial ACL, thereby reducing the economic benefits associated with the increasing ACLs; however, landings rates for later years are more uncertain. In general, reducing the commercial trip limit, even if aggregate landings remain the same, may reduce the economic efficiency of individual trips which, in turn, may have negative consequences on economic profits. These effects cannot be quantified with existing data.

Three alternatives were considered for the action to revise the ABC, based on the SSC's latest recommendations, and set the total ACL and annual OY equal to it. The first alternative, the no action alternative, would retain the existing ABC of 773,000 lb (350,627 kg). Under this alternative, the total ACL and annual OY would remain

equivalent to 95 percent of the current ABC or 734,350 lb (333,096 kg). Because no changes would be made to the current catch limits, the first alternative would not be expected to change fishing practices or commercial harvests of gag, nor would it be expected to result in direct economic effects. This alternative was not selected because it would be inconsistent with the SSC's latest catch limit recommendations and the transition to the MRIP FES, and therefore, would not be based on the best scientific information available.

The second alternative to the action to revise the ABC, ACL and annual OY would adopt the revised ABCs recommended by the SSC; however, it would set both the total ACL and annual OY equal to 95 percent of the ABC. The change in pounds between the total and commercial ACLs under this alternative relative to those set by this final rule, along with the expected change in ex-vessel revenue, are provided in Table 3. Relative to the total ACLs set by this final rule and assuming no change to the current sector allocations, this alternative would reduce the commercial ACL by a range of 4,479 lb (2,032 kg) in 2023 to 24,197 lb (10,976 kg) in 2032 and subsequent years (Table 3). Assuming the commercial ACL would be harvested in full under either this final rule or the second alternative, this translates to a loss in ex-vessel revenue of \$29,156 to \$157,524 (2021 dollars) and a loss in economic profits

equal to 1 percent of that or \$292 to \$1,575. The NPV of the estimated stream of changes in ex-vessel revenue over a 10-year period (2023 through 2032) relative to the commercial ACLs set by this final rule, using a 3 percent discount rate, is -\$777,295 (2021 dollars) and the annualized NPV during that period is -\$91,123. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are -\$449 and -\$4, respectively. The second alternative was not selected because the Council determined that it would be less effective at achieving the objectives of the FMP and that the current ACL monitoring mechanisms in the South Atlantic, coupled with the existing management measures and those implemented by this final rule, would be sufficient at preventing overages, thus not requiring a buffer between the ABC and total ACL.

**Table 3 -- Differences in Total ACL, Commercial ACL, and Ex-Vessel Revenue Under the Second Alternative to the Action to Revise the ABC, ACL, and Annual OY**

Year	Total ACL set by this final rule in lb (kg)	Total ACL under Alternative 2 in lb (kg)	Difference in total ACL in lb (kg)	Difference in commercial ACL in lb (kg) using current allocation of 51 percent	Change in potential ex-vessel revenue (2021 dollars)
2023	175,632 (79,665)	166,850 (75,682)	-8,782 (-3,983)	-4,479 (-2,032)	-\$29,156
2024	261,171 (118,465)	248,112 (112,542)	-13,059 (-5,923)	-6,660 (-3,021)	-\$43,356
2025	348,352 (158,010)	330,934 (150,109)	-17,418 (-7,901)	-8,883 (-4,029)	-\$57,828
2026	435,081 (197,349)	413,327 (187,482)	-21,754 (-9,867)	-11,095 (-5,033)	-\$72,226

2027	524,625 (237,966)	498,394 (226,068)	-26,231 (-11,898)	-13,378 (-6,068)	-\$87,090
2028	617,778 (280,219)	586,889 (266,208)	-30,889 (-14,011)	-15,753 (-7,145)	-\$102,554
2029	711,419 (322,694)	675,848 (306,559)	-35,571 (-16,135)	-18,141 (-8,229)	-\$118,099
2030	800,088 (362,914)	760,084 (344,768)	-40,004 (-18,146)	-20,402 (-9,254)	-\$132,819
2031	879,758 (399,052)	835,770 (379,099)	-43,988 (-19,953)	-22,434 (-10,176)	-\$146,044
2032+	948,911 (430,419)	901,465 (408,898)	-47,446 (-21,521)	-24,197 (-10,976)	-\$157,524

The third alternative to the action to revise the ABC, ACL and annual OY would adopt the revised ABCs recommended by the SSC; however, it would set both the total ACL and annual OY equal to 90 percent of the ABC. The change in pounds between the total and commercial ACLs under this alternative relative to those set by this final rule, along with the expected change in ex-vessel revenue, are provided in Table 4. Relative to the total ACLs set by this final rule and assuming no change to the current sector allocations, this alternative would reduce the commercial ACL by a range of 8,957 lb (4,063 kg) in 2023 to 48,394 lb (21,951 kg) in 2032 and subsequent years (Table 4). Assuming the commercial ACL would be harvested in full under either this final rule or the third alternative, this translates to a loss in ex-vessel revenue of \$58,312 to \$315,048 (2021 dollars) and a loss in economic profits equal to 1 percent of that or \$583 to \$3,150. The NPV of the estimated stream of changes in ex-vessel revenue over a 10-year period (2023 through 2032) relative to the commercial ACLs set by this final rule, using a 3 percent

discount rate, is -\$1.6 million (2021 dollars) and the annualized NPV during that period is -\$182,245. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are -\$898 and -\$9, respectively. The third alternative was not selected because the Council determined that it would be less effective at achieving the objectives of the FMP and that the current monitoring mechanisms in the South Atlantic, coupled with the existing management measures and those implemented by this final rule, are expected to be sufficient at preventing overages, thus not requiring a buffer between the ABC and total ACL.

**Table 4 -- Differences in Total ACL, Commercial ACL, and Ex-Vessel Revenue Under the Third Alternative to the Action to Revise the ABC, ACL, and Annual OY**

Year	Total ACL set by this final rule in lb (kg)	Total ACL under Alternative 3 in lb (kg)	Difference in total ACL in lb (kg)	Difference in commercial ACL in lb (kg) using current allocation of 51 percent	Change in potential ex-vessel revenue (2021 dollars)
2023	175,632 (79,665)	158,069 (71,699)	-17,563 (-7,966)	-8,957 (-4,063)	-\$58,312
2024	261,171 (118,465)	235,054 (106,619)	-26,117 (-11,846)	-13,320 (-6,042)	-\$86,711
2025	348,352 (158,010)	313,517 (142,209)	-34,835 (-15,801)	-17,766 (-8,059)	-\$115,656
2026	435,081 (197,349)	391,573 (177,615)	-43,508 (-19,735)	-22,189 (-10,065)	-\$144,451
2027	524,625 (237,966)	472,163 (214,170)	-52,463 (-23,797)	-26,756 (-12,136)	-\$174,181
2028	617,778 (280,219)	556,000 (252,197)	-61,778 (-28,022)	-31,507 (-14,291)	-\$205,108
2029	711,419 (322,694)	640,277 (290,425)	-71,142 (-32,269)	-36,282 (-16,457)	-\$236,198

2030	800,088 (362,914)	720,079 (326,622)	-80,009 (-36,291)	-40,804 (-18,508)	-\$265,637
2031	879,758 (399,052)	791,782 (359,146)	-87,976 (-39,905)	-44,868 (-20,352)	-\$292,088
2032+	948,911 (430,419)	854,020 (387,377)	-94,891 (-43,042)	-48,394 (-21,951)	-\$315,048

Four alternatives were considered for the action to revise the gag sector allocations and sector ACLs. The first alternative, the no action alternative, would retain the current commercial and recreational sector allocations as 51 percent and 49 percent, respectively, of the revised total ACL for gag. Relative to the allocation set by this final rule, the first alternative, when applied to the total ACLs in Table 1, would result in an increase in ex-vessel revenue that ranges from \$27,641 (\$136 per vessel) in 2023 to \$77,983 (\$384 per vessel) in 2032 (Table 5). The NPV of the estimated stream of changes in ex-vessel revenue over a 10-year period (2023 through 2032) relative to the allocation set by this final rule, using a 3 percent discount rate, is \$443,067 (2021 dollars) and the annualized NPV during that period is \$51,941. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are \$256 and \$3, respectively. The first alternative was not selected because the Council determined the allocation set by this final rule was based on an allocation method that incorporated more recent landings and was therefore a better representation of the gag portion of the snapper-

grouper fishery moving forward. This allocation method also provided better fairness and equity between the sectors.

**Table 5 -- Comparison of Commercial Allocation, Commercial ACL, and Ex-Vessel Revenue Under the First Alternative to the Allocation Set by This Final Rule**

Year	Commercial allocation set by this final rule	Alternative 1 allocation	Commercial ACL in lb (kg) under Alternative 1 allocation	Change in commercial ACL in lb (kg) under Alternative 1 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.51	89,572 (40,629)	4,246 (1,926)	\$27,641
2024	0.49	0.51	133,197 (60,417)	5,101 (2,314)	\$33,208
2025	0.49	0.51	177,660 (80,585)	5,973 (2,709)	\$38,884
2026	0.49	0.51	221,891 (100,648)	6,840 (3,103)	\$44,528
2027	0.50	0.51	267,559 (121,363)	7,736 (3,509)	\$50,361
2028	0.50	0.51	315,067 (142,912)	8,667 (3,931)	\$56,422
2029	0.50	0.51	362,824 (164,574)	9,604 (4,356)	\$62,522
2030	0.50	0.51	408,045 (185,086)	10,490 (4,758)	\$68,290
2031	0.50	0.51	448,677 (203,516)	11,287 (5,120)	\$73,478
2032+	0.50	0.51	483,945 (219,514)	11,979 (5,434)	\$77,983

The second allocation alternative would use the distribution of landings from 1999 through 2003 to set the commercial and recreational sector allocations at 36.37 percent and 63.63 percent, respectively, of the revised total ACL for gag. Relative to the allocation set by this final rule, the second alternative, when applied to the revised total ACLs, would result in a decrease in ex-vessel

revenue that ranges from \$139,631 (\$688 per vessel) in 2023 to \$825,774 (\$4,068 per vessel) in 2032 (Table 6). The NPV of the estimated stream of changes in ex-vessel revenue over a 10-year period (2023 through 2032) relative to the allocation set by this final rule, using a 3 percent discount rate, is -\$4.02 million (2021 dollars) and the annualized NPV during that period is -\$470,854. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are -\$2,319 and -\$23, respectively. The second alternative was not selected because the Council determined the allocation set by this final rule, as well as other alternatives that were considered, were based on allocation methods that incorporated more recent landings and were therefore a better representation of the gag portion of the snapper-grouper fishery moving forward. These allocation methods also provided better fairness and equity between the sectors.

**Table 6 -- Comparison of Commercial Allocation, Commercial ACL, and Ex-Vessel Revenue Under the Second Alternative to the Allocation Set by This Final Rule**

Year	Commercial allocation set by this final rule	Alternative 2 allocation	Commercial ACL in lb (kg) under Alternative 2 allocation	Change in commercial ACL in lb (kg) under Alternative 2 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.3637	63,877 (28,974)	-21,449 (-9,729)	-\$139,631
2024	0.49	0.3637	94,988 (43,086)	-33,108 (-15,018)	-\$215,534

2025	0.49	0.3637	126,696 (57,468)	-44,991 (-20,408)	-\$292,894
2026	0.49	0.3637	158,239 (71,776)	-56,812 (-25,769)	-\$369,846
2027	0.50	0.3637	190,806 (86,548)	-69,017 (-31,306)	-\$449,300
2028	0.50	0.3637	224,686 (101,916)	-81,714 (-37,065)	-\$531,959
2029	0.50	0.3637	258,743 (117,364)	-94,477 (-42,854)	-\$615,045
2030	0.50	0.3637	290,992 (131,992)	-106,563 (-48,336)	-\$693,725
2031	0.50	0.3637	319,968 (145,135)	-117,422 (-53,262)	-\$764,417
2032+	0.50	0.3637	345,119 (156,543)	-126,847 (-57,537)	-\$825,774

The third allocation alternative would set the commercial and recreational sector allocations as 43.06 percent and 56.94 percent, respectively, of the revised total ACL for gag. These allocations would be based on historical landings information that are equally-weighted for the periods of 1986 through 2008 and 2006 through 2008. Relative to the allocation set by this final rule, the third alternative, when applied to the revised total ACLs, would result in a decrease in ex-vessel revenue that ranges from \$63,140 (\$311 per vessel) in 2023 to \$412,506 (\$2,032 per vessel) in 2032 (Table 7). The NPV of the estimated stream of changes in ex-vessel revenue over a 10-year period (2023 through 2032) relative to the allocation set by this final rule, using a 3 percent discount rate, is -\$1.98 million (2021 dollars) and the annualized NPV during that period is -\$231,791. The average annualized NPV of changes in ex-vessel revenue and economic profits per

vessel (assuming 203 affected vessels) are -\$1,142 and -\$11, respectively. This allocation method uses the allocation formula often used for unassessed stocks, and while this method has been used for some assessed stocks, the Council decided that the years used in this allocation formula would not be the most representative of the gag portion of the snapper-grouper fishery moving forward.

**Table 7 -- Comparison of Commercial Allocation, Commercial ACL, and Ex-Vessel Revenue Under the Third Alternative to the Allocation Set by This Final Rule**

Year	Commercial allocation set by this final rule	Alternative 3 allocation	Commercial ACL in lb (kg) under Alternative 3 allocation	Change in commercial ACL in lb (kg) under Alternative 3 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.4306	75,627 (34,304)	-9,699 (-4,399)	-\$63,140
2024	0.49	0.4306	112,460 (51,011)	-15,636 (-7,092)	-\$101,789
2025	0.49	0.4306	150,000 (68,039)	-21,687 (-9,837)	-\$141,180
2026	0.49	0.4306	187,346 (84,979)	-27,705 (-12,567)	-\$180,360
2027	0.50	0.4306	225,904 (102,468)	-33,919 (-15,385)	-\$220,816
2028	0.50	0.4306	266,015 (120,662)	-40,385 (-18,318)	-\$262,905
2029	0.50	0.4306	306,337 (138,952)	-46,883 (-21,266)	-\$305,208
2030	0.50	0.4306	344,518 (156,271)	-53,037 (-24,057)	-\$345,272
2031	0.50	0.4306	378,824 (171,832)	-58,566 (-26,565)	-\$381,266
2032+	0.50	0.4306	408,601 (185,338)	-63,365 (-28,742)	-\$412,506

The fourth allocation alternative would set gag sector allocations and sector ACLs in 2023 proportional to each

sector's share of total average landings (commercial and recreational combined) from 2017 through 2019. In subsequent years, as the total ACL increases, the total ACL poundage increase would be split equally between both sectors and added to each sector's ACL from the previous year. This, in effect, would gradually shift the allocation percentages. The 2032 values would remain in effect unless changed by future management action. Relative to the allocation set by this final rule, the fourth alternative, when applied to the revised total ACLs, would result in an annual decrease in ex-vessel revenue of approximately \$110,969 (\$547 per vessel) (Table 8). The NPV of the estimated stream of changes in ex-vessel revenue over a 10-year period (2023 through 2032) relative to the allocation set by this final rule, using a 3 percent discount rate, is -\$946,558 (2021 dollars) and the annualized NPV during that period is -\$110,965. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are -\$547 and -\$5, respectively. The fourth alternative was not selected because the Council decided that the years of average landings used in this method did not best represent the gag portion of the snapper-grouper fishery.

**Table 8 -- Comparison of Commercial Allocation, Commercial ACL, and Ex-Vessel Revenue Under the Fourth Alternative to the Allocation Set by This Final Rule**

Year	Commercial allocation set by this final rule	Alternative 4 allocation	Commercial ACL in lb (kg) under Alternative 4 allocation	Change in commercial ACL in lb (kg) under Alternative 4 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.39	68,281 (30,972)	-17,045 (-7,731)	-\$110,963
2024	0.49	0.43	111,051 (50,372)	-17,045 (-7,731)	-\$110,963
2025	0.49	0.44	154,641 (70,144)	-17,046 (-7,732)	-\$110,969
2026	0.49	0.46	198,006 (89,814)	-17,045 (-7,731)	-\$110,963
2027	0.50	0.46	242,778 (110,122)	-17,045 (-7,731)	-\$110,963
2028	0.50	0.47	289,354 (131,249)	-17,046 (-7,732)	-\$110,969
2029	0.50	0.47	336,175 (152,486)	-17,045 (-7,731)	-\$110,963
2030	0.50	0.48	380,509 (172,596)	-17,046 (-7,732)	-\$110,969
2031	0.50	0.48	420,344 (190,665)	-17,046 (-7,732)	-\$110,969
2032+	0.50	0.48	454,921 (206,349)	-17,045 (-7,731)	-\$110,963

Five alternatives were considered for the action to reduce the commercial trip limit to 300 lb (136 kg). The first alternative, the no action alternative, would retain the current trip limit, which is 1,000 lb (454 kg) until 75 percent of the commercial ACL is met and then 500 lb (227 kg) for the remainder of the fishing year or until the commercial ACL is met. Therefore, it would not be expected to change fishing practices or commercial harvests of gag, nor would it be expected to result in direct economic effects. This alternative was not selected because it would likely result in a short fishing season and limited

availability of gag for seafood consumers. Additionally, the Council did not think that the commercial trip limit step-down would be able to be effectively implemented in a timely manner, particularly in the first several years of the rebuilding plan.

The second alternative to the revised commercial trip limit of 300 lb (136 kg) would set the commercial trip limit at 200 lb (91 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 32 percent or 74,133 lb (33,626 kg) per year. Relative to the commercial trip limit set by this final rule, the second alternative would result in an estimated annual reduction in ex-vessel revenue that is \$180,978 (2021 dollars) greater and an annual reduction in economic profits that is \$1,810 greater. However, because the trip limit would be modified in conjunction with the revised commercial ACL (Table 2) and NMFS expects the commercial sector to fully harvest the revised ACL even with a 200 lb (91 kg) commercial trip limit, at least in the beginning years of the rebuilding plan, these economic effects would initially be subsumed under those described for the revised commercial ACLs and allocations. In later years, the lower trip limit may prevent the full harvest of the commercial ACL, thereby reducing the economic benefits associated with the increasing commercial ACLs; however, landings rates for later years are more uncertain and these effects cannot be

quantified with existing data. In general, a lower commercial trip limit may reduce economic efficiency on trips, which may lead to a reduction in economic profits. This alternative was not selected because a 200 lb (91 kg) trip limit would make trips to catch gag too costly and inefficient.

The third alternative to the commercial trip limit action would set the commercial trip limit at 400 lb (181 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 13 percent or 30,117 lb (13,661 kg) per year. Relative to the commercial trip limit set by this final rule, this alternative would result in an estimated annual reduction in ex-vessel revenue that is \$105,571 (2021 dollars) less and an annual reduction in economic profits that is \$1,056 less. However, because the trip limit would be modified in conjunction with the revised commercial ACL (Table 2) and NMFS expects the commercial sector to fully harvest the revised ACL even with the reduced commercial trip limit, at least in the beginning years of the rebuilding plan, these economic effects would initially be subsumed under those described for the revised commercial ACLs and allocations. In later years, a higher trip limit may lead to better utilization of the ACL and greater economic efficiency, thereby increasing the economic benefits associated with the increasing commercial ACLs. However, landings rates for

later years are more uncertain and these effects cannot be quantified with existing data. This alternative was not selected because it would not constrain harvest to ensure the longest commercial season possible under the revised catch levels.

The fourth alternative to the commercial trip limit action would set the commercial trip limit at 500 lb (227 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 8 percent or 18,533 lb (8,406 kg) per year. Relative to the commercial trip limit set by this final rule, this alternative would result in an estimated annual reduction in ex-vessel revenue that is \$180,978 less and an annual reduction in economic profits that is \$1,810 less. However, because the trip limit would be modified in conjunction with the revised commercial ACL (Table 2) and because NMFS expects the commercial sector to fully harvest the revised ACL even with the reduced commercial trip limit, at least in the beginning years of the rebuilding plan, these economic effects would initially be subsumed under those described for the revised commercial ACLs and allocations. In later years, the higher trip limit may lead to better utilization of the ACL and greater economic efficiency, thereby increasing the economic benefits associated with the increasing commercial ACLs. However, landings rates for later years are more uncertain and these effects cannot be

quantified with existing data. This alternative was not selected because it would not constrain harvest to ensure the longest commercial season possible under the revised catch levels.

The fifth and final alternative to the commercial trip limit action would reduce the gag commercial trip limit to 300 lb (136 kg) in 2023 then increase the commercial trip limit to 500 lb (227 kg) in 2026 and to 1,000 lb (454 kg) in 2027 and subsequent years. In 2023 through 2025, the commercial trip limit under this alternative would be the same as the commercial trip limit set by this final rule and therefore would have equivalent economic effects during those years. In 2026, the trip limit would be set 200 lb (91 kg) greater than the trip limit set by this final rule and in 2027, and subsequent years it would be 700 lb (318 kg) greater. These incremental increases may allow for greater utilization of the revised commercial ACLs and greater economic efficiency, leading to potential increases in economic profits; however, the economic effects cannot be quantified with available data given uncertainty in future commercial landings rates. This alternative was not selected because it would increase the trip limit in the years specified, regardless of rebuilding success and could have negative long-term effects for the fishery. The Council decided that if it was appropriate to increase the commercial trip limit for gag in the future, this could be

done through a framework action to the FMP after data on rebuilding progress are provided.

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 will publish one or more guides to assist small entities in complying with the rule and will designate such publications as "small entity compliance guides." The agency will 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 fishery bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.*, bulletin) will be available on the website (see **ADDRESSES**). Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES**).

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

#### **List of Subjects in 50 CFR Part 622**

Accountability measures, Annual catch limits, Black grouper, Commercial, Fisheries, Fishing, Gag, Recreational, South Atlantic.

Dated: September 15, 2023.

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Samuel D. Rauch, III

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

For the reasons set out in the preamble, NMFS amends  
50 CFR part 622 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 § 622.187, revise paragraph (b) (2) (i) to read as  
follows:

**§ 622.187 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) No more than one fish may be gag or black grouper,  
combined. However, no gag or black grouper may be retained  
by the captain or crew of a vessel operating as a charter  
vessel or headboat. The bag limit for such captain and crew  
is zero;

(A) In addition to the bag limits specified in this paragraph (b)(2)(i), for gag, the vessel limit for a vessel operating as a private recreational vessel may not exceed 2 fish per vessel per day.

(B) In addition to the bag limits specified in this paragraph (b)(2)(i), for gag, the vessel limit for a vessel operating as a charter vessel or headboat may not exceed 2 fish per vessel per trip.

(C) In addition to the bag limits specified in this paragraph (b)(2)(i), for black grouper, the vessel limit for a vessel operating as a private recreational vessel may not exceed 2 fish per vessel per day.

(D) In addition to the bag limits specified in this paragraph (b)(2)(i), for black grouper, the vessel limit for a vessel operating as a charter vessel or headboat may not exceed 2 fish per vessel per trip.

\* \* \* \* \*

3. In § 622.190, revise (a) introductory text and paragraph (a)(7) to read as follows:

**§ 622.190 Quotas.**

\* \* \* \* \*

(a) *South Atlantic snapper-grouper, excluding wreckfish.* The quotas apply to persons who are not subject to the bag limits. (See § 622.11 for applicability of the bag limits.) The quotas are in gutted weight, that is eviscerated but otherwise whole, except for the quotas in

paragraphs (a) (4) through (6) of this section which are in both gutted weight and round weight.

\* \* \* \* \*

(7) *Gag*. (i) For the 2023 fishing year - 85,326 lb (38,703 kg).

(ii) For the 2024 fishing year - 128,096 lb (58,103 kg).

(iii) For the 2025 fishing year - 171,687 lb (77,876 kg).

(iv) For the 2026 fishing year - 215,051 lb (97,545 kg).

(v) For the 2027 fishing year - 259,823 lb (117,854 kg).

(vi) For the 2028 fishing year - 306,400 lb (138,981 kg).

(vii) For the 2029 fishing year - 353,220 lb (160,218 kg).

(viii) For the 2030 fishing year - 397,555 lb (180,328 kg).

(ix) For the 2031 fishing year - 437,390 lb (198,397 kg).

(x) For the 2032 and subsequent fishing years - 471,966 lb (214,080 kg).

\* \* \* \* \*

4. In § 622.191, revise paragraph (a) (7) to read as follows:

**§ 622.191 Commercial trip limits.**

\* \* \* \* \*

(a) \* \* \*

(7) *Gag*. Until the applicable commercial quota specified § 622.190(a)(7) is reached - 300 lb (136 kg), gutted weight. See § 622.190(c)(1) for the limitations regarding gag after the commercial quota is reached.

\* \* \* \* \*

5. In § 622.193, revise paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) *Gag*—(1) *Commercial sector*. (i) If commercial landings for gag, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial 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. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(ii) If the commercial landings for gag, as estimated by the SRD, exceed the commercial ACL specified in § 622.190(a)(7), and the combined commercial and recreational ACL specified in paragraph (c)(3) of this section, is exceeded during the same fishing year, 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 reduce the commercial ACL for that following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for gag, as estimated by the SRD, reach or are projected to reach the recreational ACL, 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 regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such notification, the bag and possession limits for gag in or from the South Atlantic EEZ are zero. The recreational ACL for gag is 90,306 lb (40,962 kg), gutted weight, for 2023; 133,075 lb (60,362 kg), gutted weight, for 2024; 176,665 lb (80,134 kg), gutted weight, for 2025; 220,030 lb (99,804 kg), gutted weight, for 2026; 264,802 lb (120,112 kg), gutted weight, for 2027; 311,378 lb (141,239 kg), gutted weight, for 2028; 358,199 lb (162,476 kg), gutted weight, for 2029; 402,533 lb (182,586 kg), gutted weight, for 2030; 442,368 lb (200,655 kg), gutted weight, for 2031; 476,945 lb (216,339 kg), gutted weight, for 2032 and subsequent years.

(ii) If recreational landings, as estimated by the SRD, exceed the recreational ACL specified in paragraph (c) (2) (i) of this section, then during the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded. NMFS will use the best scientific information available to determine if reducing the length of the recreational fishing season is necessary. When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season, the bag and possession limits for gag in or from the South Atlantic EEZ are zero.

(3) *Combined commercial and recreational ACL.* The combined commercial and recreational ACL for gag is 175,632 lb (79,665 kg), gutted weight, for 2023; 261,171 lb (118,465 kg), gutted weight, for 2024; 348,352 lb (158,010 kg), gutted weight, for 2025; 435,081 lb (192,349 kg), gutted weight, for 2026; 524,625 lb (237,965 kg), gutted weight, for 2027; 617,778 lb (280,219 kg), gutted weight, for 2028; 711,419 lb (322,694 kg), gutted weight, for 2029; 800,088 lb (362,914 kg), gutted weight, for 2030; 879,758 lb (399,052 kg), gutted weight, for 2031; 948,911 lb (430,419 kg), gutted weight, for 2032 and subsequent years.

\* \* \* \* \*