



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 231222-0315]

RIN 0648-BL98

**Snapper-Grouper Fishery of the South Atlantic Region;
Golden Crab Fishery of the South Atlantic Region; Dolphin
and Wahoo Fishery of the Atlantic; Acceptable Biological
Catch Control Rules**

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement amendments to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery, the Golden Crab Fishery, and the Dolphin and Wahoo Fishery, referenced here as the Acceptable Biological Catch (ABC) Control Rule Amendments. This final rule modifies the ABC control rules, allows the phase-in of subsequent ABC changes, allows some carry-over of an unharvested portion of the annual catch limit (ACL) to the following fishing year, and modifies the FMP framework procedures to implement carry-overs of ACLs when appropriate. NMFS also implements an administrative clarification to existing regulations for the Snapper-Grouper FMP framework procedure. The purpose of this final rule is to ensure

catch level recommendations are based on the best scientific information available, prevent overfishing while achieving optimum yield, and increase flexibility in setting catch limits.

DATES: This final rule is effective February 2, 2024.

ADDRESSES: An electronic copy of the ABC Control Rule Amendments, which includes an environmental assessment, a fishery impact statement, and a regulatory impact review, may be obtained from the NMFS Southeast Regional Office website at

<https://www.fisheries.noaa.gov/action/comprehensive-acceptable-biological-catch-abc-control-rule-amendment-revisions-abc-control>.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or email: *nikhil.mehta@noaa.gov*.

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper and golden crab fisheries are managed under the Snapper-Grouper FMP and Golden Crab FMP, respectively. The dolphin and wahoo fishery of the Atlantic is managed under the Dolphin and Wahoo FMP. These 3 FMPs were prepared by the South Atlantic Fishery Management Council (Council) and are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council has developed, and NMFS has approved, the Comprehensive Acceptable Biological Catch Control Rule

Amendment: Revisions to the Acceptable Biological Catch Control Rules and Specifications for Carry-Overs and Phase-Ins. The Council document is composed of Amendment 45 to the Snapper-Grouper FMP, Amendment 11 to the Golden Crab FMP, and Amendment 11 to the Dolphin and Wahoo FMP.

Background

The Magnuson-Stevens Act requires that NMFS and the regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield 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. The Council and NMFS manage snapper-grouper species and golden crab in Federal waters from North Carolina south to the Florida Keys. The Council and NMFS manage the dolphin and wahoo fishery in Federal waters from Maine south to the Florida Keys.

The Magnuson-Stevens Act requires the Secretary to approve, disapprove, or partially approve fishery management plan amendments and issue regulations necessary to implement them (16 U.S.C. 1854(a)). On September 11, 2023, NMFS published a notice of availability for the ABC Control Rule Amendments and requested public comment (88 FR 62309). On October 2, 2023, NMFS published a proposed rule

for the ABC Control Rule Amendments and requested public comment (88 FR 67721). NMFS approved the ABC Control Rule Amendments on December 8, 2023. The proposed rule and the ABC Control Rule Amendments detail the rationale for the actions contained in this final rule and is not all repeated here. This final rule (1) provides notice of approval of the ABC Control Rule Amendments and (2) makes minor changes to regulatory text to implement those amendments to the FMPs. A summary of the management measures described in the ABC Control Rule Amendments and implemented by this final rule is provided below.

The Council's Scientific and Statistical Committee (SSC) will use the ABC control rules described in the ABC Control Rule Amendments and implemented by this final rule to recommend future ABC levels to the Council. The ABC control rules use uncertainty and risk ranking traits to determine the acceptable risk of overfishing. The ABC control rule is the method by which the ABC for a stock is set, ideally based on an overfishing limit (OFL) from a stock assessment but at times established using more data-limited methodologies. The acceptable risk of overfishing is denoted as P-Star (P^*) and is applied through stock assessment projections to develop the SSC's ABC recommendation to the Council.

In October 2016, NMFS published a final rule to revise the guidelines for National Standard 1 (NS1) of the

Magnuson-Stevens Act (81 FR 71858, October 18, 2016). NS1 states that fishery conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. One of the objectives of the 2016 NS1 revisions was to provide additional flexibility within current statutory limits to address fishery management issues. For example, the revised NS1 guidelines allow for changes in catch limits to be phased in over time. A similar "phase-in" provision is included in the ABC Control Rule Amendments and this final rule. The revised guidelines also allow for some of the unused portion of an ACL to be carried over from a single fishing year to the next, which is also described as "carry-over" in this final rule.

The ABC Control Rule Amendments incorporate carry-over and phase-in provisions by modifying the existing ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs by clarifying the incorporation of scientific uncertainty and management risk, modifying the approach used to determine the acceptable risk of overfishing, and prioritizing the use of stock rebuilding plans for overfished stocks.

Management Measure Contained in This Final Rule

Modify Framework Procedures

The ABC Control Rule Amendments and this final rule will modify the framework procedures in the Snapper-

Grouper, Golden Crab, and Dolphin and Wahoo FMPs to allow for the future transfer, if pre-qualifying criteria are met, of an unharvested portion of a stock, total, or sector-specific ACL to the following fishing year (details are described in the *Allow Carry-Over of Unharvested Portion of ACLs* section of this final rule).

The revised FMP framework procedures implemented by this final rule will allow for the potential carry-over of an ACL in future management actions. Before NMFS can implement an ACL carry-over, other preceding steps by the Council, SSC, and NMFS must occur.

First, a future stock assessment must be conducted to determine if a species is eligible for carry-over and specify the appropriate catch level based on the criteria contained in the applicable ABC control rule. Then, the SSC would determine and recommend an ABC to the Council and the Council would develop an FMP amendment or framework action for the species that includes the option of ACL carry-over. If the related rulemaking was implemented by NMFS, then that species would be eligible for future carry-over through a subsequent action under the abbreviated framework procedures described in this final rule. To support potential carry-over justification, a Term of Reference will be added to each future stock assessment to project the maximum amount of landings beyond the ABC that could be carried over in 1 year while not resulting in overfishing

or the stock becoming overfished within the projection period.

When the Council develops a subsequent fishery management action in response to a stock assessment to specify or revise an ABC and ACL for a stock or sector, the Council will determine whether carry-over will be authorized if annual conditions cause a stock ACL or sector ACL to qualify for carry-over. In doing so, the Council will consider the potential need for, and benefits of, carry-over for a stock that could become eligible according to criteria specified in the ABC control rule. The Council will also consider the duration of time when the specified ABC and ACL are effective. An FMP amendment or framework action that specifies carry-over for a stock or sector will include analysis of the relevant biological, economic, and social information necessary to meet the criteria and guidance of the ABC control rule.

Following the conclusion of each fishing year, Council staff will notify the Council if any stocks and sectors for which carry-over is approved qualify based on the previous year's landings, including preliminary landings estimates from the previous year if those landings data are not yet finalized. If a stock or sector qualifies for carry-over according to specifications of the ABC recommended by the SSC and annual landings meet criteria specified in the ABC control rule, NMFS will implement carry-over of eligible

landings from the previous year via a temporary rule published in the **Federal Register** through the existing FMP framework procedure and rulemaking process.

The ACL carry-over procedure for eligible fish stocks or fishery sectors generally will not require additional advisory panel (AP) input or SSC recommendation, because input relevant to an ABC being approved with potential for ACL carry-over will be part of the prior development process for the FMP amendment or framework in which the ABC and ACL for a stock or sector are already specified. Application of the carry-over procedure is expected to be routine and formulaic.

The NMFS Regional Administrator (RA) will review any Council recommendations for carry-over and supporting information. If the RA concurs that the Council's recommendations are consistent with the objectives of the applicable FMP, the Magnuson-Stevens Act, and all other applicable law, the RA will be authorized to implement the Council's proposed action through publication of appropriate notification in the **Federal Register**.

If the Council chooses to deviate from the criteria and guidance of the ABC control rules, this abbreviated process will not apply.

Further details of the process can be found in section 2.4.1 and Appendix J of the ABC Control Rule Amendments. An example of the carry-over can be found in Appendix H of the

ABC Control Rule Amendments.

The new process will allow ACL carry-overs to occur in a more timely manner than that of an FMP amendment or framework action. A faster process is necessary due to the year-to-year nature of carry-overs. Under-harvest of an ACL may only be carried over in the immediate next year.

Therefore, defining a stock's eligibility and the amount of ACL being carried over must occur quickly enough such that the fishery has time to harvest the carried over amount within the fishing year following a year of under-harvest. The process also provides the Council discretion in determining whether carry-over should be applied to a potentially eligible stock when setting the ABC and ACL.

It is important to note that this final rule will not change current ABCs or ACLs for any species managed under the FMPs affected by the ABC Control Rule Amendments. This rule makes no other substantive changes to the current framework procedures in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs.

Management Measures in the ABC Control Rule Amendments Not Codified by This Final Rule

In addition to the regulatory language within this final rule, the ABC Control Rule Amendments contain more specific provisions that modify the ABC control rules, allow the phasing in of ABC changes, and allow carry-over of unharvested portion of the ACL, for Snapper-Grouper,

Golden Crab, and Dolphin and Wahoo FMPs.

Modify the ABC Control Rules

The ABC Control Rule Amendments will modify the ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs by categorizing stocks based on the available information, scientific uncertainty evaluation, and incorporation of the Council's risk tolerance policy through an accepted P^* . The Council will specify the P^* based on relative stock biomass and a stock risk rating. When possible, the SSC will determine the OFL and characterize its uncertainty based primarily on the stock assessment and secondarily on the SSC's expert opinion. The SSC will then use the OFL and its uncertainty to derive and recommend the ABC to the Council, based on the risk tolerance specified by the Council. The detailed step-by-step procedure detailing how the ABC is derived for assessed stocks can be found in section 2.1.1 of the ABC Control Rule Amendments. ABC for unassessed stocks will be recommended by the SSC based on applicable data-limited methods. Unassessed stocks will be assigned the moderate biomass level unless there is a recommendation from the SSC that justifies assignment of a different level. For overfished stocks, the Council will specify a stock rebuilding plan, considering recommendations from the SSC and the AP of the respective FMP. The ABC enacted while the rebuilding plan is in effect will be based on

recommendations from the Council's SSC. The probability of success for rebuilding plans (1 minus P^*) will be at least 50 percent. Control rule categories for assessments are described in detail in Table 2.1.1.2 of the ABC Control Rule Amendments.

In summary, four categories in the revised ABC control rules will facilitate an ABC determination based on scientific uncertainty and SSC guidance. The Council, with advice from the SSC and AP, will evaluate management risk for each stock through a stock risk rating. Stock risk ratings include information already used in the productivity and susceptibility analysis (PSA), but also incorporate socio-economic (for example, potential for discard losses, annual commercial value, recreational desirability, *etc.*) and environmental attributes (for example, climate change) (see Appendix E of the ABC Control Rule Amendments for more details). These recommendations will be revisited when new information becomes available (for example, a new stock assessment). The Council will then specify the risk rating as low, medium, or high risk of overfishing. A higher risk of overfishing will indicate that risk tolerance (*i.e.*, the accepted probability of overfishing) should be lower. These stock risk ratings, along with relative biomass levels, will be used to determine the Council's default risk tolerance for each stock. Default P^* values based on relative biomass and

stock risk rating are shown in Table 2.1.1.3 of the ABC Control Rule Amendments. As an example, a stock with high biomass and medium stock risk rating will have a P^* of 45 percent. This will be lower than the OFL, in accordance with Magnuson-Stevens Act. The SSC can recommend the Council reconsider the stock risk rating. This could happen, for example, with the emergence of new scientific studies or new information discovered through a stock assessment.

The modified ABC control rules will also allow the Council to deviate, to a greater or lesser amount, from the default accepted probability of overfishing by up to 10 percent for an individual stock, based on its expert judgment, new information, or recommendations by the SSC or other expert advisors. Accepted probability of overfishing may not exceed 50 percent. Using a 50 percent probability of overfishing implies negligible scientific uncertainty and sets OFL equal to ABC. At P^* equals 0.50, removals above ABC caused by deviations in biological parameters (for example, natural mortality (M), recruitment) could cause an overfishing determination and delay rebuilding plans. Therefore, adjusting P^* above the value recommended by the SSC will be infrequent and well justified based on new scientific understanding and the Council's risk tolerance. Additionally, when requested by the Council, the SSC will recommend the ABC for up to 5 years as both a

constant value across years and as individual annual values for the same period of years. These options provide more flexibility to both the Council and SSC in the ABC determination.

The ABC Control Rule Amendments does not change the current ABC levels for any species managed under the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. Modifying the ABC control rules as specified will give the SSC the ability to recommend adjusting or deriving uncertainty of future assessment results (ultimately impacting projections of future catch) if they determine uncertainty is not adequately estimated through information used in the assessment. Evaluation of risk tolerance will also be improved by considering factors beyond the current PSA and expanding the range of reference points used to describe and incorporate relative biomass. For unassessed stocks, the modifications will expand the number of methods that could be considered for estimating OFL and ABC. The addition of economic factors in the ABC control rules will allow the Council to better consider the long-term economic implications when examining management risk, which could lead to better economic outcomes and increase net economic benefits in a fishery for a given species. The inclusion of social factors in the ABC control rules will allow the Council to directly consider the importance of a given species to fishing communities and businesses when

determining risk tolerance and will have long-term social benefits in the form of a more appropriate ABC.

Allow the Phase-In of ABC Changes

Currently, the phase-in of ABC changes is not allowed in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. The ABC Control Rule Amendments will establish criteria specifying when the phase-in of ABC changes will be allowed and specify the approach for the phase-in of ABC changes.

The ABC Control Rule Amendments will allow the phase-in of increases to ABC as specified by the Council, with advice from the SSC and AP. Increases to ABC (assuming the presence of comparable data between assessments) are generally indicative of an increase in relative biomass and improving stock condition. The revised approach in the ABC Control Rule Amendments allows greater consideration of ecological, social, and economic effects of an increased ABC, and increased flexibility in how that change can be implemented. Because ABCs during an increasing phase-in will be less than those initially recommended by the SSC, the phase-in period is not limited (*i.e.*, it can exceed the maximum timeframe specified for the phase-in decreases). The Council may specify ABC to be less than the SSC's recommended ABC, but it may not exceed the SSC's recommendation. Phasing in an ABC increase will set ABC below the SSC's recommendation. If the phase-in is included

in projections used to develop the SSC's ABC recommendation, there also may be an increase to the recommended long-term ABC (*i.e.*, the ABC that persists after the phase-in is complete). Thus, phasing in increases to ABC over a longer time period could result in a greater increase to long-term ABC, and phasing in increases over a shorter period could result in a smaller increase to long-term ABC.

The ABC Control Rule Amendments will allow the phase-in of decreases to ABC when a new ABC is less than 80 percent of the existing ABC, and over a period not to exceed 3 years, which is the maximum phase-in period allowed by the NS1 guidelines. The criterion requiring a minimum threshold of difference between the current and new ABCs to be 20 percent defines a significant enough change to merit phasing in the change and is more flexible than other minimum threshold levels considered in the ABC Control Rule Amendments. The Council will consider whether to apply a phase-in on a case-by-case basis when specifying a stock ABC through an FMP amendment after a new ABC has been recommended by the SSC. A longer phase-in period provides more flexibility and allows a more gradual change from the existing ABC to the new ABC.

The phase-in of the ABC is an option the Council can consider to address the social and economic effects from management changes. Adopting this flexibility does not

require the Council to phase in all ABC changes, nor does adopting one approach for one stock prevent the Council from choosing a more restrictive schedule of ABC phase-ins (less than 3 years) for a different stock. When considering whether to phase in an ABC change, the Council will compare the risk to the stock against the expected social and economic benefits of the alternative ABC. Management strategy evaluations may be used to quantify such trade-offs. The Council will be able to consult with its scientific and fishery advisors to help develop a rationale and implementation plan for phase-ins. The phase-in of ABC changes is consistent with the NMFS 2020 guidance and incorporates flexibility as per the revised NS1 guidelines into the FMPs for Snapper-Grouper, Golden Crab, and Dolphin and Wahoo.

Allow Carry-Over of Unharvested Portion of ACLs

Currently, carry-over of unharvested portion of ACLs is not allowed in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. The ABC Control Rule Amendments will establish criteria specifying circumstances when an unharvested portion of the originally specified sector ACL can be carried over from a single fishing year to increase the available harvest in the immediate next year. Carry-overs may not be delayed, and only amounts from the originally specified sector ACL may be carried over. Carry-over of the unharvested portion of a sector ACL will be

allowed if:

- 1) The stock status is known;
- 2) The stock is neither overfished nor experiencing overfishing;
- 3) An overfishing limit for the stock is defined;
- 4) ABC decreases are not being phased-in;
- 5) There are measures that restrict annual landings to the ACL; and
- 6) The post-season AM that reduces the ACL in the following year according to any landings overages is in place for that stock and sector.

The ABC Control Rule Amendments also specify limits on how much of the unharvested portion of a sector ACL may be carried over from a single fishing year to increase the sector ACL in the next year. The ABC and the total ACL may be temporarily increased to allow this carry-over. The temporary ABC may not exceed the OFL. The revised total ACL may not exceed the temporary ABC or the total ACL plus the carried over amount, whichever is less. If a stock experiences overfishing, either as the result of a stock assessment or as determined by NMFS' annual evaluation of landings, that stock will no longer qualify for carry-over. Additional conditions to annually qualify for carry-over can be added on a stock-by-stock basis. For example, to prevent overharvest of other species commonly caught with the target species (referred to as co-caught species)

during years with a carried-over ACL, a future FMP amendment specifying an ABC and ACL with carry-over could additionally require that the previous year's harvest for co-caught species also be less than or equal to the ACL for carry-over to occur. When applicable, the Council will specify whether fisheries that have split seasons or sub-sector allocations (such as gear allocations) should be eligible for inter-annual carry-over on a case-by-case basis.

Carry-overs will also be sector-specific. The Snapper-Grouper and Dolphin and Wahoo FMPs have both commercial and recreational sectors whereas the Golden Crab FMP includes only a commercial sector. Thus, if only one sector is carrying over unused ACL, the carried-over amount will be allocated only to that sector, subject to limitations defined above. If more than one sector is carrying over unused ACL in the same year, each sector carry-over amount will be completely allocated to the sector from which it was derived, unless the sum of all carry-over amounts plus the specified total ACL is greater than the OFL. In this case, the difference between the temporary revised ABC and the specified total ACL will be allocated using sector allocation percentages specified by the FMP. A revised sector ACL and revised ABC will remain in place for a single fishing year. Following a year that included carry-over, evaluations of carry-over amounts for future years

will be based on the ABC and sector ACLs specified by the FMP rather than on the temporarily revised values.

The carry-over criteria and conditions contained in the ABC Control Rule Amendments are consistent with the NMFS 2020 guidance. The carry-over criteria and conditions will also make carry-over applicable to only a few stocks managed by the Council under the Snapper-Grouper FMP at the time this action was developed. However, allowing carry-over does fulfill Federal guidance on carry-overs that requires allowance of this management tool to be included in an FMP, and provide additional management flexibility to better enable harvest of the optimum yield from a healthy stock.

Changes to Codified Text Not in the ABC Control Rule

Amendments

In this final rule, NMFS clarifies existing regulations in 50 CFR 622.194(a) about the scope of allowable management changes using the framework procedure in the Snapper-Grouper FMP. Specifically, NMFS clarifies the allowable changes via framework to essential fish habitat (EFH), EFH habitat areas of particular concern (HAPCs), and coral HAPCs.

In 2000, NMFS implemented two final rules that updated the Snapper-Grouper FMP framework procedures to include EFH, EFH HAPCs, and coral HAPCs that enabled more timely implementation of subsequent management measures than is

possible via an FMP amendment (65 FR 37292, June 14, 2000; 65 FR 51248, August 23, 2000). Since NMFS implemented those final rules, NMFS has made no other changes to the framework procedure for EFH, EFH HAPCs, and coral HAPCs. Those regulations implemented Council recommendations to allow for the establishment of or modifications to EFH HAPCs or coral HAPCs via framework procedure. However, the rules are overly general and reference both "definitions of EFH" and "EFH," which could be interpreted as duplicative.

In this final rule, NMFS clarifies the regulations by more clearly describing the existing parameters for EFH, EFH HAPCs, and coral HAPCs that can be changed via framework action. Accordingly, NMFS revises § 622.194(a) without changing the Council's original management recommendations.

Comments and Responses

NMFS received four comments from individuals during the public comment period on the notice of availability and proposed rule for the ABC Control Rule Amendments. NMFS acknowledges the comment in favor of the actions in the ABC Control Rule Amendments and proposed rule and agrees that the actions will aid in ensuring sustainable fish populations. NMFS received two comments regarding the development of offshore wind infrastructure that were outside the scope of the ABC Control Rule Amendments and the proposed rule and are not responded to in this final

rule. One commenter wanted more clarification and made comments for the actions contained in the ABC Control Rule Amendments and the proposed rule, and those comments are summarized below, along with NMFS' responses. The same commenter also expressed an opinion as to how to improve the organization of the discussion presented in **Federal Register**, to which no response is provided. No changes were made to this final rule as a result of public comment.

Comment 1: Why do changes need to be made to the current framework procedures for the three FMPs regarding biomass levels, age-structure analyses, maximum sustainable yield, etc.?

Response: This final rule will allow for the carry-over of future ACLs and in a more timely manner and is the only substantive change to the framework procedures for the three FMPs within the scope of this rule. This final rule also clarifies current regulations in 50 CFR 622.194(a) about the scope of allowable management changes using the framework procedure in the Snapper-Grouper FMP as described earlier. This final rule will not change any other regulatory provisions currently included in the framework procedures for the Snapper-Grouper, Golden Crab, or Dolphin and Wahoo FMPs.

Comment 2: Biological, social, and economic data from all sectors and the analyses are necessary to help guide changes to an ABC and ACL. It would be wise if the Council

completed these analyses each year to track the changes in fish, which may be applied to future conservation projects as needed.

Response: NMFS agrees. NMFS and the Council already have an extensive process in place to gather biological, social, and economic data from all sectors, and analyze the effects on any action to change an ABC or ACL. This is done via the amendments to an existing FMP, in consultation with the Council's AP, SSC, NMFS' Southeast Fisheries Science Center, and the public through scoping meetings, public hearings, and public comment opportunities at Council meetings. NMFS reviews and approves the FMP amendments and implements necessary regulations only after ensuring the actions are consistent with the Magnuson-Stevens Act and its National Standards, and all other applicable laws. NMFS and the Council track landings weekly for the commercial sector and recreational charter vessels and headboats, and every 2 months for the private recreational component, and conduct analyses as necessary. Fishery performance reports are published by the Council after getting extensive feedback from its APs for each FMP, investigating life-history parameters, and landings reports from fishery dependent and independent sources. NMFS and the Council evaluate trends and consider possible changes to the ABC and ACL through amendments to an FMP.

Comment 3: What are the qualifications for including

unassessed species in levels 2 through 5? Additionally, would it be possible for the five-star restoration system to be implemented here?

Response: The current ABC control rules contain five levels of conditions, decisions, and processes, involved to set an ABC (see Table 2.1.1.1 in the Comprehensive ABC Control Rule Amendments). Level 1 is for species that have stock assessments (assessed species). Levels 2 through 5 apply to species without a stock assessment (unassessed species), with each level corresponding to a specific data-limited method used to calculate the ABC. Typically, the SSC proceeded sequentially through the levels adopting the first level that was adequate for deriving an ABC for the unassessed stock at issue. This final rule will implement revised ABC control rules by removing levels 1 through 5, and establishing four categories to set an ABC (see Table 2.1.1.2 and Section 2.1.1 in the Comprehensive ABC Control Rule Amendments for more details).

NMFS is unclear what the commenter meant by "the five-star restoration system" and, therefore, cannot provide a response.

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 the ABC Control Rule Amendments, the Snapper-Grouper, Golden Crab, and Dolphin

and Wahoo FMPs, 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.

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being considered, and the purpose of this final rule is contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. The objectives of this final rule are to ensure catch level recommendations are based on the best scientific information available, prevent overfishing while achieving optimum yield, and include flexibility in setting catch limits as allowed by the Magnuson-Stevens Act and in accordance with NMFS' guidance on carry-over and phase-in provisions.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments from SBA's Office of Advocacy or the public regarding the certification in the proposed rule. No

changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, South Atlantic, Atlantic.

Dated: December 28, 2023.

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 § 622.194, revise paragraph (a) to read as follows:

§ 622.194 Adjustment of management measures.

* * * * *

(a) Biomass levels, age-structured analyses, target dates for rebuilding overfished species, maximum sustainable yield (or its proxy), optimum yield, acceptable biological catch, total allowable catch, quotas (including a quota of zero), annual catch limits, annual catch targets, accountability measures, maximum fishing mortality threshold, minimum stock size threshold, trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of essential fish habitat (EFH), establishment of or modifications to EFH habitat areas of particular concern (HAPCs) or coral HAPCs, restrictions on gear and fishing activities applicable in EFH and EFH HAPCs, establish or modify spawning SMZs, and allow transfer of the unharvested total or sector ACL to the following fishing year.

* * * * *

3. In § 622.252, revise paragraph (a) to read as follows:

§ 622.252 Adjustment of management measures.

* * * * *

(a) Biomass levels, age-structured analyses, maximum sustainable yield, acceptable biological catch, total allowable catch, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area

closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the Regional Administrator to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat (EFH), EFH habitat areas of particular concern (HAPCs), or coral HAPCs, and allow transfer of the unharvested ACL to the following fishing year.

* * * * *

4. In § 622.281, revise paragraph (a) to read as follows:

§ 622.281 Adjustment of management measures.

* * * * *

(a) Biomass levels, age-structured analyses, maximum sustainable yield, optimum yield, overfishing limit, total allowable catch, acceptable biological catch (ABC), ABC control rule, annual catch limits, annual catch targets, accountability measures, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the Regional Administrator to close a fishery when a quota is reached or is projected to

be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat (EFH), EFH habitat areas of particular concern (HAPCs), or coral HAPCs, and allow transfer of the unharvested total or sector ACL to the following fishing year.

* * * * *

[FR Doc. 2023-28906 Filed: 1/2/2024 8:45 am; Publication Date: 1/3/2024]