

- Verify that the name and state issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel on which the logbook is used is recorded in the charter logbook.

NMFS did not intend for the prohibition at § 300.66(v) to conflict with the collection of charter logbook data. It was meant to promote involvement by the CHP holder with the charter halibut fishing operation and the collection of accurate logbook data. The requirement to identify the vessel in the logbook was intended to be consistent with an existing ADF&G requirement that a charter vessel operator have onboard the vessel a charter logbook. Therefore, this interpretation clarifies that a charter vessel operator must record in the charter logbook issued for the vessel the person named on the CHP(s) and the CHP number(s) used for each charter vessel fishing trip.

#### Classification

The Assistant Administrator for Fisheries, NOAA has determined that this interpretation is consistent with the Halibut Act and other applicable law.

This action is administrative in nature and is exempt from the requirement to prepare an environmental assessment in accordance with NAO 216–6 because this interpretive rule will have no effect on the environment. As stated earlier in the preamble, this action ensures that the issuance of charter logbooks remains the same as before the implementation of the limited access program for guided sport charter vessels and clarifies confusion about who could be issued a charter logbook.

This interpretive rule has been determined to be not significant for purposes of Executive Order 12866.

The notice and comment requirements and the 30-day delay in the effective date requirements of the Administrative Procedure Act do not apply to this interpretive rule as provided in 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(d)(2).

This interpretive rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

**Authority:** 16 U.S.C. 773 *et seq.*

Dated: June 9, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 622

[Docket No. 110422261–1309–02]

RIN 0648–BA70

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Snapper-Grouper Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved actions identified in a regulatory amendment (Regulatory Amendment 9) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) prepared by the South Atlantic Fishery Management Council (Council). This final rule reduces the recreational bag limit for black sea bass, increases the commercial trip limit for greater amberjack, and establishes commercial trip limits for vermilion snapper and gag. This rule also implements a minor revision to the mailing address for the NMFS Southeast Regional Administrator (RA), revises commercial trip limit codified text for greater amberjack to be consistent with respect to the commercial quota, and corrects two closed area coordinates published in a previous rulemaking. The intended effect of this final rule is to address derby-style fisheries for black sea bass, gag, and vermilion snapper while reducing the rate of harvest to extend the fishing seasons of these three species, to achieve optimum yield (OY) for greater amberjack, and to implement technical corrections to the regulations.

**DATES:** This rule is effective July 15, 2011, except for the amendment to § 622.39, which is effective June 22, 2011.

**ADDRESSES:** Electronic copies of the regulatory amendment, which includes an environmental assessment, a regulatory impact review, and a regulatory flexibility act analysis may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, 727–824–5305, e-mail: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

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

On April 29, 2011, NMFS published a proposed rule for Regulatory Amendment 9 and requested public comment (76 FR 23930). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This final rule sets the black sea bass recreational bag limit at 5-fish per person per day. This bag limit is projected to slow the rate of recreational harvest to allow for a longer recreational fishing season. The effective date for the implementation of the bag limit reduction is June 22, 2011, which is earlier than the effective date for the other actions within this final rule. This earlier date of implementation will allow for adequate notice to recreational fishers to plan their fishing activities without delaying the implementation of the bag limit reduction, and will minimize unnecessary economic impacts to snapper-grouper fisherman by allowing for a longer fishing season and more fishing trips.

To increase the probability of the greater amberjack commercial sector achieving OY, this final rule increases the commercial trip limit to 1,200 lb (544 kg). This increased trip limit is expected to increase harvest opportunities within the commercial sector.

This final rule implements commercial trip limits for vermilion snapper and gag. These commercial trip limits are intended to slow the rate of harvest, extend commercial harvest opportunities during the fishing year, and reduce the risk of commercial quota closures early in the fishing year.

This final rule also revises an outdated mailing address for the NMFS Southeast Regional Administrator (RA) and corrects two closed area coordinates published in the final rule implementing Comprehensive Ecosystem-Based Amendment 1 in the South Atlantic (CE–BA1) (75 FR 35330, June 22, 2010). The final rule for CE–BA1 contained one latitudinal and one longitudinal coordinate that were incorrectly identified. These additional measures are unrelated to the actions contained in Regulatory Amendment 9.

### Partial Approval of Regulatory Amendment 9

Under the Magnuson-Stevens Act, the Secretary of Commerce (Secretary) may approve, disapprove or partially approve an amendment upon submission of an amendment by the Council. The Secretary shall disapprove or partially approve an amendment if the Secretary finds that the amendment, or parts of the amendment, are inconsistent with the requirements of applicable law.

NMFS disapproved the proposed management measure that would have implemented split season quotas for commercial black sea bass because it finds the administrative record for that measure insufficient under the Administrative Procedure Act because NMFS received additional information that impacted its decision to implement a split season quota. The Council had proposed splitting the commercial quota into two 6-month seasons; from June–November the quota would be 128,547 lb (58,308 kg), and from December–May the quota would be 180,453 lb (81,852 kg), and any unharvested quota from the June–November season would be added to the quota for the following December–May season. During the comment period on the proposed rule, NMFS received several comments opposed to the split season quota. Two commenters were concerned about the proposed measure's possible negative impacts on North Atlantic right whales. North Atlantic right whales are listed as endangered under the Endangered Species Act, and the commenters indicated that right whales may be at particular risk to entanglement with vertical lines in the South Atlantic exclusive economic zone (EEZ). Splitting the commercial black sea bass quota to specifically allow for fishing in December through May would result in the presence of numerous vertical black sea bass pot buoy lines within the North Atlantic right whale winter migration route along the Southeast coast. The commenter additionally cited recent information from an April 2011 Atlantic Large Whale Take Reduction Team (ALWTRT) meeting that validated there is a risk to North Atlantic right whales from vertical black sea bass buoy gear in the South Atlantic EEZ. Another commenter indicated that implementation of a split season would increase the derby nature of the black sea bass commercial sector.

The information in these comments led NMFS to reconsider information regarding marine mammal entanglements in black sea bass pot gear. Recent scientific information

suggests North Atlantic right whales are potentially more vulnerable to entanglements in South Atlantic fisheries gear than previously thought. New data suggest the coastal waters of South Carolina, North Carolina, and possibly Virginia may be used as birthing and calving areas for right whales, and that some right whales make multiple intra-season trips between the U.S. Northeast and Southeast regions. Saving the largest portion of the black sea bass commercial quota for the December through May time period would reintroduce vertical black sea bass pot buoy lines during the time of the year when the right whales are transiting and residing off the South Atlantic coast, and would undermine the ongoing efforts of the ALWTRT to reduce the entanglement risk for large whales.

Thus, while the administrative record for Regulatory Amendment 9 now contains the information discussed above, it is clear that the Council did not have the opportunity to consider this information prior to making their decision to approve the split season, thus overlooking an important aspect of the implications of a split season implementation. Therefore, after considering public comments opposed to the split season for socio-economic reasons, concerns undermining the efforts of the ALWTRT to reduce the risk of entanglement to large whales, and new information that has become available from the ALWTRT, NMFS has disapproved the commercial black sea bass split season action within Regulatory Amendment 9, and is not implementing that provision as indicated in the proposed rule.

As a result of the partial approval of Regulatory Amendment 9, the quota for the black sea bass commercial sector remains at 309,000 lb (140,160 kg) for the entire fishing year of June through May.

### Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and Regulatory Amendment 9, and NMFS's respective responses. During the comment period, NMFS received a total of 22 comments from individuals, state and Federal agencies, and fishing associations. Of the 22 comments, two comments expressed general support, and eight individual comments opposed one or more actions contained in Regulatory Amendment 9. Two environmental organizations both provided a comment that was similar in its intent opposing one of the actions in Regulatory Amendment 9. NMFS received nine

comments that did not support or oppose Regulatory Amendment 9, but suggested alternative means for managing components of the snapper-grouper fishery. One state and one Federal agency submitted comments on Regulatory Amendment 9. Specific comments related to the actions contained in the amendment and the rule as well as NMFS' respective responses, are summarized below.

*Comment 1:* Several commenters stated the data used to determine that black sea bass are overfished and undergoing overfishing are flawed because they are seeing numerous black sea bass while on fishing trips. One commenter stated the use of what is considered "the best science available" is a distorted interpretation of the true intent of the Magnuson-Stevens Act, and one commenter stated Regulatory Amendment 9 is an example of the Federal Government intruding into what should be considered a state issue.

*Response:* Black sea bass were most recently assessed through the Southeast, Data, Assessment, and Review process (SEDAR), the findings of which can be found in the 2006 SEDAR 2 update, which determined the black sea bass stock was overfished and undergoing overfishing.

SEDAR is a cooperative process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR is managed by the Caribbean, Gulf of Mexico, and South Atlantic Regional Fishery Management Councils (Councils) in coordination with NMFS and the Atlantic and Gulf States Marine Fisheries Commissions. SEDAR seeks improvements in the scientific quality of stock assessments and greater relevance of information available to address existing and emerging fishery management issues. SEDAR emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. SEDAR is organized around three workshops. The first is a data workshop where datasets are documented, analyzed, and reviewed and data for conducting assessment analyses are compiled. The second is an assessment workshop where quantitative population analyses are developed and refined and population parameters are estimated. The third is a review workshop where a panel of independent experts reviews the data and assessment, and recommends the most appropriate values of critical population and

management quantities. All SEDAR workshops are open to the public. Public testimony is accepted in accordance with each Council's standard operating procedures.

The findings and conclusions of each SEDAR workshop are documented in a series of reports, which are ultimately reviewed and discussed by the appropriate Council and its Scientific and Statistical Committee.

Recreational fishing data are collected by the Marine Recreational Fishing Statistics Survey (MRFSS), which conducts telephone surveys of coastal households and for-hire businesses, as well as in-person access-point angler intercept surveys. These surveys are used to collect information on recreational fishery participation, fishing effort and catch, in addition to the demographic, social, and economic characteristics of the participants. NMFS recognizes that within MRFSS data there may be uncertainty for infrequently encountered species and is working with recreational and for-hire fishermen to address this issue through the Marine Recreational Information Program (MRIP).

A new SEDAR stock assessment (SEDAR 25) is currently underway for black sea bass. This assessment is scheduled to be completed in October 2011. If results of SEDAR 25 indicate an increased level of commercial and recreational harvest could be allowed without negatively impacting rebuilding efforts, the Council may consider addressing black sea bass harvest limits in a future amendment.

National Standard 2 of the Magnuson-Stevens Act states: "Conservation and management measures shall be based upon the best scientific information available." NMFS has not modified the intended interpretation of the National Standard 2 language. Black sea bass was assessed through the SEDAR process and the findings of the most recent SEDAR for black sea bass can be found in the SEDAR 2 2006 update.

Additionally, vermilion snapper was assessed in SEDAR 17 (2008); gag was assessed in SEDAR 10 (2006); and greater amberjack was assessed in SEDAR 15 (2008). All SEDAR stock assessments can be found at the Internet site: <http://www.sefsc.noaa.gov/sedar/>. Though these stock assessments form the basis for many fishery management decisions, the actions in Regulatory Amendment 9 were largely supported by recent landings data derived from vessel logbooks, headboat logbooks, and MRFSS/MRIP data in order to determine which trip limits or bag limits would be most effective in extending fishing opportunities for the subject species.

Landings data are provided by the NMFS Southeast Fisheries Science Center, which also certified the data used in Regulatory Amendment 9 as the best scientific information available in a memorandum dated May 2, 2011.

The Federal Government has jurisdiction over fisheries prosecuted in Federal waters, *i.e.*, the area 3 miles (4.8 km) to 200 miles (322 km) offshore in the South Atlantic. The snapper-grouper fishery, including black sea bass, gag, vermilion snapper, and greater amberjack, is included in the list of Federally-managed fisheries. Therefore, when modifications to Federal fisheries regulations are needed, NMFS, the government agency responsible for managing Federal fisheries, is the appropriate entity to carry out those changes.

*Comment 2:* One commenter opposed splitting the black sea bass commercial quota into two 6-month seasons because the December–May portion of the fishing year is likely to increase the risk of entanglement to endangered North Atlantic right whales that reside in the waters off the South Atlantic coast during the winter months. They additionally noted that a 2008 survey of black sea bass fishermen indicated black sea bass pots are deployed in closer proximity to each other during the winter months than during the summer months, which could increase the threat of entanglement in fishing gear to right whales. The commenter also lists ship strikes and entanglement in vertical lines as the top two factors responsible for preventing rebuilding of the North Atlantic right whale population. Furthermore, the ALWTRT convened a meeting in April 2011, where the issue of reducing risk to right whales from vertical lines in the South Atlantic was a significant focus of the meeting. The ALWTRT has determined that NMFS should reduce the risk of right whale entanglement associated with vertical line gear (which includes black sea bass pot buoy gear).

*Response:* NMFS has chosen not to approve the action to split the black sea bass commercial quota into two 6-month seasons. New information on the possible impacts of black sea bass pot fishing during the December through May split season was received by NMFS, after the Council had submitted Regulatory Amendment 9 for Secretarial approval, and NMFS has determined it is not appropriate to approve the split season commercial quota action at this time as previously explained. However, disapproval of the split season commercial quota in Regulatory Amendment 9 does not preclude the Council from considering the action in

a future amendment, after a thorough analysis of all relevant data has been completed.

Splitting the commercial black sea bass quota to specifically allow for fishing in December through May would result in the presence of numerous vertical black sea bass pot buoy lines within the North Atlantic right whale winter migration route along the Southeast coast. The April 2011 ALWTRT meeting validated there is a risk to North Atlantic right whales from vertical black sea bass buoy gear in the South Atlantic EEZ.

Recent scientific information suggests North Atlantic right whales are potentially more vulnerable to entanglements in South Atlantic fisheries gear than previously thought. New data suggest the coastal waters of South Carolina, North Carolina, and possibly Virginia may be used as birthing and calving areas for right whales, and that some right whales make multiple intra-season trips between the U.S. Northeast and Southeast regions. Saving the largest portion of the black sea bass commercial quota for the December through May time period would reintroduce vertical black sea bass pot buoy lines during the time of the year when the right whales are transiting and residing off the South Atlantic coast, and would undermine the ongoing efforts of the ALWTRT to reduce the entanglement risk for large whales.

*Comment 3:* One commenter opposed splitting the commercial quota for black sea bass into two seasons without first implementing a catch share program or trip limits to prevent derby conditions in each of the two split seasons. Another commenter opposed splitting the black sea bass commercial quota because it would allow commercial fishing to occur while the black sea bass recreational sector is potentially closed.

*Response:* The Council considered commercial trip limits as part of the range of alternatives for addressing the derby nature of the black sea bass component of the snapper-grouper fishery. The trip limits analyzed in Regulatory Amendment 9 ranged from 340 lb (154.2 kg) gutted weight to 2,500 lb (1,134 kg) gutted weight. However, Amendment 18A to the FMP, currently under development by the Council and NMFS, includes a proposed action that would require fishermen to return pots to shore at the conclusion of a commercial fishing trip. If this action is implemented through subsequent rulemaking, there is a possibility that the trip limit could unintentionally be exceeded. As black sea bass pot fishermen go through the process of

retrieving the pots, they may find the trip limit has been met when only a portion of the pots they deployed have been retrieved. Therefore, the catch contained in each pot retrieved after the trip limit is met must be discarded, causing unnecessary biological and economic harm. For this reason, the Council did not select the alternative to implement a commercial trip limit for black sea bass in Regulatory Amendment 9.

Actions are under development by the Council and NMFS that could reduce the derby nature of the black sea bass commercial sector. In addition to the requirement of returning pots to shore at the conclusion of a commercial fishing trip, Amendment 18A to the FMP includes a proposed action to limit the number of black sea bass pots that can be fished. Additionally, a catch share program for several snapper-grouper species, including black sea bass, was under development in Amendment 21 to the FMP. However, at its March 2011 meeting, the Council reviewed public comments and testimony from scoping meetings held in January and February of 2011, and determined there was not enough public support to continue development of a catch share program for species in the snapper-grouper fishery. It is important to note, the Council's decision not to move forward with snapper-grouper catch shares at this time does not preclude the development of a catch share program in the future.

If the recreational sector were to meet the recreational annual catch limit (ACL) before the commercial sector reached the commercial quota during either of the two split seasons, there is a possibility that commercial fishing may occur while the recreational sector is closed. However, the previously established commercial and recreational ACLs would not change for either sector and, therefore, total allowable harvest would remain the same regardless of how the commercial season is configured or how quickly the recreational sector may harvest its ACL in a given fishing year.

*Comment 4:* Several commenters supported implementing split season commercial quotas for black sea bass and one commenter states the split season commercial quota for black sea bass would help rebuild the stock.

*Response:* NMFS agrees that split season quotas for the black sea bass component of the snapper-grouper fishery may benefit the fishing community by creating two distinct opportunities to fish for black sea bass rather than one season that has recently been relatively short. However, while

split seasons may provide an opportunity for commercial harvest during some additional months of the year, the commercial quota has not increased. Therefore, if fishing effort remains consistent, the split season commercial quotas would be expected to be met early in each split season, which would result in periods of time where there would be no fishing for black sea bass with pots. These periods of no fishing effort would benefit the stock as would any early closure during the December–May season, which is when black sea bass are in spawning condition. However, for the reasons previously stated, NMFS is not approving the action to split the commercial black sea bass quota into two 6-month seasons.

*Comment 5:* Three commenters supported a black sea bass recreational bag limit reduction from 15-fish per person per day to 10-fish per person per day bag limit rather than 5-fish per person per day. One commenter supported reducing the black sea bass bag limit by the amount needed to avoid any recreational closure during the fishing year.

*Response:* Reducing the recreational bag limit to 10-fish per person per day would achieve a harvest reduction of between 2–4 percent, which is not enough to keep the recreational sector open significantly longer than the 2010–2011 recreational black sea bass season which closed in February 2011. A bag limit of 5-fish per person per day is expected to provide a reduction in recreational harvest of about 15.5 percent based on 2010 data, as well as extending the recreational fishing season through March. The Council had the option of choosing an even lower bag limit, in order to keep the recreational sector open longer than that expected under the 5-fish daily bag limit alternative. In order to keep the recreational sector open all year, the bag limit would need to be reduced from 15-fish per person per day to below 3-fish per person per day. However, the Council concluded a bag limit lower than five fish could remove the incentive to fish altogether for many potential passengers of for-hire vessels. Additionally, based on data indicating that a large percentage of recreational trips result in approximately five black sea bass being landed per person per day, and that the estimated closure date (based on a 5-fish bag limit) for the 2011–2012 season is the middle of March 2012, the Council chose to implement the 5-fish per person daily recreational bag limit. The Council considers the bag limit an interim measure to extend fishing opportunities

farther into the fishing season until the SEDAR 25 stock assessment is completed. The Council may then chose to modify management measures for black sea bass based on the outcome of the new stock assessment.

*Comment 6:* Several commenters opposed the 5-fish per person daily bag limit for black sea bass, stating that it would be prohibitively expensive to run for-hire trips for such a small number of fish. One recreational fisher indicated he would not pay the same fishing trip cost when restricted to a 5-fish daily bag limit, implying that for-hire fishing operations may suffer negative economic consequences in the form of fewer paying passengers as a result of the lowered bag limit. One of the commenters opposed to the bag limit reduction stated that Regulatory Amendment 9 incorrectly states the length of time the smaller bag limit would extend the season, noting the trip limit is being reduced by two-thirds and therefore, the season should triple in length.

*Response:* The economic analysis conducted for Regulatory Amendment 9 evaluated the economic effects of the various bag limit alternatives relative to the no action alternative. The no action alternative consists of a 15-fish daily bag limit and an ACL based closure, which is longer than the closure would be under any of the lower bag limit alternatives. Although the for-hire sector would experience reduced profits due to the lower bag limit, it would gain profits through a closure of reduced duration with respect to the no action alternative. Profit gains due to a shorter closure relative to the profit losses due to the bag limit reduction under the 5-fish daily bag limit alternative were estimated to outweigh the profit losses due to the longer closed season experienced under the no action alternative. Based on actual catch of black sea bass by recreational fishermen, a reduction in the bag limit is expected to extend the recreational season through March in a June–May fishing year based on 2010 data. The Council decided that a bag limit of less than 5-fish per person might be too low to be worth taking a fishing trip and a bag limit greater than 5-fish per person would not extend the fishing season by a meaningful amount. Overall, profits of for-hire vessels under the 5-fish bag limit alternative with a shorter duration closure would be higher than those under the 15-fish daily bag limit with a longer duration closure.

The reduction in the black sea bass bag limit was considered by the Council to allow the recreational sector to operate over a longer season. This

measure would be expected to directly affect certain anglers who may eventually cancel fishing trips due to relatively higher fishing costs. However, a majority of anglers would remain relatively unaffected by the measure, because they did not catch more than five black sea bass on a fishing trip.

The reduction in harvest associated with a bag limit reduction is based on the actual catch of fishermen. According to the biological effects analysis, a reduction in the black sea bass bag limit from 15-fish per person to 5-fish per person would reduce recreational landings of black sea bass by 15.5 percent. The current recreational harvest would only be reduced by two-thirds under the bag limit reduction of 5-fish per person, if all fishermen caught the current bag limit of 15-fish per person per day.

*Comment 7:* Two commenters stated the intent of the bag limit reduction from 15-fish per person per day to 5-fish per person per day is to protect commercial fishermen at the expense of recreational fishermen. One of the same commenters recommends increasing the commercial minimum size limit from 10 inches (25.4 cm) to 12 inches (30.5 cm) total length, which is consistent with the recreational size limit.

*Response:* The intent of reducing the black sea bass bag limit is to extend recreational fishing opportunities farther into the fishing season than what is possible under the current 15-fish per person daily bag limit. Reducing the black sea bass bag limit is expected to extend recreational fishing for the species by approximately one and one-half months longer in the 2011–2012 season, compared to the closure in early February that occurred during the 2010–2011 fishing season. Because Amendment 17B to the FMP established separate ACLs for the commercial and recreational sectors, management measures that are implemented for one sector do not affect overall allowable harvest of the other sector. Therefore, adjustments to the black sea bass bag limit would independently affect the recreational sector and the commercial sector would not benefit from a reduced recreational bag limit.

Amendment 13C to the FMP increased the recreational minimum size limit for black sea bass from 10 inches (25.4 cm) to 12 inches (30.5 cm) total length and maintained the 10 inch (25.4 cm) size limit implemented in 1999 through Amendment 9 to the FMP for the commercial sector. The average size of black sea bass is largest for fish caught by commercial fishermen and smallest for black sea bass caught by the headboat component of the fishery. The

black sea bass 2005 SEDAR Assessment Update #1, indicated that the 10 inch (25.4 cm) total length minimum size limit implemented in 1999 ensures that biomass persists even in a heavily fished environment because it is large enough to protect several year classes of spawning fish resulting in a spawning potential ratio equal to 25.8 percent. The Council did not consider adjusting the minimum size limit for commercially harvested black sea bass through Regulatory Amendment 9.

*Comment 8:* One commenter stated that lowering the black sea bass bag limit and implementing trip limits for other species would compel anglers to undertake more trips to catch the same amount of fish, thereby increasing their overall costs and exposing them to fishing hazards due to bad weather.

*Response:* The expectation is that the number of trips overall may increase, but that the trip limits for gag and vermilion snapper and a lower bag limit for black sea bass would effectively constrain the harvest of these three species so that reaching their respective ACLs would occur later in the fishing year than in 2011. For snapper-grouper commercial fishermen attempting to maintain overall harvest levels and associated profits, the number of trips may need to increase to compensate for lower catch-per-trip, which would increase overall costs.

In the case of black sea bass, for the majority of anglers who caught no more than 5-fish per trip, their relative cost of fishing would essentially remain the same. For for-hire vessels, the economic analysis compared the net operating (profit) losses under a higher bag limit with a longer closure against the 5-fish bag limit with a shorter closure. A major conclusion arrived at by this analysis is that profit losses would be lower under the 5-fish bag limit with shorter closure than under the 15-fish bag limit with longer closure. For the commercial sector, operating costs would be expected to increase if more trips are taken to compensate for lower per-trip harvest. The extent to which these costs may be affected is unknown and would fluctuate with fuel costs.

By extending the recreational season for black sea bass and the commercial fishing seasons for gag and vermilion snapper, anglers would be afforded a wider fishing window for undertaking trips so that they could schedule fishing trips to avoid hazardous inclement weather.

*Comment 9:* One commenter stated several of his for-hire passengers, who are part of a minority population, feel they are being discriminated against as a result of the reduced black sea bass

bag limit in this final rule as well as the 2010–2011 early recreational seasonal closure for black sea bass.

*Response:* Executive Order 12898 requires Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Appendix D of Regulatory Amendment 9 outlines the environmental justice considerations for the actions contained within the amendment, and a thorough social effects analysis was conducted for each action in the amendment. The regulation applies to all recreational sector participants in the South Atlantic region regardless of their socioeconomic or minority status. Available data does not indicate that minority or low-income populations comprise a disproportionate portion of the for-hire sector, or that minority or low-income populations are disproportionately dependent on black sea bass for subsistence consumption or other purposes. The commenter did not provide sufficient new information that alters NMFS' determination that no disproportionate impacts or environmental justice issues are anticipated as a result of the reduced bag limit.

*Comment 10:* One commenter supported changing the start date of the fishing year from June 1 to May 1 of each year in order to provide southern North Carolina for-hire vessels with greater opportunities to harvest a share of the recreational ACL.

*Response:* The June 1 start date for the black sea bass fishing year was implemented through Amendment 13C to the FMP with the intent that, if a closure should occur, it would most likely coincide with the black sea bass spawning season and thus, aid rebuilding efforts. The Council considered two start date alternatives, other than the no action alternative of maintaining the current start date for the fishing year. One alternative was a November 1 start date and the other was a January 1 start date. A May 1 start date was not considered as an alternative, and it would not be expected to significantly alter prosecution of the fishery when compared to the current June 1 start date for the fishing year. A January start date would provide more benefit to fishermen in Georgia and Florida, whereas a June start date would provide more benefit to fishermen in North Carolina and South Carolina. Without a system of regional or state-by-state quotas, different states are going to benefit from different fishing year start

dates disproportionately. Further, NMFS and the Council are committed to exploring the option of a regional management program for black sea bass and potentially other snapper-grouper species.

*Comment 11:* Three commenters supported the option of closing the black sea bass commercial pot sector once 90 percent of the quota has been caught.

*Response:* Regulatory Amendment 9 contained one alternative that would close the pot portion of the commercial black sea bass component of the snapper-grouper fishery once 90 percent of the commercial quota is met. The Council chose not to implement this action because of time lags in the data reporting process. Also, the rate at which the black sea bass commercial quota is harvested would make it difficult to determine when the small amount of the remaining commercial quota (10 percent) would be met.

*Comment 12:* One commenter suggested NMFS prohibit the use of black sea bass pots because they create navigation hazards, they are left to soak too long, and too many are allowed per vessel.

*Response:* Prohibiting the use of black sea bass pots was not considered by the Council in Regulatory Amendment 9 as an alternative to address derby conditions in the commercial sector. Most black sea bass pot activity is concentrated off the coasts of North Carolina and South Carolina and, to a lesser extent, northern Florida. Amendment 17B to the FMP established separate ACLs for the commercial and recreational sectors for black sea bass. Amendment 18A to the FMP, currently under development, contains several actions that could affect the overall prosecution of the black sea bass component of the snapper-grouper fishery. Amendment 18A to the FMP could limit participation in the commercial sector through an endorsement program and limit the number of pots allowed onboard black sea bass vessels. Amendment 18A to the FMP may also require black sea bass trap fishermen to bring in their pots at the end of each trip.

*Comment 13:* Three commenters suggested a 1,500-lb (680-kg) commercial trip limit for black sea bass should be implemented.

*Response:* The Council chose not to specify a trip limit for the commercial black sea bass component of the snapper-grouper fishery because actions in Amendment 18A to the FMP, currently under development, such as requiring fishermen to return pots to shore at the conclusion of a trip, may

result in fishermen exceeding the trip limit when retrieving pots. Once a fisherman recognizes the trip limit has been met, all black sea bass caught in the pots ready to be retrieved would have to be discarded, resulting in unnecessary biological harm to the stock and economic harm to the fisherman.

*Comment 14:* One commenter suggested creating a seasonal commercial closure for black sea bass at the same time as the current shallow-water grouper closure in order to simplify the closure regulations.

*Response:* The Council considered four different spawning season closure alternatives for black sea bass, with the intent to extend fishing opportunities during the fishing season. However, public opposition to a spawning season closure was significant when considered with respect to the other measures proposed in Regulatory Amendment 9. While many fishermen are in favor of reducing harvest during the spawning season, they felt it would be best accomplished through a modification to the fishing year start date. Additionally, since SEDAR 25 is ongoing, the Council chose not to implement a spawning season closure at this time but may consider additional future black sea bass management measures if the stock assessment indicates such changes are warranted.

*Comment 15:* Three commenters suggested reducing the commercial trip limit for vermilion snapper when 75 percent of the split season quota is met.

*Response:* Three alternatives were considered for a vermilion snapper stepped-down trip limit triggered when 75 percent of the quota is harvested. The Council determined that reducing the vermilion snapper commercial trip limit once 75 percent of the quota is reached is not likely to extend the fishing season by a meaningful length of time. In addition, it would be difficult to monitor the small remaining portion of the commercial quota and project when the commercial quota closure should be implemented. Furthermore, trip limit step-downs during the fishing season can disproportionately affect larger vessels because the stepped-down trip limit of 75 percent of the quota would likely be too small to make profitable trips possible. For these reasons in-season trip limit step-downs were not selected by the Council for the vermilion snapper commercial component of the snapper-grouper fishery.

*Comment 16:* Three commenters suggested implementing a 100-lb (45-kg) commercial trip limit for gag and greater amberjack during the January–April 4-month spawning season closure for

shallow-water groupers and the 1-month (April) spawning season closure for greater amberjack to allow for retention of incidentally captured gag and greater amberjack.

*Response:* Allowing a 100-lb (45-kg) commercial trip limit for gag and greater amberjack during the spawning season closures was not an action considered by the Council during the development of Regulatory Amendment 9. The actions in Regulatory Amendment 9 focused on extending the fishing seasons for black sea bass, gag, and vermilion snapper, and maximizing fishing opportunities for greater amberjack. Gag and greater amberjack are part of a multispecies fishery. Therefore, allowing any harvest of gag and greater amberjack during the spawning season closures could increase the risk of incidentally capturing other species such as red grouper and scamp, the harvest of which are also prohibited during the 4-month seasonal closure for shallow-water groupers.

*Comment 17:* Three commenters supported the implementation of a 1,500-lb (680-kg) commercial trip limit for gag and greater amberjack.

*Response:* A 1,500-lb (680-kg) trip limit for gag was not considered by the Council as an alternative within Regulatory Amendment 9 because it would not sufficiently reduce the rate of harvest to extend opportunities to fish during the fishing season by a meaningful length of time. A trip limit of 1,500 lb (680 kg) was analyzed in Regulatory Amendment 9 for greater amberjack. Industry representatives indicated that the trip limit should be increased by only a modest amount in order to avoid market disruption and price fluctuations. The Council determined that increasing the trip limit from 1,000 lb (453 kg) to 1,200 lb (544 kg) would be enough of an increase to optimize per-trip harvest, yet small enough to avoid any market disruption that may be caused by increasing the trip limit more than 200 lb (91 kg).

*Comment 18:* Three commenters opposed increasing the commercial trip limit for greater amberjack to 1,200 lb (544 kg) because it will increase fishing pressure on the species and create an unfair advantage to commercial fishermen.

*Response:* Greater amberjack is not overfished or undergoing overfishing, and the commercial quota of 1,169,931 lb (530,672 kg) has never been met since the commercial quota was implemented in 1999. The 1,169,931 lb (530,672 kg) commercial quota represents 63 percent of 1995 landings, and therefore, includes a significant reduction in

allowable harvest for the commercial sector from previous years. Increasing the trip limit for the commercial sector will not provide an unfair advantage to commercial fishermen since it does not increase the total amount they are allowed to harvest within a given fishing year, only their per-trip yield. Many commercially permitted snapper-grouper fishery participants have been negatively impacted by restrictive management measures recently implemented for red snapper and shallow-water grouper. Increasing the trip limit for greater amberjack by 200 lb (91 kg) will allow a portion of those affected fishermen to compensate for those impacts by increasing their per trip yield of greater amberjack.

*Comment 19:* Three commenters suggested reducing the recreational bag limits for all species addressed in Regulatory Amendment 9 when 75 percent of the recreational ACL is met or projected to be met.

*Response:* The current recreational landings data collection program is not capable of providing landings data in real-time for the purposes of tracking the recreational landings of species included in Regulatory Amendment 9. There is a time lag between the time fishermen report landings through the MRFSS/MRIP system and when fishery managers are notified of the estimated landings. This issue may be compounded in fisheries where the recreational ACL is caught very quickly, as is the case with black sea bass. Additionally, recreational landings data are associated with a degree of uncertainty that must be factored into final landings estimates. Therefore, it is not practical to implement in-season accountability measures (AMs) such as stepping-down the bag limits for the recreational sector of the snapper-grouper fishery at this time.

*Comment 20:* Three commenters suggested removing all size limits to manage the snapper-grouper species included in Regulatory Amendment 9.

*Response:* Removing the minimum size limits was not considered for any of the species addressed in Regulatory Amendment 9. Minimum size limits are generally used to maximize the yield of each fish recruited to the fishery and to protect a portion of a stock from fishing mortality. The idea behind maximizing yield through size limits is to identify the size that best balances the benefits of harvesting fish at larger, more commercially valuable sizes against losses due to natural mortality. Protecting immature and newly mature fish from fishing mortality provides them increased opportunities to reproduce and replace themselves

before they are captured. The removal of minimum size limits is likely to increase the rate at which the quotas and ACLs are met, and is not likely to ease derby conditions for species addressed in Regulatory Amendment 9.

*Comment 21:* Two commenters, including the state of North Carolina, suggested dividing the commercial quotas and recreational ACLs on a state-by-state basis so that species can be managed for the greatest benefit to the citizens of each state.

*Response:* NMFS agrees that establishing state-by-state quotas for snapper-grouper species could be beneficial to fishery participants, including those in North Carolina. Due to winter weather conditions, many snapper-grouper species may not be available off North Carolina until well after the fishing season has begun and a large portion of the commercial quota or recreational ACL has been harvested. However, effectively managing and enforcing state-by-state quotas remains a key obstacle to implementing such a program. NMFS has identified the issue of the enforcement of interstate cross-boundary quotas as a concern in the South Atlantic region and the Council did not consider them as a reasonable alternative within Regulatory Amendment 9.

*Comment 22:* Three commenters suggested that for all species addressed in Regulatory Amendment 9, the AMs regarding any ACL overages should be deducted from the next season's ACL, and any unharvested portion of the ACL should be carried over to the next fishing season.

*Response:* AMs for black sea bass, gag, and vermilion snapper were addressed in Amendment 17B to the FMP. AMs for greater amberjack are being addressed in the Comprehensive ACL Amendment. The action to establish a split season quota for black sea bass in Regulatory Amendment 9 includes a provision to carry over any unused portion of the first split season quota to the second split season quota. However, any unharvested portion of the second split season quota would not be credited to the following fishing year. NMFS has determined it is inappropriate to approve the action to establish split season quotas for the commercial sector of the black sea bass component of the snapper-grouper fishery at this time, as previously explained.

The Council did implement a payback provision for the recreational sectors for black sea bass, gag, and vermilion snapper in Amendment 17B to the FMP for situations where the stock is overfished. If the recreational ACL for black sea bass, gag, or vermilion snapper

is exceeded and the stock is overfished, the Regional Administrator will publish a notice to reduce the recreational ACL in the following year by the amount of the overage. A payback for any ACL overages for greater amberjack may be considered in the Comprehensive ACL Amendment, which is currently under development. The commercial sector for these three species does not currently have a payback provision in place for any ACL overages that may occur during the fishing year.

*Comment 23:* One commenter stated the development of derby conditions in the snapper-grouper fishery has led to safety at sea issues, which should be addressed through a system of trip limits.

*Response:* NMFS recognizes the safety issues associated with derby-style fishing (the race to fish), where during a short duration of increased effort, fishermen may engage in fishing activities during foul weather situations in order to ensure they are able to harvest their optimum share of the harvest prior to reaching the commercial quota. Regulatory Amendment 9 seeks to alleviate safety at sea issues to some degree through the implementation of trip limits for gag, and vermilion snapper, and modifying the trip limit for greater amberjack. Trip limits for the black sea bass commercial sector were considered, but the Council did not choose to implement a trip limit for the species as explained in previous responses. In short, there is a possibility that commercial black sea bass fishermen using black sea bass pots could exceed the trip limit when retrieving pots, particularly if they were required to bring all pots to shore as currently being considered in Amendment 18A to the FMP, which could cause negative biological and economic effects.

*Comment 24:* One commenter suggested limiting the days per week the species in Regulatory Amendment 9 could be harvested as an alternative to the management measures included in Regulatory Amendment 9.

*Response:* The Council did not consider specifying fishing days per week in the commercial or recreational sectors for the species addressed in Regulatory Amendment 9. Limiting commercial fishermen to only certain days of the week for harvesting black sea bass, gag, and vermilion snapper may create enforcement challenges, safety at sea issues, and interfere with a fisherman's ability to maintain steady income and market conditions since trips would be highly dependent on weather conditions on allowable fishing days. Black sea bass, gag, and vermilion



snapper are part of a multispecies fishery and they are often incidentally caught while fishermen target other co-occurring snapper-grouper species. Limiting the number of days per week a certain species may be recreationally harvested may result in higher rates of regulatory discards and bycatch mortality than if some level of recreational harvest is permitted each day.

*Comment 25:* Two commenters support the use of trip limits to address derby fishing conditions that have emerged for gag and vermilion snapper.

*Response:* NMFS agrees that implementation of trip limits for species, such as vermilion snapper, associated with derby-style fisheries will help to minimize the race to fish, slow the rate of harvest, and limit the progressive shortening of fishing seasons.

*Comment 26:* One commenter suggested conducting a true study of the effects of fishing bans on the Georgia area considering that boating and fishing are significant to the economy of Georgia.

*Response:* An economic analysis conducted for fishing regulations in the South Atlantic would generally combine the economic effects on Georgia with those of northeast Florida due to confidentiality issues. Fishing effort, particularly on headboat trips, is relatively low in Georgia so that combining Georgia effort with that of northeast Florida would avoid divulgence of confidential information specific to a particular area. However, NMFS and the Council would be supportive of economic studies on fishery management issues in Georgia.

#### **Other Non-Substantive Changes Implemented by NMFS**

This final rule revises an outdated mailing address for the NMFS Southeast Regional Administrator (RA).

This final rule revises commercial trip limit codified text for greater amberjack to be consistent with respect to the commercial quota. Reference language for closure provisions within the commercial trip limit section has been changed to refer to the quota instead of the fishing year quota.

This final rule also contains two corrections for coordinates contained in the final rule to implement Comprehensive Ecosystem-Based Amendment 1 for the South Atlantic region that published in the **Federal Register** on June 22, 2010 (75 FR 35330). These additional measures are unrelated to the actions contained in Regulatory Amendment 9.

#### **Classification**

The NMFS Assistant Administrator has determined that the approved actions in the regulatory amendment are necessary for the conservation and management of snapper-grouper species in the South Atlantic and that they are consistent with the Magnuson-Stevens Act, and other applicable laws.

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 economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and therefore no public comments are addressed in this FRFA. However, several comments with socioeconomic implications were received and are addressed in the Comment and Responses section.

In response to public comments and new information that became available after the publication of the proposed rule, NMFS has chosen not to approve the proposed action to split the commercial quota for black sea bass into two 6-month seasons. The reason for this disapproval is discussed in the Supplementary Information and the Comments and Responses sections of the preamble, and is not repeated here.

With the exception of the disapproved action, NMFS agrees with the Council's choice of preferred alternatives as that which would be expected to best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The previous section of preamble to the final rule provides a summary of the actions contained within this final rule and is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This final rule would not establish any new reporting, record-keeping, or other compliance requirements.

This final rule is expected to directly affect commercial harvesting and for-hire fishing operations. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting 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 \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2007–2009, an average of 895 vessels-per-year had valid permits to operate in the commercial sector of the snapper-grouper fishery. Of these 895 vessels, 751 held transferable permits and 144 held non-transferable permits. On average, 797 vessels landed snapper-grouper species, generating dockside revenues of approximately \$14.514 million (2008 dollars). Each vessel, therefore, generated an average of approximately \$18,000 annually in gross revenues from snapper-grouper commercial landings. Gross dockside revenues by state are distributed as follows: \$4.054 million in North Carolina, \$2.563 million in South Carolina, \$1.738 million in Georgia/Northeast Florida, \$3.461 million in central and southeast Florida, and \$2.695 million in the Florida Keys. Vessels that operate in the snapper-grouper commercial sector may also operate in other fisheries; the revenues from the other fisheries cannot be determined with available data and thus are not reflected in these totals.

Based on revenue information, all commercial vessels affected by this final rule can be considered small entities.

From 2007–2009, an average of 1,797 vessels had valid permits to operate in the for-hire component of the snapper-grouper fishery. Of the 1,797 vessels, 82 are estimated to have operated as headboats. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue is estimated to range from approximately \$62,000–\$84,000 for Florida vessels, \$73,000–\$89,000 for North Carolina vessels, \$68,000–\$83,000 for Georgia vessels, and \$32,000–\$39,000 for South Carolina vessels. For headboats, the corresponding estimates are \$170,000–\$362,000 for Florida vessels, and \$149,000–\$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the final rule can be considered small entities.

Some fleet activity, *i.e.*, multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors but its



extent is unknown, and therefore, all vessels are treated as independent entities in this analysis.

This final rule is expected to directly affect all Federally permitted commercial and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, it is determined that this final rule would affect a substantial number of small entities.

Because all entities that are expected to be affected by the final rule are considered small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

Relative to the no action alternative, the final rule to reduce the recreational bag limit to five black sea bass per person-per-day is expected to increase short-term for-hire vessel profits (NOR) annually from approximately \$78,000 to \$164,000 assuming no trip cancellations during the open season, or from approximately \$45,000 to \$131,000 assuming some trip cancellations during the open season. This expected increase in short-term profits would come from a shorter closure duration relative to the no action alternative.

The management measure to establish a 1,500-lb (680-kg) commercial trip limit for vermilion snapper is expected to reduce the gross revenues of commercial vessels by approximately \$306,000 annually. Profits would be reduced accordingly. Among the trip limit alternatives, however, the preferred alternative is expected to result in the lowest revenue losses. Commercial fishing vessels in North Carolina and Georgia/Northeast Florida would experience the largest revenue losses compared to those of other states/areas in the South Atlantic.

The management measure to establish a 1,000-lb (454-kg) commercial trip limit for gag is expected to reduce the short-term gross revenues of the commercial fishing fleet by approximately \$102,000 annually. Short-term fleet profits are also expected to decrease. However, relative to the no action alternative, the preferred alternative of establishing a 1,000 lb (454 kg) trip limit is expected to lengthen the commercial season so that revenues and profits could increase over time. The largest short-term revenue (and profit) reductions would fall on vessels in South Carolina and Georgia/Northeast Florida.

The management measure in this final rule to increase the commercial trip limit for greater amberjack to 1,200 lb (544 kg) is expected to increase short-term gross revenues of commercial

vessels. Short-term profits are also expected to increase. Over time, the net result on vessel revenues and profits would depend on the resulting fishing season length under the higher trip limit.

Five alternatives, including the preferred alternative implemented through this final rule, were considered for modifying the black sea bass bag limit. The first alternative would have reduced the bag limit to 7-fish per person per day; the second, 5-fish per person per day; the third, 3-fish per person per day; the fourth, 2-fish per person per day; and the fifth, 1-fish per person per day. Relative to the 15-fish bag limit and depending on the baseline year used, the bag limit alternatives would have varying effects on the annual NOR of the for-hire fleet. The first alternative would result in increased NOR from approximately \$19,000 to \$129,000 annually; the second alternative would increase NOR from negative \$62,000 to positive \$48,000 annually; the third alternative would result in a decreased NOR of \$97,000 annually; and, the fourth alternative would result in a decreased NOR of \$226,000 annually. The effects of these five alternatives are less than the positive effects of the selected preferred alternative. The Council's decision to recommend the implementation of a 5-fish bag limit per person per day was based on public support and the fact that a large percentage of recreational trips result in approximately 5 black sea bass landed per person. Moreover, the Council intends to re-visit this bag limit when the final results of SEDAR 25 are available.

Seven alternatives, including the preferred alternative implemented through this final rule, were considered for the commercial vermilion snapper trip limit. The first alternative is the no action alternative. This alternative would not address concerns regarding derby fishing practices in the commercial sector of the vermilion snapper segment of the snapper-grouper fishery. The second alternative would establish a 1,000-lb (454-kg) commercial trip limit, with one sub-alternative that would reduce the trip limit to 500 lb (227 kg) when 75 percent of the commercial quota is met. This alternative would lengthen the commercial fishing season relative to the no action alternative, but it would bring about a reduction in short-term revenues of approximately \$611,000 annually without the sub-alternative, or \$752,000 annually with the sub-alternative. The reductions in the two alternatives are larger than those that

would occur under the selected preferred alternative. The third alternative to the final rule would establish a 1,500-lb (680-kg) trip limit, and reduce the trip limit to 500 lb (227 kg) when 75 percent of the commercial quota is met. This alternative would bring about a reduction in short-term revenues of approximately \$505,000. This revenue reduction is larger than what would occur under the selected preferred alternative. The fourth alternative would establish a 750-lb (340-kg) commercial trip limit, with one sub-alternative that would reduce the commercial trip limit to 400 lb (181 kg) when 75 percent of the commercial quota is met. Compared to the preferred alternative, this alternative would result in short-term revenue reductions of approximately \$880,000 annually without the sub-alternative, or \$1,013,000 annually with the sub-alternative. The fifth alternative would establish a 500-lb (227-kg) commercial trip limit. This alternative would result in short-term revenue reductions of approximately \$1,302,000 annually, which is much larger than those resulting under the preferred alternative. The sixth alternative would establish a 400-lb (181-kg) commercial trip limit. Compared to the selected preferred alternative, this alternative would result in larger revenue reductions of approximately \$1,528,000 annually. NMFS rejected these six alternatives because they result in larger reductions in revenue when compared with the preferred alternative.

Five alternatives, including the preferred alternative implemented through this final rule, were considered for the gag commercial trip limit. The first alternative is the no action alternative. This alternative would not address the derby concern in the gag commercial sector of the snapper-grouper fishery. The second alternative would establish a 1,000-lb (454-kg) commercial trip limit that would be reduced to a 100-lb (45-kg) trip limit when 75 percent of the commercial quota is projected to be met. This alternative would result in short-term revenue reductions of approximately \$392,000 annually when based on 2007 landings, or \$204,000 annually when based on 2009 landings. The third alternative would establish a 750-lb (340-kg) commercial trip limit, with one sub-alternative that would reduce the commercial trip limit to 100 lb (45 kg) when 75 percent of the commercial quota is projected to be met. This alternative would result in short-term revenue reductions of approximately \$194,000 annually without the sub-

alternative, or from \$467,000 annually (based on 2007 landings) to \$228,000 (based on 2009 landings) with the sub-alternative. The fourth alternative would establish a 1,000-lb (454-kg) commercial trip limit, with the fishing year starting annually on May 1, and reduce the trip limit to 100 lb (45 kg) when 90 percent of the gag commercial quota is projected to be met. This alternative would result in revenue reductions greater than \$102,000 annually but less than \$392,000 annually. All of these alternatives are expected to result in larger short-term revenue reductions than the selected preferred alternative, and therefore were rejected.

Two alternatives, including the preferred alternative implemented through this final rule, were considered for the greater amberjack commercial trip limit. The first alternative is the no action alternative, which specifies a 1,000-lb (454-kg) commercial trip limit. Under this trip limit alternative, the commercial quota for greater amberjack has not been fully taken, and given historical landings and effort, the quota is expected to not be fully taken in the near future. A trip limit increase was considered to allow the fishing fleet to harvest the entire commercial quota for greater amberjack in order to mitigate the adverse effects of increased restrictions applied in other fisheries prosecuted by the same fishermen. The second alternative consists of three sub-alternatives, one of which is the final action. The first sub-alternative would increase the greater amberjack commercial trip limit to 2,000 lb (907 kg) while the second sub-alternative would increase the greater amberjack commercial trip limit to 1,500 lb (680 kg). Each of these two trip limit alternatives would result in larger short-term revenue increases than the final action. However, they pose a higher risk that the commercial quota for greater amberjack would be met prior to the end of the fishing season, resulting in potentially larger revenue and profit reductions to the fishing fleet. In addition, these higher trip limits could result in sudden large increases in landings that could only lead to lower ex-vessel prices and lower overall revenues. Therefore, NMFS rejected these two alternatives.

The proposed action to split the commercial quota for black sea bass into two seasons has been disapproved by NMFS in response to public comments and new information that became available after publication of the proposed rule. In their deliberations regarding harvest management of black sea bass, the Council considered

thirteen alternatives, two of which were proposed to be implemented through the proposed rule. One of those two is the preferred alternative on bag limit reduction implemented through this final rule and discussed above. The second is the disapproved proposed action on splitting the commercial quota for black sea bass into two seasons. A qualitative discussion of the effects of splitting the black sea bass commercial quota between the June–November and December–May sub-seasons indicates that profits to the commercial fishing fleet would not deteriorate, as would occur under the no action alternative of maintaining a single quota for the entire fishing year.

The first alternative to the proposed split season is the no action alternative. This alternative would not address the derby concern in the commercial sector of the black sea bass segment of the snapper-grouper fishery.

The second alternative to the proposed split season would establish a commercial trip limit, with 8 sub-alternatives. The first sub-alternative would be a 500-lb (227-kg) trip limit; the second, a 750-lb (340-kg) trip limit; the third, a 1,000-lb (454-kg) trip limit; the fourth, a 1,250-lb (567-kg) trip limit; the fifth, a 1,000-lb (454-kg) trip limit but reduced to 500 lb (227 kg) when 75 percent of the quota is met; the sixth, a 2,000-lb (907-kg) trip limit; the seventh, a 2,500-lb (1,134-kg) trip limit; and the eighth, a 340-lb (154-kg) trip limit. Based on the input received from the public during public hearings, from the Council's Advisory Panel, and from the Council's Scientific and Statistical Committee, and the fact that the stock is undergoing an assessment through SEDAR 25, the results of which will be available by the end of 2011, the Council chose not to implement trip limits for the black sea bass commercial sector. The Council concluded the split season approach would best meet the purpose and need to prevent the progressive shortening of the fishing season while ensuring equity in harvest opportunities, promoting safety at sea, and minimizing adverse socioeconomic impacts.

The third alternative to the proposed split season would retain the fishing year (June 1 through May 31) and specify separate commercial quotas for the June–December and the January–May sub-seasons based on 2006–2009 landings. This is similar to the proposed split season, except that the first sub-season ends in December, with January being the starting month of the second sub-season. The effects of this alternative on small entities are comparatively the same as those of the

proposed split season, except that the proposed split season would allow the second sub-season to start, with available quota, at the time when the traditional winter pot component of the commercial sector takes place in December.

The fourth alternative would change the black sea bass fishing year to November–October and specify separate commercial quotas for November–April and May–October. The Council recognized the distributional effects of changing the fishing year, and decided to address this issue, together with a regional approach to management of black sea bass, after the SEDAR 25 assessment is completed.

The fifth alternative to the proposed split season would change the black sea bass fishing year to January–December and specify separate commercial quotas for January–June and July–December. This alternative raises the same issue as the fourth alternative to the proposed split season for which the Council decided to consider the fishing year issue, together with regional approach to management, in the future.

The sixth alternative would add to alternatives two through five of the proposed split season, a measure that would allow a carry-over of unused portion of the quota from the second part of the fishing year to the next fishing year. This alternative has the potential to result in exceeding the commercial quota for the next year that would trigger application of AMs, resulting in revenue and profit losses to the commercial fishing fleet. In addition, this alternative could result in exceeding other fishery benchmarks and the stock could be considered to experience overfishing. More restrictive regulations could result that would only decrease revenues and profits to the fishing fleet.

The seventh alternative would add to alternatives two through five a measure that would close the black sea bass commercial pot gear component, but not other allowable gear types, when all but 100,000 lb (45,359 kg) of the commercial quota for the sub-season is harvested and would allow all allowable gear types to operate in the next sub-season. The Council decided not to impose specific gear restrictions at this time, partly due to the difficulty of monitoring catches by gear type on a timely basis.

The eighth alternative is similar to the seventh alternative to the proposed split season, except that 50,000 lb (22,680 kg) would be the amount of quota remaining to trigger the closure of the black sea bass commercial pot component. The Council decided not to

impose specific gear restriction at this time, partly due to the problem of monitoring catches by gear type on a timely basis.

The ninth alternative would close the black sea bass commercial pot component when 90 percent of the commercial quota is met. The Council decided not to impose specific gear restrictions at this time, partly due to the difficulty of monitoring catches by gear type on a timely basis.

The tenth alternative to the proposed split season would establish a spawning season closure, with four sub-alternatives. The first sub-alternative would implement a March–April closure applicable to both the commercial and recreational sectors; the second, an April–May closure; the third, a March–May closure; and, the fourth, a May closure. A spawning season closure for black sea bass that would affect both the commercial and recreational sectors was considered as a possible tool to extend the fishing season and benefit the stock. However, there was strong opposition from the public toward such a measure given other additional proposed measures within Regulatory Amendment 9. While many fishermen were in favor of curbing harvest during the spawning season, they stated that curbing harvest would be best accomplished with a modification to the fishing year. Moreover, the black sea bass stock is under a rebuilding schedule, there are indications that the stock is rebuilding, and a stock assessment is currently underway.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the 30-day delay in effective date for the black sea bass recreational bag limit reduction because it would be contrary to the public interest. The black sea bass fishing year opens June 1, and NMFS wants to give fisherman the longest fishing season possible. Under the reduced bag limit of 5-fish per person, the season is expected to be approximately 2½ months longer than under a 15-fish per person bag limit. If this rule were delayed to allow for a 30-day delay in effectiveness, the season would be reduced from the projected season length, resulting in a reduced fishing opportunity and lower angler benefits and for-hire profits. Therefore, waiving the 30-day delay in effectiveness will give fisherman the longest season possible, and reduce any economic impact of this rule.

However, NMFS is delaying implementation of the reduced bag limit for 7 days, instead of implementing the bag limit on the day of publication to allow NMFS the opportunity to notify the industry through a Fishery Bulletin, a NOAA Weather Radio announcement, and other means of constituent outreach.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance

guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the South Atlantic snapper-grouper fishery as well as other interested parties.

#### List of Subjects

##### 50 CFR Part 600

Fisheries and Fishing vessels.

##### 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 10, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 600 and 622 are amended as follows:

#### PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. *et seq.*

■ 2. In § 600.502, revise Table 1 entry “Administrator, Southeast Region” to read as follows:

##### § 600.502 Vessel reports.

\* \* \* \* \*

TABLE 1 TO § 600.502—ADDRESSES

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
* * *	* * *	* *
Administrator, Southeast Region, National Marine Fisheries Service, 263 13th Ave. South, St. Petersburg, FL 33701.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York 10004.
* * *	* * *	* *

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.35 (n)(1)(iii)(A), the coordinates for Point 26 and Point 171 are revised to read as follows:

##### § 622.35 Atlantic EEZ seasonal and/or area closures.

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) \* \* \*

Point	North lat.	West long.
* * *	* * *	* * *
26 .....	32°13'09"	78°34'04"

Point	North lat.	West long.
* * *	* * *	* * *
171 .....	26°09'17"	79°58'45"
* * *	* * *	* * *

■ 5. In § 622.39, paragraph (d)(1)(vii) is revised to read as follows:

##### § 622.39 Bag and possession limits.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(vii) Black sea bass—5.

\* \* \* \* \*

■ 6. In § 622.44, paragraph (c)(5) is revised and paragraphs (c)(6) and (c)(7) are added to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(c) \* \* \*

(5) *Greater amberjack*. Until the quota specified in § 622.42(e)(3) is reached—1,200 lb (544 kg). See § 622.43(a)(5) for limitations regarding greater amberjack after the quota is reached.

(6) *Vermilion snapper*. Until either quota specified in § 622.42(e)(4)(i) or (ii) is reached—1,500 lb (680 kg). See § 622.43(a)(5) for the limitations regarding vermilion snapper after either quota is reached.

(7) *Gag*. Until the quota specified in § 622.42(e)(7) is reached—1,000 lb (454 kg). See § 622.43(a)(5) for the limitations regarding gag after the quota is reached.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100923469–1298–03]

RIN 0648–BA27

#### Revisions to Framework Adjustment 45 to the Northeast Multispecies Fishery Management Plan and Sector Annual Catch Entitlements; Updated Annual Catch Limits for Sectors and the Common Pool for Fishing Year 2011

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

**ACTION:** Temporary final rule; adjustment to specifications.

**SUMMARY:** Based on the final multispecies sector rosters submitted as of May 1, 2011, NMFS announces adjustments to the Northeast (NE) multispecies fishing year (FY) 2011 specification of annual catch limits (ACLs) for common pool vessels (common pool sub-ACLs), ACLs for sector vessels (sector sub-ACLs), and sector Annual Catch Entitlements (ACEs) for groundfish stocks managed under the NE Multispecies Fishery Management Plan (FMP). This revision

to FY 2011 catch levels is necessary to account for changes to the number of participants electing to fish in either sectors or the common pool fishery in FY 2011.

**DATES:** Effective June 14, 2011, through April 30, 2012.

**FOR FURTHER INFORMATION CONTACT:**

William Whitmore, Fishery Policy Analyst, (978) 281–9182.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and Amendment 16 to the FMP (75 FR 18262; April 9, 2010), Framework Adjustment (FW) 44 to the FMP, which was published in the **Federal Register** on April 9, 2010 (75 FR 18356), specified catch levels for 20 NE groundfish stocks for FY 2010–2012. In addition, FW 45 (April 25, 2011; 76 FR 23042) modified the 2011 ACLs for five stocks (Georges Bank (GB) haddock, GB cod, GB yellowtail flounder, white hake, and pollock). FW 45 also specified catch levels for various components of the groundfish fishery, including sub-ACLs for the common pool and sectors. These sub-ACLs were based on the catch history of the vessels enrolled in sectors, as of December 1, 2010.

On April 25, 2011, NMFS published an interim final rule approving FY 2011 sector operations plans and allocating ACE to sectors for FY 2011 (76 FR 23076; “sector rule”). The sector rule included FY 2011 sector sub-ACL information also reflected in FW 45, where the sum of the ACEs for each sector equals the sector sub-ACL. Unlike FW 45, though, the sector ACEs in the sector rule were derived from February 1, 2011, sector rosters. To provide increased flexibility to the fishing industry, vessels initially enrolled in sectors for FY 2011 were allowed to drop out and join the common pool fishery through April 30, 2011.

Additional flexibility was also provided to allow NE multispecies permitted vessels purchased after the sector enrollment deadline of December 1, 2010, to enroll in a sector up through April 30, 2011. Because the sector ACEs, as well as the sector sub-ACLs (sum of ACEs for all sectors) and the common pool sub-ACL (groundfish sub-ACL minus sector sub-ACL), are based upon the specific membership of sectors, any changes in membership since FW 45 and the sector rule were implemented requires that NMFS revise the sector ACEs and sub-ACLs for the common pool and sectors. This rule adjusts the FY 2011 sector ACEs and sub-ACLs for the common pool and sectors based on the members of each sector roster as of May 1, 2011 (“final sector rosters”).

The preamble of the final rule implementing FW 45 informed the public that “NMFS intends to publish a rule in early May 2011 to modify these [common pool and sector] sub-ACLs and notify the public if these numbers change.” Through this temporary final rule, NMFS is revising FY 2011 ACEs for all approved sectors and for FY 2011 sub-ACLs for common pool and sector vessels, based on the final sector rosters. The final number of vessels electing to fish in sectors for FY 2011 is 829 (reduced by 7 vessels since the February 2011, rosters). All ACE and sub-ACL values for sectors assume that each NE multispecies vessel enrolled in a sector has a valid permit for FY 2011.

Additionally, this rule implements a revised definition of “unmarketable fish” for the purposes of a sector exemption first introduced in the interim final rule approving FY 2011 sector operations plans. NMFS requested comments on this definition (76 FR 23076), as well as comments on the final sector rosters. However, NMFS received no comments to the notice of final sector rosters, or to the definition of “unmarketable” fish, as included in the interim final rule. Therefore, the definition will remain as stated in the interim final rule.

Tables 1, 2, and 3 (below) explain the allocation of the FY 2011 ACE for each sector and stock, as a percentage and absolute amount (in metric tons and pounds), based on the final sector rosters. The regulations provide sectors two weeks following the completion of catch data reconciliation by NMFS to trade FY 2010 ACE in order to account for any overharvesting during that period. After the completion of two week trading window, accountability measures, specifically the reduction in FY 2011 ACE for sectors that exceeded their FY 2010 ACE, will be implemented. In addition, sectors that did not harvest their entire ACE of any particular stock are allowed to carry over up to 10 percent of their initial allocation to the next year. To discourage overfishing of the NE groundfish species, current regulations also require NMFS to reserve 20 percent of each sector’s FY 2011 ACE until FY 2010 landings data are reconciled. Once the reconciliation of FY 2010 sector catch is complete, the remaining 20 percent of ACE withheld from sectors will be allocated, and any sector that still exceeded its FY 2010 after reconciliation will have its share of the withheld ACE reduced accordingly. NMFS will publish a follow-up rule detailing any FY 2011 sector ACE reductions resulting from FY 2010 ACE