

conference, or computer-based means. The Arbitration Agreement should also allow the arbitrator discretion to call for an in-person hearing should the arbitrator determine that credibility may be a factor in the proceeding. The arbitrator may also conduct, with the consent of the parties, all or part of a hearing by telephone, video conferencing, or computer, so long as each party has an equal opportunity to participate.

**Issue 19:** May an arbitration award be used as a precedent in any other proceeding?

**Response:** No. The arbitration award may not be used as precedent consistent with 5 U.S.C. § 580(d). Nonetheless, by entering into arbitration, the carrier has admitted, or the Assistant Administrator has found that the carrier has admitted, violating the regulation(s) as charged in the Notice of Claim. These violation(s) may be considered in future enforcement actions by FMCSA.

## Appendix A

### Sample Agreement to Submit to Binding Arbitration

#### Section One—Parties and Controversy

The Federal Motor Carrier Safety Administration and \_\_\_\_\_ (“Carrier”) (collectively the “Parties”) voluntarily agree to submit the following controversy arising from violations of the Federal Motor Carrier Safety Regulations, the Hazardous Materials Regulations, and/or the Federal Motor Carrier Commercial Regulations to binding arbitration: (briefly describe the controversy).

#### Section Two—Assignment of Arbitrator

We agree upon \_\_\_\_\_ as the Arbitrator.

#### Section Three—Issues of Arbitration

We agree that the Arbitration shall be limited to the following issues of fact and law: (Set forth each issue with specificity including the question of whether a payment plan is appropriate).

#### Section Four—Costs of Arbitration

We agree to pay the Arbitrator a fee of \$ \_\_\_\_\_ (“the Fee”) for services as an arbitrator. The Fee is based on the issues specified in Section Three above.

We agree to reimburse the Arbitrator for all reasonable out-of-pocket expenses that the Arbitrator may incur for the arbitration. These expenses include, but are not limited to: Travel, lodging, and meals (consistent with Federal *per diem* standards), long-distance charges, printing and copying, postage and courier fees. There is no cost if the parties choose a Civilian Board of Contract Appeals Judge or an Uncompensated Neutral as the arbitrator.

#### Section Five—Minimum and Maximum Award

We agree that the maximum award shall be (the amount demanded in the Notice of

Claim). This amount is a total of the penalties for each of the individual violations as follows:

We also agree that the minimum award for violations will be those set forth in the statute or regulations.

#### Section Six—Management of the Proceeding

We further agree that the arbitration proceeding will be conducted in accordance with procedures established in 49 CFR part 386 for hearings. Additional rules and procedures for the arbitration may be negotiated and agreed upon by the Arbitrator and the Parties at any time during the arbitration process.

We further agree that we will faithfully observe this Agreement and the applicable procedural rules and we will abide by any award rendered by the Arbitrator.

\_\_\_\_\_ (“Carrier”) will pay to the Field Administrator the award determined by the Arbitrator.

We agree that the Arbitrator will assume control of the process and will schedule all events as expeditiously as possible, to ensure that an award is issued no later than \_\_\_\_\_ days from the date of this Agreement. The penalty, if any, will be due to FMCSA 30 days after service of the Arbitration Award by the Arbitrator unless the Arbitrator orders a payment plan.

Consistent with the Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings, 49 CFR part 386, Carriers may be represented by a representative of their choice, including non-lawyers. Representatives and FMCSA counsel shall be responsive to the direction provided by the Arbitrator.

We understand that neither party shall initiate or participate in *ex parte* communication with the Arbitrator relevant to the merits of the proceeding, unless the parties agree. If a party or its representative engages in an unauthorized *ex parte* communication, the Arbitrator may resolve the case against the offending party. Before taking that action, however, the Arbitrator must allow the offending party to show cause why the issue in controversy should not be resolved against it for improper conduct.

#### Section Seven—Arbitrator’s Award

We agree that the Arbitrator’s decision will be issued in writing and will state the legal and factual bases and amount of the penalty awarded by the Arbitrator. We further agree that the arbitration award is final and has the same force and effect as any final agency order. We understand that there is no appeal to the Assistant Administrator of the Arbitrator’s award. Thus, failure to pay the determined award triggers the same Agency remedies as would the failure to pay a civil penalty award entered by the Assistant Administrator.

#### Section Eight—Confidentiality of the Proceeding

We agree that the arbitration proceeding is not a public forum and will be restricted to the Parties, their representatives, and the Arbitrator. We acknowledge and agree that 5 U.S.C. 574 controls the confidentiality of the proceeding, and that neither the Arbitration

Agreement nor the arbitration award may be considered confidential.

#### Section Nine—Judicial Review

\_\_\_\_\_ The award shall be reviewable only under provisions of 5 U.S.C. § 581 and 9 U.S.C. §§ 9–13.

#### Section Ten—Governing Law

\_\_\_\_\_ This Agreement is entered into consistent with 5 U.S.C. § 571 *et seq.*, and we agree that Federal law shall govern this Arbitration. The Arbitrator shall apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

[FR Doc. 2012–14087 Filed 6–8–12; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 101202599–2122–02]

RIN 0648–BA52

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 24

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 24 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). This final rule establishes red grouper commercial and recreational sector annual catch limits (ACLs); establishes red grouper sector accountability measures (AMs); and removes the combined gag, black grouper, and red grouper commercial quota, and commercial and recreational sector ACLs and AMs. The intent of this final rule is to specify ACLs and AMs for red grouper while maintaining catch levels consistent with achieving optimum yield (OY) for the red grouper resource. Additionally, Amendment 24 implements a rebuilding plan for red grouper in the South Atlantic.

**DATES:** This rule is effective July 11, 2012.

**ADDRESSES:** Electronic copies of Amendment 24, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be

obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sf/pdfs/SGAamend24\\_121411.pdf](http://sero.nmfs.noaa.gov/sf/pdfs/SGAamend24_121411.pdf).

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, telephone: 727-824-5305, or email: [rick.devictor@noaa.gov](mailto:rick.devictor@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 February 27, 2012, NMFS published a notice of availability for Amendment 24 and requested public comment (77 FR 11477). On March 30, 2012, NMFS published a proposed rule for Amendment 24 and requested public comment (77 FR 19169). The proposed rule and Amendment 24 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

This final rule removes the gag, black grouper, and red grouper combined commercial and recreational ACLs and AMs, and specifies the ACLs and AMs for red grouper. This final rule implements in-season commercial and recreational sector AMs for red grouper, as well as post-season overage adjustments. In addition to the actions contained in this final rule, specific to red grouper, Amendment 24 implements a 10-year rebuilding plan, specifies the maximum sustainable yield (MSY) and OY values, revises the definition of minimum stock size threshold (MSST) to be 75 percent of the spawning stock biomass when fishing at the MSY level, specifies commercial and recreational allocations, and establishes a recreational sector annual catch target (ACT). The intent of Amendment 24 and this final rule is to specify ACLs and AMs for red grouper while maintaining catch levels consistent with achieving OY for the red grouper resource.

### Comments and Responses

A total of nine comments were received on Amendment 24 and the proposed rule. One commenter submitted identical comments on Amendment 24 and the proposed rule. One Federal agency stated that they had no comment on Amendment 24. NMFS received one comment of general support and six individual comments opposing one or more of the actions contained in Amendment 24 and the proposed rule. Specific comments

related to the actions contained in Amendment 24 and the proposed rule, as well as NMFS' respective responses, are summarized below.

*Comment 1:* The restrictions on red grouper harvest in Amendment 24 are not necessary because a 4-month closure for shallow-water groupers is currently in place. In addition, the Magnuson-Stevens Act requirement that the Council prepare and implement a plan amendment to rebuild red grouper should not apply because the 4-month closure, implemented through Amendment 16 to the FMP (74 FR 30964, June 29, 2009), was not considered in the Southeast Data, Assessment, and Review (SEDAR) SEDAR 19 stock assessment.

*Response:* The most recent South Atlantic red grouper stock assessment, SEDAR 19, was completed in 2010 and used data available through 2008. Therefore, SEDAR 19 did not consider impacts of the 4-month prohibition on the harvest, landing, and possession of shallow-water groupers (gag, black grouper, red grouper, scamp, red hind, rock hind, coney, yellowfin grouper, yellowmouth grouper, and tiger grouper) implemented in 2009 through Amendment 16 to the FMP (74 FR 30964, June 29, 2009). However, SEDAR 19 determined that red grouper was overfished and undergoing overfishing, and NMFS notified the Council of the red grouper stock status on June 9, 2010. The Council is required by the Magnuson-Stevens Act to implement a rebuilding plan within 2 years after notification of an overfished stock.

NMFS and the Council must schedule stock assessments several years in advance to allow time for the needed data to be compiled for use by stock assessment scientists. The effect of the 4-month closure and other recent measures implemented to improve the status of red grouper will be evaluated in the next stock assessment, scheduled to begin in 2013.

The Council and NMFS are also required to establish ACLs and AMs based on the best scientific information available. Commercial and recreational aggregate ACLs and AMs for black grouper, gag, and red grouper were established through Amendment 17B to the FMP (75 FR 82280, December 30, 2010). The aggregate ACLs currently in place were computed using landings data for black grouper and red grouper prior to the availability of stock assessments (SEDAR 19) for these two species. This final rule will remove the gag, black grouper, and red grouper aggregate commercial and recreational ACLs and AMs, and implement red grouper ACLs based upon the best

scientific information available, which includes SEDAR 19 and the acceptable biological catch (ABC) recommendation from the Council's Scientific and Statistical Committee (SSC). NMFS notes that gag individual ACLs and AMs were previously established through Amendment 16 to the FMP (74 FR 30964, June 29, 2009) and black grouper ACLs and AMs were implemented through the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) and will remain in effect. The commercial and recreational ACLs and AMs implemented through Amendment 24 are expected to ensure red grouper overfishing does not occur and the stock rebuilds to target levels within the 10-year rebuilding timeframe.

*Comment 2:* Red grouper allocations should be reexamined using landings through 2010 or 2011. All recreational landings information used for sector allocations should be recalculated using the Marine Recreational Information Program (MRIP) instead of the Marine Recreational Fisheries Statistics Survey (MRFSS). Additionally, NMFS should allocate red grouper as 50 percent for the commercial sector and 50 percent for the recreational sector until the Southeast Fisheries Science Center (SEFSC) and SEDAR complete a new full benchmark assessment utilizing MRIP.

*Response:* The Council concluded that sector-specific ACLs and AMs are important components of red grouper management because the scientific and management uncertainty are different for each sector. To divide the red grouper stock ACL into sector ACLs, the Council had to make allocation decisions. The Council decided to establish sector allocations by balancing long-term catch history with recent catch history. Accordingly, the Council determined the allocation using 50 percent of average landings from 1986-2008 and 50 percent of average landings from 2006-2008. This resulted in an allocation of red grouper in the South Atlantic as 44 percent for the commercial sector and 56 percent for the recreational sector. The commercial sector landed the majority of red grouper in the early time period (1987-1992) and the for-hire component of the recreational sector landed the majority of fish in more recent years (2006-2008). The Council concluded that this approach was a fair and equitable method to allocate fishery resources and had the additional benefit of using a mathematically transparent formula. The Snapper-Grouper Advisory Panel and the majority of comments received during scoping meetings and

public hearings supported the Council's allocation decision.

Landings data from SEDAR 19 were used to determine allocations. SEDAR 19 was completed in 2010, and the most recent year of data used in the stock assessment was 2008. The Council was notified of the red grouper stock status on June 9, 2010, and submitted Amendment 24 to NMFS on December 14, 2011, to meet the 2-year Magnuson-Stevens Act deadline to implement a rebuilding plan. The incorporation of 2010 and 2011 landings data would have delayed the implementation of Amendment 24 past the 2-year deadline.

When the Council determined the appropriate sector allocations and approved Amendment 24 in December 2011, the new MRIP estimates had not yet been released. The MRIP data were not available until January of 2012. If MRIP data indicate that an allocation adjustment is necessary, the Council may take action in a future amendment to revise sector allocations. Further, the red grouper standard SEDAR assessment is scheduled to begin in 2013. During the stock assessment process, SEDAR participants will review the MRIP data for its application in the assessment.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 24 and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the 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. No changes to the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble to the final rule provides a statement and need for, and the objectives of this rule, and is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No

duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not introduce any changes to current reporting, recordkeeping, and other compliance requirements.

NMFS expects the rule to directly affect commercial fishers and for-hire operators. The Small Business Administration 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 its combined annual receipts are not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2005–2009, an annual average of 892 vessels with valid permits to operate in the commercial snapper-grouper fishery landed snapper-grouper, generating dockside revenues of approximately \$13.817 million (2009 dollars). Each vessel, therefore, generated an annual average of approximately \$15,500 in gross revenues from snapper-grouper during the period of 2005–2009. Gross dockside revenues by area were distributed as follows: \$4.196 million in North Carolina, \$3.612 million in South Carolina, \$3.219 million in Georgia/East Florida, and \$2.790 million in the west coast of Florida. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

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

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. From 2005–2009, an annual average of 2,018 vessels had valid Federal permits to operate in the snapper-grouper for-hire sector, of which 82 vessels are estimated to have operated as headboats. 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 annual average gross revenue 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 this final rule can be considered small entities.

NMFS expects this final rule to directly affect all federally permitted commercial vessels 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, NMFS determines that the final rule would affect a substantial number of small entities.

NMFS considers all entities expected to be affected by the rule as small entities, so the issue of disproportional effects on small versus large entities does not arise in the present case.

Modifying the rebuilding strategy, ABC, and ACL would result in an increase in cumulative commercial vessel profits of \$990,000 over the first 7 years of the rebuilding schedule with an additional \$310,000 generated in years 8 through 10, assuming a discount rate of 7 percent to determine current year (2012) dollars. The corresponding effects on the for-hire vessels would also be an increase in cumulative profits but the magnitude cannot be estimated based on available information. These increases in commercial vessel and for-hire vessel profits are mainly a result of increases in the ACL over time.

To the extent that the action for allocating the ACL between the commercial and recreational sectors would maintain the baseline landings distribution of red grouper between the two sectors, NMFS expects no profit changes to the commercial or for-hire vessels to occur as a direct result of this action.

The preferred alternative of revising the ACL/OY would provide the largest ACL/OY for red grouper, which would increase the profits of the commercial and for-hire vessels. Eliminating the aggregate black grouper, red grouper, and gag quota would tend to ensure that profit increases from the largest ACL/OY alternative for red grouper are realized.

Within Amendment 24, establishing a recreational ACT would have no impacts on the profits of for-hire vessels in the short term, because this measure would not be used to trigger the application of AMs. Should this recreational ACT be used in the future to trigger AMs, then it may be expected to reduce the profits of for-hire vessels. The magnitude of such reduction cannot be estimated with available information.

Implementing in-season and post-season AMs for the commercial sector are expected to limit the increases in the short-term profits of commercial vessels as a result of ACL increases, especially since the most recent landings information suggests that the series of ACLs would likely be exceeded in the near future. However, in the absence of these AMs, regulations could become more restrictive over time, resulting in adversely affecting the long-term profitability of the industry.

Implementing in-season and post-season AMs for the recreational sector may be expected to limit increases in short-term profits of for-hire vessels as a result of ACL increases. However, the 2010 recreational harvest of red grouper was well below the proposed ACL for the recreational sector, suggesting that the proposed AM has a low probability of being triggered in the near future (more current data was not available at the time this analysis was conducted). In effect, the AM for the recreational sector may be expected to have a low likelihood of affecting the profits of for-hire vessels in the near future. Over the long-term, however, these AMs could apply and short-term profits of for-hire vessels may be adversely affected. However, the absence of these AMs could lead to more restrictive regulations that would reduce the long-term profitability of this sector.

Redefining MSY and MSST and establishing a rebuilding schedule for red grouper would not alter the current harvest or use of the resource, and thus would not affect the profitability of small entities.

Defining a rebuilding schedule maximizing the time to rebuild the stock to biomass at MSY would add flexibility in designing management measures that would have the least short-term effects on the profitability of small entities.

The Council considered several alternatives for each action in this final rule. In summary, the Council concluded that their preferred alternatives best meet the purpose and need of Amendment 24 to implement measures expected to prevent overfishing and achieve OY while minimizing, to the extent practicable, adverse social and economic effects. The preferred alternatives also best meet the objectives of the Snapper-Grouper FMP, while complying with the requirements of the Magnuson-Stevens Act and other applicable laws. The following discusses all alternatives to the preferred alternatives and their effects relative to the preferred alternatives.

Six alternatives, including the preferred alternative, were considered

for the rebuilding strategy and ABC. The first alternative, the no action alternative, would not establish a rebuilding strategy for red grouper. Within a rebuilding strategy, the specification of targets and limits, such as ABCs, is a crucial component of any management program involving natural resources. Without the designation of these components, as analyzed in the no action alternative, the regulations may not be sufficient to prevent overfishing and rebuild the stock. More restrictive regulations could eventually be imposed, which would substantially reduce industry profits. The second alternative would define a rebuilding strategy that sets ABC equal to the yield at  $F_{REBUILD}$ , which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 10 years. This alternative has the highest ABC, which could potentially result in the highest ACL. Therefore, this alternative would provide the best profitability scenario for the commercial and for-hire vessels over the entire rebuilding timeframe. However, it would allow a higher fishing mortality rate than the preferred alternative and result in greater uncertainty that the stock could rebuild within the allowable timeframe. Both this alternative and the preferred alternative would maintain catches at a similar level to what they have been in recent years, but the preferred alternative has a greater probability of rebuilding the stock within the 10-year timeframe. The third alternative would define a rebuilding strategy that sets ABC equal to the yield at 65 percent of  $F_{MSY}$  (fishing mortality at maximum sustainable yield). This alternative would provide for a lower ABC, and a potentially lower ACL, than the preferred alternative. Thus, this alternative would potentially result in lower profits to small entities than the preferred alternative.

The fourth alternative would define a rebuilding strategy that sets ABC equal to the yield at  $F_{REBUILD-7}$ , which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 7 years. The fifth alternative would define a rebuilding strategy that sets ABC equal to the yield at  $F_{REBUILD-8}$ , which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 8 years. Each of these alternatives would likely result in lower profits to small entities than the preferred alternative, because they would require more restrictive management measures.

Two alternatives were considered for sector allocation. Under the no action

alternative, which would not establish sector allocation, the recreational and commercial sectors would be managed under a combined ACL. The corresponding AMs would also apply to both sectors regardless of which sector lands the majority of fish. Under the second alternative, five sub-alternatives including the preferred sub-alternative were considered. The first sub-alternative would establish a 52 percent commercial and 48 percent recreational allocation; the second sub-alternative, 54 percent commercial and 46 percent recreational allocation; the third sub-alternative, 49 percent commercial and 51 percent recreational allocation; and, the fourth sub-alternative, 41 percent commercial and 59 percent recreational allocation.

All of these alternatives, including the preferred alternative, would base the allocation ratio solely on a sector distribution of landings. No economic valuation was considered due to the absence of sufficient information. In terms of effects on the profits of small entities, the general nature of the various allocation alternatives is to favor one sector over another. The higher the allocation to one sector, the higher would be the profit potential to that sector and the lower would be the profit potential to the other sector. Among the alternatives, the preferred alternative was found to have neutral effects on profits on both the commercial and for-hire vessels, because the resulting allocation would be the same as the historical sector distribution of landings. This historical distribution is the one used as a baseline against which each alternative is compared.

Six alternatives, including the three preferred alternatives, were considered for ACL and OY. The three preferred alternatives are not mutually exclusive but are rather complementary to one another. The first alternative, the no action alternative, would not establish a specific ACL for red grouper. This alternative would not allow for specific management actions to address the overfished/overfishing status of the red grouper stock. The second alternative would specify an ACL for red grouper equal to OY and OY equal to 90 percent of ABC. This alternative would result in lower profit potential to small entities than the preferred alternative. The third alternative would specify an ACL for red grouper equal to OY and OY equal to 80 percent of ABC. This alternative would result in lower profit potential to small entities than the preferred alternative.

Three alternatives, including the preferred alternative, were considered for the commercial sector ACT. The first

and second alternatives would set the commercial ACT equal to 90 percent and 80 percent of the commercial ACL, respectively. If ACTs were used to trigger AM applications, these two alternatives would result in lower profits to small entities than the preferred alternative. This rule implements the preferred alternative of not establishing a commercial ACT (no action alternative) because the current method to track commercial harvests is adequate to determine whether the commercial ACL is met or projected to be met.

Four alternatives, including the preferred alternative, were considered for the recreational ACT. ACTs would have economic effects only if they are used to trigger AMs. Amendment 24 specifies that ACTs would not be used to trigger AMs. The following discussion, however, assumes ACTs are used to trigger AMs so that the different economic implications of the alternatives can be described. The first alternative, the no action alternative, would not specify a recreational ACT for red grouper. This alternative would not allow consideration of management uncertainty which is deemed high in the recreational sector. Without consideration of management uncertainty, the probability of exceeding the ACL would be relatively high, increasing the probability of implementing more stringent management measures. The second and third alternatives would specify a recreational ACT equal to 85 percent and 75 percent of the recreational ACL, respectively. The second alternative would likely result in a smaller reduction on the short-term profits of small entities than the preferred alternative because it would provide for higher ACT levels. The third alternative would likely result in the same reduction on the short-term profits of small entities as the preferred alternative because both would result in the same ACTs.

Three alternatives, including the two preferred alternatives, were considered for the commercial AM. The two preferred alternatives are not mutually exclusive but rather complementary to each other. The only alternative to the preferred alternatives is the no action alternative, which would not specify a commercial AM for red grouper. This alternative would retain the current commercial AM specified for the group of species consisting of red grouper, black grouper, and gag. This particular AM could be either more or less restrictive than the preferred AM alternatives specified for red grouper, but it would not allow for the

implementation of management measures that would specifically address the overfished and undergoing overfishing condition of the red grouper stock. In addition, the current AM for the aggregate species of red grouper, black grouper, and gag does not provide for post-season AMs. The lack of post-season AMs under the no action alternative would result in higher short-term profits to small entities than the preferred alternative. However, it is expected that the long-term profit environment would be better under the preferred alternatives because they would provide for higher ACLs over time, and therefore higher profits on a more sustainable basis. It should also be noted that a separate commercial sector ACL/AM for black grouper was implemented through the Comprehensive ACL Amendment (final rule published on March 16, 2012, 77 FR 15916), negating the need for the aggregate species ACL/AM.

Four alternatives were considered for the recreational AM. The first alternative is the no action alternative, which would not set a specific recreational AM for red grouper. This alternative would retain the current recreational AM specified for the group of species consisting of red grouper, black grouper, and gag. This particular AM could be either more or less restrictive than the preferred AM alternatives specified for red grouper, but it would not allow for the implementation of management measures that would specifically address the overfished/overfishing condition of the red grouper stock. It should also be noted that a separate recreational sector ACL/AM for black grouper was implemented through the Comprehensive ACL Amendment, negating the need for the aggregate species ACL/AM.

The second alternative would specify a recreational sector AM trigger and includes five sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector AM trigger. This sub-alternative would likely result in higher profits to small entities than the preferred sub-alternative. However, it would not address the overfished/overfishing condition of red grouper. The second sub-alternative specifies that AM would be triggered if the mean recreational landings for the past 3 years exceed the recreational ACL. The profit environment for small entities under this sub-alternative may be lower or higher than that of the preferred sub-alternative, depending on whether the trend in landings is upward or downward.

The third sub-alternative specifies that the AM would be triggered if the modified mean (highest and lowest landings dropped) landings for the past 5 years exceed the recreational sector ACL. This sub-alternative would have the same effects on profitability as the second sub-alternative, although the magnitude may be lower. The fourth sub-alternative specifies that the AM would be triggered if the lower bound of the 90 percent confidence interval estimate of the MRFSS landings' population mean plus headboat landings is greater than the recreational ACL. This sub-alternative is likely to produce the same effects on profitability as the first sub-alternative, but the magnitude could be lower or higher.

The third alternative for a recreational sector AM would specify a recreational sector in-season AM and includes two sub-alternatives, of which one is the preferred sub-alternative. The only sub-alternative to the preferred alternative is the no action alternative which would not specify a recreational in-season AM. This alternative would result in higher short-term profits to small entities, but it would not constrain recreational fishing pressure and thus would not aid in addressing the overfished/overfishing condition for red grouper. In the presence of a post-season AM, this alternative would tend to reduce future profits of small entities because of ACL reductions.

The fourth alternative for a recreational sector AM would specify a recreational sector post-season AM if the current fishing year's recreational sector ACL is exceeded, and includes seven sub-alternatives, of which one is the preferred sub-alternative. The first sub-alternative would not specify a recreational sector post-season AM. This sub-alternative would result in higher short-term profits to small entities than the preferred alternative, although the expectation is for long-term profitability to be better under the preferred sub-alternative. The second sub-alternative would compare the recreational sector ACL with the 2011 landings only for the purpose of triggering any 2011 post-season AMs and with the mean of the 2011 and 2012 landings for the purpose of triggering any 2012 post-season AMs. For 2013 and beyond, the most recent three-year running would be used for the purpose of triggering post-season AMs. This sub-alternative may or may not have the same sort of effects on profitability as the preferred alternative, depending on the specific AM measure that would be implemented.

The third sub-alternative specifies monitoring the following year's landings for persistence in increased landings,

with the Regional Administrator (RA) taking management actions as necessary. This sub-alternative would likely result in the lower adverse effects on short-term profits than the preferred alternative, although the actual effects would depend on the type of restrictions that would be imposed by the RA. The fourth sub-alternative specifies monitoring the following year's landings for persistence in increased landings, with the RA publishing a notice in the **Federal Register** to reduce the recreational fishing season as necessary. This sub-alternative would likely result in less adverse effects on short term profits than the preferred sub-alternative to the extent that the post-season AM may not be imposed depending on how persistent the upward trend in landings would be. If a post-season AM were necessary, this sub-alternative could still result in higher profits than the preferred alternative because it would set a specific red grouper recreational season closure date, allowing for-hire vessels to make the necessary changes in their operations.

The fifth sub-alternative specifies monitoring the following year's landings for persistence in increased landings, with the RA publishing a notice in the **Federal Register** to reduce the recreational bag limit as necessary to prevent harvest from exceeding the recreational ACL. This sub-alternative would likely result in less adverse effects on short term profits than the preferred sub-alternative to the extent that post-season AMs may not be imposed depending on how persistent the upward trend in landings would be. If a post-season AM were necessary, this sub-alternative could still result in higher profits than the preferred alternative since it would allow for-hire vessels to operate year round, although at lower bag limits. The sixth sub-alternative specifies that the RA publish a notice in the **Federal Register** to reduce the following year's recreational fishing season to ensure landings do not exceed the following fishing season's recreational ACL. There is a good possibility that this sub-alternative would result in the same fishing season length as the preferred alternative, assuming no significant changes in effort would occur in the following fishing year. It is possible that other measures, like a bag limit reduction, may be employed under the preferred alternative to effect a longer season that would provide more fishing opportunities. Whichever of these two sub-alternatives can provide more fishing opportunities may be considered

better than the other from the standpoint of profits to small entities.

Two alternatives, including the preferred alternative, were considered for redefining MSY. The first alternative, the no action alternative, would retain the definition of MSY which would not reflect the conclusions of the latest stock assessment. This alternative, like the preferred alternative, would not directly affect the profitability of small entities.

Five alternatives, including the preferred alternative, were considered for redefining MSST. The first alternative, the no action alternative, would retain the definition of MSST as equal to natural mortality times the biomass at MSY. The second alternative would set MSST equal to 50 percent of biomass at MSY. The third alternative would set MSST equal to 85 percent of biomass at MSY. The fourth alternative would set MSST as the minimum stock size at which rebuilding to MSY would be expected to occur within 10 years at the maximum fishing mortality threshold level. All these alternatives, like the preferred alternative, would not directly affect the profitability of small entities.

Five alternatives, including the preferred alternative, were considered for the rebuilding schedule. The first alternative, the no action alternative, would not implement a rebuilding schedule. This alternative would not comply with the Magnuson-Stevens Act requirement to rebuild an overfished red grouper stock. The second, third, and fourth alternatives would establish a rebuilding period of 3 years (shortest), 7 years, and 8 years, respectively. These other alternatives would provide for a shorter rebuilding timeframe than the preferred alternative, and thus may be expected to restrict the flexibility in designing management measures that would minimize the economic effects on the profits of small entities.

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 in the South Atlantic snapper-grouper fishery.

## List of Subjects in 50 CFR Part 622

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

Dated: June 5, 2012.

**Alan D. Risenhoover,**

*Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

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

- 1. The authority citation for part 622 continues to read as follows:

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

#### § 622.42 [Amended]

- 2. In § 622.42, paragraph (e)(8) is removed.
- 3. In § 622.43, paragraph (a)(5)(iii) is revised to read as follows:

#### § 622.43 Closures.

(a) \* \* \*

(5) \* \* \*

(iii) For gag, when the appropriate commercial quota is reached, the provisions of paragraphs (a)(5)(i) and (ii) of this section apply to gag and all other SASWG.

\* \* \* \* \*

- 4. In § 622.49, paragraph (b)(4) is revised to read as follows:

#### § 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

\* \* \* \* \*

(b) \* \* \*

(4) *Red grouper*—(i) *Commercial sector.* (A) If commercial landings for red grouper, as estimated by the SRD, reach or are projected to reach the applicable ACL in paragraph (b)(4)(i)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of red grouper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If commercial landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or

near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(C) The applicable commercial ACLs, in round weight, are 284,680 lb (129,129 kg) for 2012, 315,920 lb (143,299 kg) for 2013, and 343,200 lb (155,673 kg) for 2014 and subsequent fishing years.

(ii) *Recreational sector.* (A) If recreational landings for red grouper, as estimated by the SRD, are projected to reach the applicable ACL in paragraph (b)(4)(ii)(C) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If recreational landings for red grouper, as estimated by the SRD, exceed the applicable ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year.

(C) The applicable recreational ACLs, in round weight, are 362,320 lb (164,346 kg) for 2012, 402,080 lb (182,380 kg) for 2013, and 436,800 lb (198,129 kg) for 2014 and subsequent fishing years.

(iii) Without regard to overfished status, if the combined commercial and recreational sector ACL (total ACL), as estimated by the SRD, is exceeded in a fishing year, then during the following fishing year, an automatic increase will not be applied to the commercial and recreational sector ACLs. The SRD will evaluate the landings data to determine whether or not an increase in the respective sector ACLs will be applied. The applicable combined commercial and recreational sector ACLs, in round weight are 647,000 lb (293,474 kg) for 2012, 718,000 lb (325,679 kg) for 2013, and 780,000 lb (353,802 kg) for 2014 and subsequent fishing years.

(A) Following an overage of the total ACL, if there is no overage the following fishing year, the SRD will evaluate the landings data to determine whether or not an increase in the respective sector ACLs will be applied.

(B) [Reserved]

\* \* \* \* \*

[FR Doc. 2012-14137 Filed 6-8-12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 110909578-2120-02]

RIN 0648-BB45

#### Western Pacific Pelagic Fisheries; Modification of American Samoa Large Vessel Prohibited Area

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

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies certain boundaries of the large fishing vessel prohibited area around Tutuila, the Manua Islands, and Rose Atoll in American Samoa to align with the boundaries of the Rose Atoll Marine National Monument. This rule simplifies enforcement and administration of the management areas.

**DATES:** This rule is effective July 11, 2012.

**ADDRESSES:** The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment that provides background information on this final rule. The regulatory amendment, identified as NOAA-NMFS-2011-0226, includes an environmental assessment and regulatory impact review, and is available from [www.regulations.gov](http://www.regulations.gov) or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Adam Bailey, Sustainable Fisheries, NMFS PIR, 808-944-2248.

**SUPPLEMENTARY INFORMATION:** A mix of small troll and longline vessels and larger longline and purse seine vessels target tunas and related fish in the U.S. Exclusive Economic Zone (EEZ) around American Samoa. In 2002, concerns about potential catch competition and gear conflicts between small and large vessels led to the implementation of two large vessel prohibited areas (LVPA), one around Swain's Island and one around Tutuila, the Manua Islands, and Rose Atoll (67 FR 4369, January 30, 2002).

In 2009, Presidential Proclamation 8337 created the Rose Atoll Marine National Monument (74 FR 1577, January 12, 2009). The monument includes Rose Atoll and surrounding waters to a distance approximately 50

nm around the atoll. The Proclamation prohibits commercial fishing in monument waters.

The monument and the LVPA around Tutuila, the Manua Islands, and Rose Atoll overlap, but the boundaries do not align. This rule aligns some of the boundaries to simplify administration and enforcement of the two areas. This rule modifies the LVPA boundaries, as follows:

(a) Move the existing northernmost LVPA boundary southward to align with the northern boundary of the monument;

(b) Move the eastern LVPA boundary eastward to align with the eastern boundary of the monument; and

(c) Move a portion of the southern LVPA boundary southward to align with the southern boundary of the monument.

The western and most of the southern boundaries of the existing LVPA remain unchanged. Fig. 1 shows the revised boundaries of the LVPA.

#### Comments and Responses

On April 20, 2012, NMFS published a proposed rule and request for public comment (77 FR 23654). The comment period for the proposed rule ended on May 11, 2012. NMFS received no public comments.

#### Changes From the Proposed Rule

There are no changes in this final rule.

#### Classification

The Administrator, Pacific Islands Region, NMFS, determined that this action is necessary for the conservation and management of the large vessel pelagic fisheries around American Samoa, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification; as a result, a regulatory flexibility analysis was not required and none was prepared.

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