

§ 231.33. The petition for modification shall include each of the elements identified in § 231.33(b).

(b) *Service.* (1) Each petition for modification of an approved industry standard under paragraph (a) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for modification of an existing industry safety appliance standard under paragraph (a) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard incorporated in the section(s) of the rule to which the modification pertains or issued the industry standard that is proposed in the petition for modification; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with FRA's Associate Administrator for Safety and shall reference the specific section(s) of this part in which the person has an interest.

(c) **Federal Register** document. Upon receipt of a petition for modification, FRA will publish a document in the **Federal Register** announcing the receipt of each petition received under paragraph (a) of this section. The document will identify the public docket number in the Federal eRulemaking Portal (FeP) where the contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at <http://www.regulations.gov>. All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.–5 p.m.).

(d) *Comment.* Not later than 60 days from the date of publication in the **Federal Register** concerning a petition for modification under paragraph (a) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made, and contain a

concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(e) *FRA Review.* During the 60 days provided for public comment, FRA will review the petition. If FRA objects to the requested modification, written notification will be provided within this 60-day period to the party requesting the modification detailing FRA's objection.

(f) *Disposition of petitions for modification.* (1) If no comment objecting to the requested modification is received during the 60-day comment period, provided by paragraph (d) of this section, or if FRA does not issue a written objection to the requested modification, the modification will become effective fifteen (15) days after the close of the 60-day comment period.

(2) If an objection is raised by an interested party, during the 60-day comment period, or if FRA issues a written objection to the requested modification, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and handled in accordance with the procedures provided in § 231.33(f).

(3) A petition for modification, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with the an applicable Federal statute, that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest railcar type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any modification of an industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the

violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

Issued in Washington, DC, on April 20, 2011.

**Joseph C. Szabo,**

*Administrator, Federal Railroad Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 101124579-1236-02]

RIN 0648-BA51

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Red Snapper 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 a regulatory amendment (Regulatory Amendment 10) 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 removes the snapper-grouper area closure implemented through Amendment 17A to the FMP. The intended effect of this final rule is to minimize socio-economic impacts to snapper-grouper fishermen, without subjecting the red snapper resource to overfishing.

**DATES:** This final rule is effective May 31, 2011.

**ADDRESSES:** Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone 843-571-4366; fax 843-769-4520; e-mail [safmc@safmc.net](mailto:safmc@safmc.net); or may be downloaded from the Council's Web site at <http://www.safmc.net/>.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, 727-824-5305.

**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 18, 2011, NMFS published a proposed rule in the **Federal Register** for Regulatory Amendment 10 and requested public comment (76 FR 9530). The proposed rule and Regulatory Amendment 10 explained the rationale for the action contained in this final rule. A summary of the rationale and the action implemented by this final rule is provided below.

In the South Atlantic, the red snapper stock is currently overfished and undergoing overfishing. The stock status was determined through a Southeast Data Assessment and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 15, which was completed in February 2008. Based on this stock assessment, Amendment 17A to the FMP was developed to end the overfishing of red snapper and rebuild the stock. The final rule to implement Amendment 17A was published in the **Federal Register** on December 9, 2010 (75 FR 76874). The final rule to implement Amendment 17A included an area closure for South Atlantic snapper-grouper of 4,827 square miles (7,768 square km), consisting of the area encompassed by commercial logbook grids (cells) 2880, 2980, and 3080 for depths from 98 ft (30 m) to 240 ft (73 m), in order to minimize the bycatch of red snapper. Harvest and possession of snapper-grouper species would be prohibited in this area which is off the coasts of southern Georgia and northeast Florida, except when fishing with black sea bass pot gear or spearfishing gear for species other than red snapper.

Through the SEDAR 24 benchmark stock assessment, updated information on the status of the red snapper stock became available in late October 2010. The SEDAR 24 assessment determined, similar to the SEDAR 15 benchmark, that the red snapper stock is overfished and undergoing overfishing. However, the rate of overfishing found in SEDAR 24 is less than the rate of overfishing found in the previous SEDAR 15 stock assessment.

Given the information in the new stock assessment, an emergency rule to delay the effective date of the snapper-grouper area closure was published on December 9, 2010 (75 FR 76890). The emergency rule delayed the effective date of the area closure from January 3,

2011, until June 1, 2011, with a possible 186-day extension, unless superseded by subsequent rulemaking. The delayed effective date provided the Council time to respond to the new scientific information from the SEDAR 24 benchmark stock assessment.

When recent reductions in fishing effort are considered, the red snapper moratorium, implemented through Amendment 17A to the FMP, is projected to end overfishing and rebuild the stock without the additional implementation of the snapper-grouper area closure. Therefore, the proposed action in Regulatory Amendment 10 to remove the snapper-grouper area closure approved in Amendment 17A to the FMP seeks to prevent significant direct economic loss to snapper-grouper fishermen without subjecting the red snapper resource to overfishing.

#### Comments and Responses

During the comment period on the proposed rule and Regulatory Amendment 10, NMFS received 21 submissions from individuals and fishing associations on the proposed rule. NMFS received 17 comments that expressed general support of the action in Regulatory Amendment 10. The additional four comments are not addressed in this final rule because they addressed issues outside the scope of the action contained in the proposed rule and Regulatory Amendment 10. Specifically, they asserted that red snapper release mortality estimates, overall abundance, data sources, and recreational bag limits should be considered by the Council.

#### Classification

The NMFS Regional Administrator, Southeast Region, has determined that Regulatory Amendment 10 is necessary for the management of South Atlantic snapper-grouper and is 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 or concerning the economic impacts of the rule more generally were received and therefore no comments are addressed in this FRFA. No changes in

the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternative 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 objectives of this rule, and it is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for the final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The 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 snapper-grouper fishery. Of these 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. 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 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 revenue information, all commercial vessels affected by the final rule can be considered small entities.

From 2007–2009, an average of 1,797 vessels had valid permits to operate in

the snapper-grouper for-hire sector, of which 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 all vessels are treated as independent entities in this analysis.

The final rule is expected to directly affect all Federally permitted commercial vessels that operate in the South Atlantic snapper-grouper fishery as well as for-hire vessels operating out of northeast Florida and Georgia. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, it is determined that the final rule will 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.

The economic analysis for the final rule estimated the changes in net operating revenues to commercial and for-hire vessels. These changes were estimated assuming the area closure provision of Amendment 17A commenced on June 1, 2011, which differs from the proposed rule which assumed a January 1, 2011, implementation of the area closure. For the current analysis, net operating revenue is equated to profit.

The final rule to eliminate the area closure that was implemented in Amendment 17A is estimated to have a non-uniform change in the short-term profits of commercial vessels operating in the South Atlantic snapper-grouper fishery. Annual profits would increase approximately by \$261,000 for vessels in northeast Florida and Georgia and by \$84,000 for vessels in southeast Florida.

Conversely, annual profits would decrease by approximately \$187,000 for vessels in North Carolina, by \$99,000 in South Carolina, and by \$2,000 for vessels in the Florida Keys. The net effect of the action on commercial vessels as a whole would be an average increase in annual profits of approximately \$57,000. Vessels fishing with vertical-line gear are most affected by the action.

The differential effects of the final rule on commercial vessels in various geographic areas in the South Atlantic are mainly determined by the manner in which quotas for certain snapper-grouper species, such as gag, red grouper, black grouper, and vermilion snapper, would be met. Although the rule would open up very specific areas off the coasts of Georgia and northeast Florida, commercial vessels operating in other areas would also be affected by possible quota closures of some snapper-grouper species as their quotas are reached. Eliminating the area closure from Amendment 17A would allow commercial vessels from southeast Florida, northeast Florida, and Georgia to harvest more snapper-grouper species, such as vermilion snapper, gag, and red grouper, and this would tend to increase their profits. Such a harvest increase, however, would lead to reaching certain snapper-grouper quotas earlier in the fishing year, resulting in lower harvest by vessels in North Carolina, South Carolina, and the Florida Keys. These vessels would then experience reductions in their profits. The more restrictive quotas are those in place for vermilion snapper and gag. The quota for gag is especially critical, because it also serves as a trigger mechanism for closing the harvest of all shallow-water grouper when its quota is reached.

For-hire vessels operating in northeast Florida and Georgia are expected to be the only for-hire vessels affected by the final rule. This is based on the extent of for-hire vessel fishing activities in the subject three statistical areas implemented for closure under Amendment 17A. As a result of the action, annual profits are expected to increase by \$227,000 for charterboats and \$815,000 for headboats.

Eleven alternatives, including the preferred alternative implemented through this final rule, were considered for alternatives to the area closure of Amendment 17A. The first alternative is the no action alternative. The no action alternative would retain the area closure of Amendment 17A. Among the alternatives, this would result in the largest negative economic effects on small entities.

The second alternative is a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases for both the commercial and for-hire vessels than the action in this final rule.

The third alternative is a May-August closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in a lower profit increase to the for-hire vessels and a slightly higher profit increase to commercial vessels. The overall net effect of this alternative would be a lower profit increase than that implemented through this action.

The fourth alternative is a July-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases to the for-hire and commercial vessels.

The fifth alternative for Regulatory Amendment 10 is a May-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases to the for-hire and commercial vessels.

The sixth alternative is a May-December closure of cells 2880, 2980, and 3080 in depths from 66 ft (20 m) to 240 ft (73 m) for the first year and a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The seventh alternative is a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a June-July closure of cell 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The eighth alternative is a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a July closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The ninth alternative is a July-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a January-April closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The tenth alternative is a May-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a January-April closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

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 in 50 CFR Part 622**

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

Dated: April 25, 2011.

#### **Samuel D. Rauch III,**

*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.*

#### **§ 622.35 [Amended]**

■ 2. In § 622.35, the suspension on paragraph (l) is lifted and paragraph (l) is removed and reserved.

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