

**PART 916—NECTARINES GROWN IN CALIFORNIA**

■ 1. The authority citation for 7 CFR parts 916 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 916.356 [Amended]**

■ 2. Section 916.356 paragraph (a)(1) introductory text is amended by removing words “Provided further, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart:”.

Dated: September 15, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 622**

[Docket No. 060525140–6221–02; I.D. 051106B]

**RIN 0648–AT75**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 13C**

**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 13C to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Amendment 13C establishes management measures to end overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass and measures to allow moderate increases in recreational and commercial harvest of red porgy consistent with the rebuilding program for that stock.

For the commercial fisheries, this final rule establishes restrictive quotas for snowy grouper, golden tilefish,

vermilion snapper, and black sea bass and, after the quotas are met, prohibits all purchase and sale of the applicable species and restricts all harvest and possession to the applicable bag limit; establishes restrictive trip limits for snowy grouper and golden tilefish; requires at least 2-inch (5.1-cm) mesh in the back panel of black sea bass pots; requires black sea bass pots to be removed from the water after the quota is reached; changes the fishing year for black sea bass; increases the trip limit for red porgy; establishes a red porgy quota that would allow a moderate increase in harvest; and, after the red porgy quota is reached, prohibits all purchase and sale and restricts all harvest and possession to the bag limit.

For the recreational fisheries, this final rule reduces the bag limits for snowy grouper, golden tilefish, and black sea bass; increases the minimum size limit for vermilion snapper and black sea bass; changes the fishing year for black sea bass; and increases the bag limit for red porgy.

The intended effects of this final rule are to eliminate or phase out overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass; and increase red porgy harvest consistent with an updated stock assessment and rebuilding plan to achieve optimum yield. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

**DATES:** This final rule is effective October 23, 2006.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) and the Record of Decision (ROD) may be obtained from John McGovern, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail [John.McGovern@noaa.gov](mailto:John.McGovern@noaa.gov).

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, Office of Management and Budget (OMB), by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** John McGovern, telephone: 727–824–5305; fax: 727–824–5308; e-mail: [John.McGovern@noaa.gov](mailto:John.McGovern@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern

Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On May 18, 2006, NMFS published a notice of availability of Amendment 13C and requested public comment (70 FR 28841). On June 9, 2006, NMFS published the proposed rule to implement Amendment 13C and requested public comment (71 FR 33423). NMFS approved Amendment 13C on August 14, 2006. The rationale for the measures in Amendment 13C is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

**Comments and Responses**

NMFS received a total of 32 comment letters: 17 addressed Amendment 13C, 6 addressed the Final Environmental Impact Statement (FEIS) associated with Amendment 13C, and 9 addressed the proposed rule. Four of these comment letters supported the proposed actions. The remaining comment letters opposed one or more of the proposed actions for reasons summarized below. Similar comments are consolidated, and each is followed by NMFS's response.

*Comment 1:* Concerns were raised about edits made to Amendment 13C after it was approved by the Council and its Scientific and Statistical Committee (SSC), and before it was transmitted for Secretarial review. At issue is whether NMFS altered the document without the Council's knowledge and in a way that was inconsistent with the Council's intent.

*Response:* At the December 2005 meeting, the Council chose several different preferred alternatives than those in the public hearing draft of Amendment 13C. Thus, when approving Amendment 13C for Secretarial review during its December 2005 meeting, the Council requested the NMFS and Council staffs work together through an Interdisciplinary Plan Team (IPT) to finalize the integrated amendment for Secretarial review. Specifically, the Council directed the IPT to modify a number of preferred alternatives, and to “\* \* \* complete the document as reflected by all the discussion here at this meeting with the preferreds and everything else.” The IPT made the requested edits following the December Council meeting. Edits included modifying and supplementing analyses, as needed, to describe the effects of the Council's revised preferred alternatives that were chosen to further mitigate the unavoidable short-term

adverse socioeconomic impacts of ending overfishing. Additionally, the IPT corrected some statements and conclusions not supported by the analyses, added text describing the long-term benefits of the proposed actions, and added text describing the adverse effects of continued overfishing in response to a request of the Snapper Grouper Committee at its September 2005 meeting. The additional text was added in support of the Council for Environmental Quality's regulatory requirement to consider the magnitude of impacts at various spatial and temporal scales (40 CFR 1508.27).

For example, the DEIS reviewed by the Council in December 2005 stated, "Preferred Alternative 2 (regardless of which sub-alternative is chosen) would have a disproportionately negative effect on North Carolina fishermen unless perhaps the fishing year is changed. The 100-lb (45.4-kg) gutted weight or 10-fish trip limit is intended to extend the fishery through December. However, it is likely that this amendment will be implemented in the middle of 2006. Without these trip limits, the quota will potentially be filled by the end of March 2006 according to average landings by state (Figure 4-4) mostly by those commercial fishermen fishing in south Florida, and then by others in areas south of Cape Fear. Once the fishing begins in North Carolina in late March or early April (dependant on the weather), it is likely that the majority of the 84,000 lbs (38,102 kg) of quota will be filled. This may allow for an unequal opportunity to fish between states and inequitable access to the resource."

At its December 2005 meeting, the Council changed the quota for 2006 from 84,000 lb (38,102 kg) gutted weight to 151,000 lb (68,492 kg) gutted weight. Projections based on landings data from 1999 through 2003 indicated the 151,000-lb (68,492-kg) gutted weight commercial quota associated with the new preferred alternative would not be met until June 2006 rather than March or April 2006. Examination of historical data from 1999 through 2003 suggested North Carolina fishermen would be expected to land 62 percent of their average catch during 1999 through 2003 by June, and Florida fishermen would be expected to land 57 percent of their historical average catch during that same month. Additionally, the proposed trip limit is designed to provide for a year-round fishery in the first full year the regulations become effective and onwards, until eliminated or modified by the Council. Therefore, the IPT revised the document to clarify the Council's Preferred Alternative 2 would not likely have a disproportionate

negative effect on North Carolina fishermen during 2006. This revision is supported by a review of preliminary landings data through April 2006 which indicates North Carolina fishermen landed substantially more snowy grouper than Florida fishermen during the first 4 months of this calendar year.

While, together, edits to the socioeconomic analyses made subsequent to Council approval were substantive, such edits were necessary to comply with legal mandates and were done in response to the Council's actions. All document edits and revisions proposed by the IPT were reviewed by the Southeast Regional Office's Social Science Branch Chief, then submitted to and reviewed by the Council staff, who incorporated them in the document before the Council Chair forwarded Amendment 13C to NMFS for Secretarial review on February 24, 2006.

*Comment 2:* Numerous individuals stated snowy grouper, golden tilefish, black sea bass, and vermilion snapper are in better shape than the assessments indicated.

*Response:* An inclusive and rigorous scientific process was used to assess the status of the stocks addressed in Amendment 13C. Status determinations for all four stocks were derived from the Southeast Data Assessment and Review (SEDAR) process. The SEDAR process involves a series of three workshops designed to ensure each stock assessment reflects the best available scientific information. First, representatives from State agencies, the South Atlantic Council, academia, NMFS, and other environmental and fishery interest groups, participate in a data workshop. The purpose of this workshop is to assemble and review available fishery dependent and independent data and information on a stock, and to develop consensus about what constitutes the best available scientific information, how that information should be used in an assessment, and what types of stock assessment models should be employed. For each assessment, representatives of each state provided available data on the species to be assessed. Second, assessment biologists from these agencies and organizations participate in an assessment workshop, during which the data obtained from the data workshop are input into one or more assessment models to estimate parameters used in evaluating the status of a stock and its fishery. Generally, multiple runs of each model are conducted, including a base run and a number of additional runs, to examine how differing data and assumptions

affect results. Third, a review workshop is convened to provide representatives from the South Atlantic Council, NMFS, constituent groups, and the Center for Independent Experts the opportunity to peer review the results of the stock assessment workshop. The findings and conclusions of each SEDAR workshop are documented in a series of reports, which are ultimately reviewed and discussed by the Council's SSC. The Council's SSC concluded the snowy grouper, golden tilefish, vermilion snapper, and black sea bass assessments were based on the best available science.

*Comment 3:* Several letters assert the data supporting the actions proposed in the amendment are flawed and inadequate, and do not adequately represent conditions off North Carolina, where a large portion of the catch is harvested. Specifically at issue is text in the SEDAR report of the snowy grouper and golden tilefish peer review workshop, which states the data used in assessing the status of those stocks, "are weaker than those generally expected in fisheries assessments." Also at issue is the use of headboat survey data and fishery-independent Marine Resources Monitoring, Assessment, and Prediction Program survey data as indices of abundance in the black sea bass, vermilion snapper, and snowy grouper stock assessments.

*Response:* SEDAR participants, Council advisory committees, the Council, and NMFS staff reviewed and considered these and other concerns about the adequacy of the data underlying the proposed actions in Amendment 13C. SEDAR workshops rejected the assertion the headboat index has no utility as an index of abundance. Although the SEDAR report of the snowy grouper and golden tilefish peer review workshop acknowledged data used in those assessments were relatively weak, the same report also states, "The data used for both species were scientifically sound and appropriate for use in stock assessments (with minor exceptions), adequate to make useful inferences about stock status, and the best available for this purpose." The Council's SSC concluded the snowy grouper, golden tilefish, vermilion snapper, red porgy, and black sea bass assessments were based on the best available science. The Council's Snapper Grouper Committee acknowledged, while stock assessment findings are uncertain, there is no reason to assume such uncertainty leads to unrealistically pessimistic conclusions about stock status. Rather, the stocks could be in worse shape than indicated by the stock assessment.

Therefore, uncertainty should not be used as a reason to avoid taking action. The Council agreed with this conclusion when voting to submit Amendment 13C for Secretarial review in December 2005. The NMFS' Southeast Fisheries Science Center (SEFSC) reviewed and certified Amendment 13C and its supporting analyses as being based on the best available scientific information in April 2006. Finally, the amendment also was subject to a pre-dissemination review in May 2006 in compliance with the Information Quality Act.

*Comment 4:* Eight letters stated the recreational and commercial measures in Amendment 13C would have negative economic and social impacts. One group suggested the proposed actions in Amendment 13C do not adequately balance socioeconomic needs with the need to rebuild snapper-grouper stocks. Another letter stated Amendment 13C ignores national standards 6 and 8 of the Magnuson-Stevens Act, which require "conservation and management shall take into account and allow for variations among, and contingencies in, fisheries, fisheries resources, and catches," and "conservation and management measures shall, consistent with the requirements of the Magnuson-Stevens Act (including prevention of overfishing and rebuilding of overfished stocks), take in account the importance of fishery resources to fishing communities in order to (A) Provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.", respectively.

*Response:* NMFS agrees the actions proposed in Amendment 13C will have immediate, short-term, negative socioeconomic impacts. The Council made efforts to minimize, to the extent practicable, the unavoidable adverse socioeconomic impacts of ending overfishing by modifying a number of alternatives identified as preferred in the DEIS to allow overfishing to be phased out over a 3-year period.

Together, the actions proposed in Amendment 13C are estimated to reduce the revenue of the commercial harvest sector \$730,000 the first year the regulations are effective, and \$1,080,000 in the third year, and each subsequent year the regulations are effective. The actions are estimated to decrease the net non-market benefits of the recreational sector \$80,000 the first year the regulations are effective, and \$1,120,000 in the second year and each subsequent year the regulations are effective.

NMFS is unable to quantify either the adverse socioeconomic effects of

continued overfishing of the snowy grouper, golden tilefish, vermilion snapper, and black sea bass stocks, or the long-term benefits expected to accrue to fishery participants and communities as catch per unit effort and the age structure of the stocks improve in response to decreased fishing mortality rates. However, although unquantifiable, the adverse socioeconomic effects of inaction (not ending overfishing) are expected to far exceed those associated with the proposed actions, as continued overfishing would require fishermen to increase effort in the future as the size and age of target species further decrease and, ultimately, threaten the long-term viability of these fisheries. Furthermore, the proposed actions support the goal of rebuilding these important fisheries to higher abundance levels, increasing future catch per unit effort, and achieving the optimum yield. The long-term benefits of rebuilding stocks to sustainable, optimum yield levels exceed the short-term costs associated with the necessary restrictions to achieve stock rebuilding.

There is no guarantee all current fishery participants and related industries adversely affected by the proposed actions will experience the long-term benefits of ending overfishing. The short-term losses of some individuals could be sufficiently severe to encourage them to exit the fishery. While individual proposed actions are not expected to threaten the sustainability of fishing communities in the South Atlantic, the cumulative effects of the actions proposed in Amendment 13C, in conjunction with other State and regional fishery regulations and community changes, could be severe enough to change the economic and social structures of fishing communities over the long term. However, stock assessment models indicate that if adequate corrective action to end overfishing is not taken at this time, even more severe harvest restrictions would be required in the future. This would result in greater short-term, adverse socioeconomic effects than those associated with the proposed actions.

*Comment 5:* Two individuals stated the Council refused to consider an alternative that would have minimized adverse economic impacts on fishermen, particularly those from North Carolina, by establishing an annual commercial snowy grouper quota of 151,000 lb (68,492 kg) gutted weight. Several others advocated alternative snowy grouper quota and trip limits, including: A quota of 151,000 lb (68,492 kg) gutted weight and trip limit of 600

to 700 lb (272 to 318 kg) gutted weight; a quota of 172,000 lb (78,018 kg) gutted weight with a trip limit of 500 lb (227 kg) gutted weight; a trip limit of 30 fish; a trip limit of 1,500 lb (680 kg) gutted weight; and a moratorium on the commercial harvest of snowy grouper.

*Response:* The Council considered, but eliminated from detailed study, an alternative that would reduce the annual commercial snowy grouper quota from 344,508 lb (156,256 kg) gutted weight to 151,000 lb (68,492 kg) gutted weight and specify a commercial trip limit of 275 lb (125 kg) gutted weight until the quota is met. This alternative was not retained for detailed analysis because it would not end overfishing until 2022. The Council believes this alternative is too risky due to the poor status of the snowy grouper stock and life history characteristics that make it vulnerable to overfishing. The remaining quota and trip limit recommendations would allow overfishing to occur for an even longer period of time. A moratorium on the commercial harvest of snowy grouper would have minimal biological benefits relative to the proposed action because the commercial quota proposed by the Council essentially allows fishermen to retain their snowy grouper bycatch, which is expected to die when discarded.

*Comment 6:* Two groups suggested there should be different regulations for snowy grouper and other species by region because these species are perceived to be in better shape in the northern extent of their range and are more accessible in the southern part of their range.

*Response:* The Council considered but rejected in Amendment 13C, an alternative that would specify two separate commercial quotas for snowy grouper; one for fish landed in North Carolina, and another for fish landed in the remaining three South Atlantic states. The Council considered this alternative impractical because it was concerned regional quotas would be too low to manage effectively in-season.

*Comment 7:* One group suggested the proposed snowy grouper plan would negatively impact the blueline tilefish fishery in the northern part of the Council's jurisdiction because blueline tilefish and snowy grouper are caught together. Due to the small trip limit for snowy grouper, it may not be worthwhile for fishermen to make a trip for blueline tilefish. Furthermore, two groups suggested that, if fishermen did target blueline tilefish after the proposed snowy grouper trip limit and/or quota is met, then the snowy grouper stock could be adversely affected by

discard mortality because the release mortality rate of that species is estimated to be 100 percent.

*Response:* NMFS realizes blueline tilefish and snowy grouper are captured in the same locations, and is currently working with the Council to evaluate multispecies management alternatives to reduce bycatch of deep-water species in Snapper Grouper Amendment 15. This action is being evaluated separately from Amendment 13C to ensure debate about the composition and management of a proposed deep-water grouper unit does not delay Council action to effectively address overfishing of the snowy grouper stock.

*Comment 8:* One group commented that fishery management plans must establish a standardized bycatch reporting methodology.

*Response:* Currently, approximately 20 percent of commercial fishermen are asked to record discard information in NMFS logbooks. In addition, observer data has been provided by the Marine Fisheries Initiative Program and Cooperative Research Programs for ongoing bycatch studies, which will provide information for future management actions. In Amendment 15, the Council is reviewing alternative interim methodologies for monitoring and assessing bycatch in the snapper-grouper fisheries.

*Comment 9:* One group stated NMFS should disapprove the actions proposed in Amendment 13C for the snowy grouper and black sea bass fisheries, because they fail to immediately end decades of overfishing on these stocks as required by the Magnuson-Stevens Act's national standard 1. Another group expressed similar concerns with the delay in Council action to end overfishing and with the slow and stepped implementation of necessary restrictions, but encouraged the Secretary to quickly approve and implement the actions proposed in Amendment 13C because they represent reasonable and prudent steps toward finally rebuilding South Atlantic snapper-grouper fisheries. A third individual also supported the proposed actions, stating he has been fishing for 26 years, and the fish he catches are much smaller than they used to be.

*Response:* NMFS has determined the Council's proposed actions to immediately end or phase out overfishing of the snowy grouper, golden tilefish, vermilion snapper, and black sea bass stocks meet the biological objectives set forth in the Magnuson-Stevens Act, while minimizing to the extent practicable the unavoidable adverse short-term effects of such actions on fishing communities. The

snowy grouper and black sea bass fisheries are economically important to both commercial and recreational fishermen. Because phasing-out overfishing on these stocks over a 3-year period would not compromise their long-term sustainability, ending overfishing on these stocks immediately would result in unnecessarily severe adverse impacts to affected fishermen, ancillary industries, and fishing communities.

*Comment 10:* One group stated Amendment 13C provides an inadequate range of reasonable alternatives for immediately ending overfishing of snowy grouper and black sea bass as required by the National Environmental Policy Act. Another group stated the amendment does not contain a reasonable range of alternatives for phasing out overfishing over time to minimize adverse socioeconomic impacts on fishing communities, as required by the Magnuson-Stevens Act and the Regulatory Flexibility Act.

*Response:* The Council evaluated a broad range of alternatives for ending overfishing on the snowy grouper, golden tilefish, vermilion snapper, and black sea bass stocks. The alternatives considered for each proposed action, with the exception of vermilion snapper, ranged from those that would end overfishing immediately to those that would phase out overfishing over short time periods that could reasonably be expected to assure long-term biological goals would not be compromised. The alternatives considered for the vermilion snapper stock evaluated the sustainability of a large range of allowable harvest levels in the context of historical catches and recent stock assessment information.

*Comment 11:* Amendment 13C only considers overfishing. A fully developed amendment would define conservation goals in terms of overfishing definitions, rebuilding periods, and other elements while providing a suite of alternatives that meet these objectives.

*Response:* The purpose of Amendment 13C is to end overfishing of four snapper-grouper stocks recently assessed through the SEDAR process. These actions originated from the Council's work on Snapper Grouper Amendment 13, which contained a broad range of actions to define management reference points, end overfishing and rebuild overfished stocks, consider a multispecies approach to management, address bycatch, modify permit renewal and transferability requirements, and address the scheduled sunset of

regulations protecting the Oculina Experimental Closed Area.

NMFS announced in two **Federal Register** notices (68 FR 53706, September 12, 2003 and 70 FR 46126, July 26, 2005) the Council's intent to evaluate and propose separately some of the actions originally proposed in Amendment 13. The first notice announced the Council's intent to transfer the Oculina Experimental Closed Area action from Amendment 13 to Amendment 13A, and the remaining actions in Amendment 13 to Amendment 13B. This decision was intended to ensure the Council adequate time to fully evaluate a range of actions to address overfishing, rebuilding, and other issues in the snapper-grouper fishery without compromising the Council's ability to act on the Oculina Experimental Closed Area before its scheduled sunset date of June 27, 2004.

The second notice announced the Council's intent to address overfishing and a few other priority actions in a regulatory amendment, which later evolved into Amendment 13C. This decision was intended to ensure extended debate about multispecies management and other actions in Amendment 13B did not delay Council action to effectively address overfishing of key snapper-grouper stocks recently assessed through the SEDAR process, including snowy grouper, golden tilefish, vermilion snapper, and black sea bass, and to attend to a few other, less complicated issues. The Council is currently expediting the evaluation of alternative management reference points and rebuilding plans for the four stocks addressed in Amendment 13C in Amendment 15, which is scheduled to be implemented in 2007. The other actions referenced above and not evaluated in Amendments 13A or 13C remain in Amendment 13B.

*Comment 12:* One individual stated Executive Order 12866 should be applied to the proposed rule.

*Response:* A Regulatory Impact Review (RIR) was conducted to satisfy the requirements of Executive Order 12866 and the results of the review are contained in the amendment.

*Comment 13:* One group commented the proposed action to end overfishing on the vermilion snapper stock by the commercial fishery is insufficient. This group pointed out the FEIS states a 31-percent reduction in fishing mortality is required to end overfishing, but the proposed action would reduce fishing mortality by just 8 percent.

*Response:* The Council's initial preferred alternative for ending overfishing on the vermilion snapper stock would have reduced commercial

harvest by 31 percent. Numerous comments opposing this alternative indicated it was needlessly restrictive, and would have extremely negative short-term socioeconomic impacts on affected fishermen and fishing communities. After further discussion and review of landings data used in the vermilion snapper assessment, the Council developed and identified a proposed action that would minimize the unavoidable short-term adverse socioeconomic effects associated with ending overfishing on the vermilion snapper stock until the 2007 SEDAR assessment update is completed and presented to the Council.

The commercial quota proposed for vermilion snapper is equivalent to the average commercial landings during 1999 to 2003, and takes into consideration stakeholder concerns about the uncertainty of the assessment that prompted Council action to end overfishing of the vermilion snapper stock.

The recent stock assessment indicated overfishing was occurring during 1999–2001 when the commercial landings peaked at 1,680,000 lb (762,036 kg) gutted weight. Commercial landings have generally been below 1,100,000 lb (498,952 kg) gutted weight with occasional spikes in landings. Based on the ratio between the average fishing mortality during 1999–2001 and the fishing mortality which would produce maximum sustainable yield, a 31-percent reduction in catch would be needed to end overfishing immediately. During 2003 and 2004, a 30-percent reduction in landings from the 1999–2001 average occurred.

Although the stock assessment indicated overfishing was occurring during 1999–2001 the Scientific and Statistical Committee and Stock Assessment Review Panel stated the stock recruitment relationship was poorly defined, and it was uncertain whether or not the stock was overfished. Despite uncertain biomass values, optimum yield is estimated to be 1,630,000 lb (739,356 kg) gutted weight. As 68 percent of the total catch during 1999–2003 was taken by the commercial fishery, the commercial portion of the optimum yield would be 1,110,000 lb (498,952 kg) gutted weight which is roughly equivalent to the average landings during 1999–2003.

Due to uncertainty associated with the assessment, the Council believed it was best to cap landings at 1,100,000 lb (498,952 kg) gutted weight until a new stock assessment update was completed in 2007. A 30-percent reduction in landings during 2003–2004 would have ended overfishing. The proposed quota,

which approximates the optimum yield, would prevent overfishing from occurring in the future and eliminate the occasional spikes in landings. Preventing peaks in fishing pressure and eliminating overfishing would stabilize stock biomass at current levels, ensuring there are no declines in the mean length and size/age at sexual maturity, and protecting the stock against recruitment overfishing.

*Comment 14:* Various groups advocated bag limits from five fish to two fish per person per day be considered for snowy grouper and golden tilefish rather than the preferred alternative of one fish per person per day. One group stated that hi-grading is less likely with a larger bag limit. One group stated their preference for a spawning season closure rather than a 1-fish bag limit.

*Response:* The Council did not consider bag limits exceeding two fish per person per day because the average catch of snowy grouper and golden tilefish is already low (*i.e.*, about one fish per angler per day) and the intent of the proposed actions is to end overfishing on these stocks. Also, the Council was concerned recreational fishing pressure might increase as stock biomass increases in response to reduced fishing pressure. The Council believed that a bag limit of one fish per person per day would provide a greater incentive than a 2-fish bag limit would provide for fishermen to avoid areas where golden tilefish and snowy grouper occur.

The Council considered, but eliminated from detailed study, alternatives to establish seasonal and/or area closures for the snowy grouper and golden tilefish stocks because these species could still be taken during a closed season or in a closed area when fishermen targeted co-occurring species, and the release mortality rate of these species is estimated to be nearly 100 percent.

*Comment 15:* A longline fisherman stated the proposed action to implement a stepped trip limit for the commercial snowy grouper fishery will make longlining for golden tilefish unprofitable and could eliminate longline vessels from the fishery. A hook-and-line fisherman stated the proposed stepped trip limit could disadvantage commercial hook-and-line fishermen by reducing the availability of snowy grouper to the fishery during the fall.

*Response:* NMFS and the Council are considering an action to address these concerns in Amendment 15. Specifically, an evaluation is being conducted on the effects of changing the

golden tilefish fishing year to begin on September 1 to eliminate the possibility the hook-and-line fishery would be impacted by a fall closure, and eliminating the stepped trip limit strategy to lessen the economic impact of the reduced golden tilefish quota on longline fishermen.

*Comment 16:* One individual suggested the Council specify separate golden tilefish quotas for the longline and hook-and-line fisheries.

*Response:* The Council discussed alternatives that would specify separate quotas for fishermen using longline and hook-and-line gear, and determined they were not necessary. Because the commercial hook-and-line fishery catches a minor portion of the overall harvest, separate quotas for the two sectors would have little effect on restricting harvest.

*Comment 17:* One individual stated the Council should limit the number of black sea bass pots to 20 to 30 per boat, and require pots be returned to the dock after each trip. Another individual stated the Council should prohibit the use of black sea bass pots, or restrict the number of pots used per boat.

*Response:* The Council considered but eliminated from detailed study alternatives that would restrict the number of sea bass pots a fisher could deploy and require fishermen to return pots to the dock after each trip. The Council believes its proposed action to prohibit the use of black sea bass pots after the black sea bass quota is met will restrict the number of pots fishermen use over the course of a year.

*Comment 18:* One group suggested NMFS implement a less restrictive black sea bass regulation until new data became available on the status of the stock. Specifically, the group proposed a commercial quota of 477,000 lb (216,364 kg) gutted weight, a requirement to include a 2-inch (5-cm) back panel in black sea bass pots, a recreational size limit of 11 inches (28 cm) (total length), and a bag limit of 15 fish per person per day.

*Response:* The suggested alternative would not achieve the purpose of Amendment 13C because it is not sufficiently restrictive to end overfishing on the black sea bass stock.

*Comment 19:* One group opposed increasing the allowable red porgy catch, indicating that, although red porgy are numerous, very few individuals are of legal size. Another individual indicated the allowable catch level should be even larger than that proposed because red porgy have become so plentiful in some areas they are a nuisance.

*Response:* Both the commercial and recreational regulations proposed in Amendment 13C for red porgy are expected to constrain total harvest to a level that would not compromise stock rebuilding. This expectation is supported by the 2006 assessment update, which indicates the stock would recover ahead of schedule if the proposed harvest increases were maintained throughout the rebuilding period. The proposed quota would provide for a fishing mortality rate that remains well below the maximum threshold.

#### Classification

The Regional Administrator, Southeast Region, NMFS, determined that Amendment 13C is necessary for the conservation and management of the South Atlantic snapper-grouper fishery 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.

The Council and NMFS prepared an FEIS for Amendment 13C. The FEIS was filed with the Environmental Protection Agency (EPA) on May 18, 2006. A notice of availability was published on May 26, 2006 (71 FR 30399). In approving Amendment 13C, NMFS issued a Record of Decision (ROD) identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

NMFS prepared an FRFA, as required by section 604 of the Regulatory Flexibility Act. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of significant issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the analysis follows.

This final rule will reduce the commercial quotas and establish trip limits for snowy grouper and golden tilefish, establish commercial quotas for vermilion snapper and black sea bass, establish a back-panel mesh size requirement for black sea bass pots, change the fishing year for the commercial and recreational black sea bass fisheries, establish a commercial quota and increase the trip limit for red porgy, reduce the recreational bag limit for snowy grouper and golden tilefish, increase the recreational minimum size limit of black sea bass, and increase the recreational bag limit of red porgy. The purpose of the final rule is to end overfishing for snowy grouper, golden tilefish, vermilion snapper, and black

sea bass, and allow for an increase in the harvest of red porgy consistent with the rebuilding schedule for this species. The Magnuson-Stevens Act provides the statutory basis for the final rule.

Nine comment letters were received from the public in response to the proposed rule, 6 letters received on the FEIS, and 17 letters received on the Amendment. A complete summary of these comments and NMFS' responses is provided in the previous section of this final rule. No changes were made in the final rule as a result of these comments. Among the 32 comment letters, 8 individuals or organizations raised issues regarding the economic impacts of the proposed actions. These comments collectively stated the magnitude and distributional regional or sector adverse economic impacts were too great to justify the actions. NMFS agrees the actions in the final rule will have immediate, short-term, negative socioeconomic impacts. Estimates of the expected impacts, both total and average by individual entity, are provided in this assessment. This assessment also concludes, while individual actions of the final rule are not expected to threaten the sustainability of fishing communities in the South Atlantic, the cumulative effects of the actions contained in the final rule, in conjunction with other State and regional fishery regulations and community changes, could be severe enough to change the economic and social structures of fishing communities over the long term. However, although unquantifiable, the adverse socioeconomic effects of inaction are expected to far exceed those associated with the final rule, as continued overfishing would ultimately threaten the long-term viability of these fisheries, resulting in increased levels of business failure and adverse community change. Thus, while the assessment concludes there is no guarantee all current fishery participants and related industries adversely affected by the final rule will experience the long-term benefits of ending overfishing, as the short-term losses of some individuals could be sufficiently severe to result in their exit from the fishery, the final rule is expected to best meet the Council's goals of ending overfishing while minimizing adverse economic and community impacts.

No duplicative, overlapping, or conflicting Federal rules have been identified. The final rule will not impose any reporting or recordkeeping requirements. However, sea bass pot fishermen who encounter personal hardship and are unable to meet the pot removal requirements may request

through application to the Regional Administrator, NMFS Southeast Region (RA), a grace period of up to 10 days. Completion of this application is not expected to require special skills, recordkeeping, or substantial allocation of time, which should not exceed 30 minutes. No fees or costs other than the time spent and postage are associated with this application.

Two general classes of small business entities are expected to be directly affected by the final rule, commercial fishing vessels and for-hire fishing vessels (charterboats and headboats). The Small Business Administration defines a small entity in the commercial fishing sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual gross receipts not in excess of \$3.5 million. For a for-hire business, the appropriate revenue benchmark is \$6.0 million.

An analysis of the gross revenue per vessel for commercial vessels that harvest species addressed in this action was conducted using data from the NMFS Southeast logbook program. These vessels also operate in other federally permitted fisheries, some harvests of which are also reported in the Southeast logbook program. All harvests (snapper-grouper and non-snapper-grouper species) and associated gross revenues encompassed by the Southeast logbook program were summarized. During the period 2001 to 2004, average annual gross revenue per vessel did not exceed \$14,000, and total annual gross revenue for an individual vessel did not exceed approximately \$247,000. It should be noted these vessels may also operate in the for-hire sector and other commercial fisheries whose landings are not covered by the Southeast logbook. Thus, this analysis may underestimate the total gross revenue for some vessels, though any underestimation is not believed to be substantial.

A comprehensive study of vessels that participated in the South Atlantic snapper-grouper fishery in 1994 provided estimates of total vessel revenue from all fishing activities. Average net income (1994 dollars) from sampled boats, in declining order, was \$83,224 for boats that primarily used bottom longlines in the northern area (St. Augustine, FL, northward); \$23,075 for boats that primarily used black sea bass pots in the northern area, \$15,563 for boats that primarily used bottom longlines in the southern area (south of St. Augustine, FL); \$11,649 for boats that primarily used vertical lines in the southern area; and \$8,307 for boats that primarily used vertical lines in the

northern area. Overall, boats in the northern area averaged \$14,143 in net income based on average revenues of \$48,702, while boats in the southern area averaged \$12,388 net income based on average revenues of \$39,745.

Although some fleet activity may exist in the snapper-grouper fishery, the extent of such has not been determined. Thus, all vessels are assumed to be unique business entities. Given the gross revenue profile captured by 2001–2004 Southeast logbook program data and the findings of the 1994 survey, it is assumed all vessels represent small business entities.

Charterboats are defined as boats for hire carrying 6 or fewer passengers that charge a fee to rent the entire boat. Headboats are for-hire vessels with a larger passenger capacity that charge a fee per individual angler. Using 1998 survey data, two methods were used to determine the average gross revenue per vessel for the for-hire sector. The first method summarized the survey response to total gross revenue provided by the vessel owner. The second method calculated gross revenue based on the survey response to the average price per trip/passenger and the average number of trips/passengers taken/carried per year. The second method consistently generated higher estimates of average gross revenues, suggesting either over-reporting of the individual data elements utilized in the calculated method or under-reporting of gross revenues. The analysis of the expected impacts of the proposed action, however, assumed the alternative estimation methods generated an acceptable range of the true average gross revenues for this sector. For the charterboat sector, these results (1998 dollars) are as follows: \$51,000 to \$69,268 for Florida Atlantic coast vessels; \$60,135 to \$73,365 for North Carolina vessels; \$26,304 to \$32,091 for South Carolina vessels; and \$56,551 to \$68,992 for Georgia vessels. For the headboat sector, the results are: \$140,714 to \$299,551 for Florida (east and west coast) vessels, and \$123,000 to \$261,990 for vessels in the other South Atlantic states. Similar to the commercial harvest sector, some fleet activity may exist within the for-hire sector. The magnitude and identity of such is unknown, however, and all vessels are assumed to represent unique business entities. Given the gross revenue profiles generated, it is assumed all for-hire operations expected to be affected by this final rule are small business entities.

During 2004, 1,066 commercial vessels were permitted to operate in the snapper-grouper fishery. Not all

permitted vessels operate every year, and some vessels are believed to obtain permits for either speculative purposes or as insurance against further restriction in commercial fisheries. Nevertheless, the total number of permitted vessels is considered an upper bound on the potential universe of vessels in the snapper-grouper fishery. The lower bound is assumed to be the number of vessels active in 2003—906 vessels. Thus, the range of vessels assumed to potentially operate in the commercial snapper-grouper fishery is 906 to 1,066. A subset of these vessels harvest the five species addressed in this action. From 2001 through 2004, the number of vessels that harvested any of the species addressed in this action ranged from 396 to 459 and are assumed to be the universe of potentially affected entities in the commercial harvest sector. This represents 37 percent (396/1,066) to 51 percent (459/906) of the entire universe of entities potentially active in the snapper-grouper fishery. Thus, it is determined a substantial number of small entities in the commercial harvest sector would be affected by this final rule.

For the for-hire sector, 1,594 snapper-grouper for-hire permits were issued to vessels in the southern Atlantic states in 2004. The for-hire fishery operates as an open access fishery, and not all permitted vessels are necessarily active in the fishery. Some vessel owners purchase open access permits as insurance for uncertainties in the fisheries in which they currently operate. A 1999 study of the Southeast for-hire industry estimated a total of 1,080 charter vessels and 96 headboats supplied for-hire services in Florida (east and west coast) and the rest of the South Atlantic in 1997.

Data on the number of for-hire vessels that actually harvest the species addressed by this action are not available. However, harvest data for 1999–2003 indicate most (70 percent) of the headboat harvest in the South Atlantic is comprised of snapper-grouper species, and approximately 36 percent of total snapper-grouper headboat harvest is comprised of the species addressed in this action. Therefore, it is assumed all South Atlantic headboats harvest or target snapper-grouper species, and it is likely a substantial number of headboats will be affected by measures in this final rule.

Data on the charter sector also imply a substantial number of charterboat entities will be affected by this final rule. Based on 2003 data, snapper-grouper species are caught on 28

percent of all charter trips, while 14 percent of the charter sector's snapper-grouper harvest is comprised of species addressed by this action.

The economic impact can be ascertained by examining two issues: Disproportionality and profitability. The disproportionality question is, do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All vessel operations affected by this final rule are considered small entities so the issue of disproportionality does not arise in the present case. However, among the entities in the commercial harvest sector, there is a high degree of diversity in terms of primary gear employed and level of engagement in the snapper-grouper fishery. The snowy grouper and golden tilefish actions are expected to have a proportionally higher negative short-term impact on vessels which employ longline gear or fish off south and central Florida. The vermilion snapper quota is expected to have a relatively larger negative impact on vessels that employ hook-and-line gear or fish off Georgia and Northeast Florida. The black sea bass management measures are expected to have a proportionally higher negative impact on vessels that utilize black sea bass pots in North Carolina. Although the red porgy management measures will increase the allowable harvest and revenues in the commercial fishery, most of the increase in revenue is expected to be realized by vessels that employ hook-and-line gear.

The short-term impacts on the for-hire sector from this final rule for the snowy grouper and golden tilefish management measures are expected to be minimal. In contrast, for-hire vessels are expected to bear substantially larger short-term negative impacts associated with implementation of the regulations for vermilion snapper and black sea bass. Assessment of the impacts on for-hire vessels is limited to expected reductions in harvest because the econometric models to predict changes in for-hire trips and subsequent changes in revenues as a result of the regulations contained in the final rule are not available. The short-term reduction in harvest of these two species is expected to be proportionally greater in the headboat sector than the charterboat or private boat sectors. For the vermilion snapper fishery, the final rule is expected to reduce vermilion snapper harvests by 21 percent in the private/charter sector compared to 30 percent in the headboat sector. Similarly, the regulations for black sea bass are expected to reduce black sea bass

harvests by 27 percent (year 1) in the charter/private sector compared to 41 percent (year 1) in the headboat sector.

The final rule is expected to result in an increase in recreational red porgy harvest and associated benefits and is projected to increase red porgy harvest in the headboat sector by 36 percent and by 21 percent in the charter/private recreational fishery sector.

The profitability question is, do the regulations significantly reduce profit for a substantial number of small entities? In the recreational fishery, for-hire business entities are expected to lose revenues and profits as a result of trip cancellation by clients who determine the measures will significantly affect the quality of the fishing experience. As previously discussed, these losses cannot be estimated at this time due to data limitations. However, it is reasonable to assume the greater the reduction in harvest, the higher the likelihood of trip cancellation and potential revenue loss. Even though it is not possible to calculate the change in profitability expected to arise from the final rule, given the dependence of the for-hire sector on the harvest of vermilion snapper and black sea bass, it is reasonable to assume the expected harvest reductions may result in a substantial adverse impact on the profitability of affected for-hire entities. The estimated reduction in consumer surplus for anglers that participate in the headboat sector (approximately \$577,000) as a result of the final rule in these two fisheries is approximately 19 percent of total estimated consumer surplus generated from the snapper-grouper fishery for this sector (approximately \$2.978 million). Similar analysis is not possible for the charter sector because this sector was combined with the private recreational sector in the assessment results. Although it is inappropriate to translate these results one-for-one into expected trip cancellations, they demonstrate the potential magnitude of trip cancellation and potential business revenue and profit changes.

In the commercial harvest sector, data from 2001 through 2004 were used to examine the profitability of vessels that are likely to be affected by the final rule. This analysis encompassed an average of 408 vessels per year. Because the analysis for red porgy was conducted using data during a different time period (1995 through 1998), the revenue increase associated with this measure was not included in the assessment of the short-term cumulative effects of the final rule. Instead, the estimated increase in net cash flow in the

commercial harvest sector due to red porgy regulations is presented separately.

Net vessel revenues (gross revenue minus trip costs and opportunity cost of labor) were estimated from landings reported to the Southeast logbook program. Over the period 2001 to 2004, a large proportion (67 percent) of the entities included in this analysis earned less than \$10,001 per year. Also, a number of vessels appeared to operate at a loss or break-even condition. These results could be an indication a high proportion of the commercial fishermen in the Southeast are part-time fishermen who supplement their household income by other employment. Another explanation of the results is not all of the fishing revenues for these vessels are reported in the Southeast logbooks and/or the vessels are engaged in for-hire activities. Revenues and costs associated with commercial fishing on trips that did not harvest any of the species covered by this action, commercial fishing not captured by the Southeast logbook program, and for-hire activities are not reflected in the results contained in the following analyses. As such, total and net revenues for entire fishing business operations are unknown, and the following analysis likely overstates total and average individual impacts on the affected entities. The magnitude of this overstatement, however, cannot be determined.

During the first year of implementation, the harvest restrictions for golden tilefish, snowy grouper, vermilion snapper, and black sea bass are expected to result in a total net short-term annual loss of \$0.735 million to the commercial harvest sector, or 12 percent of the total net revenue for trips that harvested any of the affected species. The final rule will implement a stepped-down approach on harvest restrictions for snowy grouper and black sea bass over a 3-year period, and the cumulative effects of the proposed measures for these four species is expected to increase to \$1.085 million in the third year.

When evaluated at the individual vessel/entity level, the average annual loss per affected entity associated with the final rule in the first year is expected to vary between \$760 and \$3,261, and the maximum net loss per boat is expected to vary between \$26,533 and \$76,390 per year. On average, 219 vessels (54 percent of potentially affected entities) are not expected to incur losses under the final rule.

Revenue loss per vessel was classified as Range I (\$1–\$500), Range II (\$501–\$10,000), or Range III (greater than \$10,000). The short-term economic

effects of the final rule are not expected to be distributed evenly across all affected entities. During the first year of implementation of the final rule, it is expected 21 vessels would sustain Range III losses (an average of \$22,764 per vessel) and collectively account for 62 percent of the total net loss in the commercial harvest sector. Conversely, 82 entities are expected to sustain Range I losses (\$102 per vessel), and 86 entities are expected to sustain Range II losses (\$3,165 per vessel) and account for 37 percent of the total net loss in the commercial harvest sector.

Vessel profitability is expected to decrease by more than 10 percent for 86 vessels (21 percent of the 408 potentially affected entities) during the first year of implementation of this final rule.

This final rule is expected to result in a loss in net revenue of more than 10 percent for the 21 vessels that experience a Range III reduction. Also, 80 percent of all affected entities (16 vessels) that experience a Range III decrease in net revenue are expected to realize more than a 25 percent reduction in profitability. In contrast, profitability is expected to decrease by more than 10 percent for only 24 percent (7 vessels) of all vessels that are likely to sustain Range I losses.

For red porgy, this final rule is expected to increase short-term revenue to the commercial harvest sector by \$0.07 million annually. The estimated increase in earnings of 32 vessels (10 percent of the 317 vessels expected to be affected by the red porgy action) are expected to exceed \$2,500 per vessel annually. The estimated average net revenue increase per vessel within the red porgy fishery is \$221 (\$70,000/317) per year.

In summary, this final rule is expected to result in a 12-percent loss in short-term net revenue to the commercial harvest sector. At least 26 percent of potentially affected entities are expected to sustain more than \$501 losses in net revenue, and 31 percent of all affected entities (13 percent of all potentially affected entities) are expected to experience more than a 25 percent decrease in profitability during the first year of implementation of the proposed action. The reductions in profitability are expected to increase through the third year as total target harvest reductions are achieved. Thus, both the magnitude and distributional effects of the reduction in net revenues could increase over this period of time. However, the delayed implementation of the full harvest reductions could allow operational adaptation by the affected entities, resulting in smaller



total impacts and smaller distributional effects than those discussed above. In addition to the impacts described for the commercial finfish harvest sector, certain segments of the for-hire sector are expected to experience substantial reductions in allowable harvests of certain species as a result of the final rule and may experience commensurate reductions in revenues if unable to maintain service demand through the substitution of other species.

Three alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the snowy grouper fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective or the requirements of the Magnuson-Stevens Act.

The third alternative would have achieved the full commercial quota reduction in the first year of implementation, rather than the step-down provision of the proposed action and, as such, would result in greater short-term adverse economic impacts than the proposed action.

Three alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the snowy grouper fishery. The status quo would have allowed continued overfishing and would, therefore, not achieve the Council's objective or the requirements of the Magnuson-Stevens Act.

Due to the low catch per unit effort in the recreational fishery, the third alternative would not have resulted in sufficient harvest reduction to achieve the goal of ending overfishing. Therefore, although this alternative would have resulted in lower short-term adverse economic impacts to the recreational sector (*i.e.*, an annual short-term reduction in consumer surplus of \$3,497, compared to a \$5,402 reduction for the preferred alternative), this alternative would not achieve the Council's objective or the requirements of the Magnuson-Stevens Act.

Three alternatives, including the status quo and two quota alternatives, one of which was the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the golden tilefish fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's

objective or the requirements of the Magnuson-Stevens Act.

For each quota alternative, five step-down trip limit alternatives, including the status quo, and two step-down trigger date control options, including the status quo no control trigger date, were considered. Under the quota specified by the proposed action, the trip limit alternatives encompassed either a lower trip limit, 3,000 lb (1,361 kg), than the proposed action or a less restrictive harvest trigger, 85 percent of the quota, for the step down. The short-term adverse economic impacts of all trip limit alternative combinations that include the 75-percent harvest trigger would be expected to be approximately equal to or greater than those of the proposed action. The trip limit alternative combinations that include the 85-percent harvest trigger would generate lower short-term adverse economic impacts than the proposed action. However, this higher trigger would result in a shorter fishing season, on average, than the proposed action. Although these impacts were not able to be quantified, shorter fishing seasons are recognized to result in adverse price effects, market disruptions, and disruptions of business operation. Therefore, the expected longer season projected under the proposed action was determined to best meet the Council's objectives.

Under the alternative quota specification, the expected adverse short-term economic impacts of seven of the ten trip limit and trigger date combinations are projected to be less than those of the proposed action due to the 3-year progression to the target quota of 295,000 lb (133,810 kg), which is implemented in the third year under this alternative, resulting in larger allowable harvests the first 2 years. This alternative, however, would not end overfishing as soon as practicable and would, therefore, not meet the Council's objective or the requirements of the Magnuson-Stevens Act.

Four alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the golden tilefish fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

Due to the low catch per unit effort in the recreational fishery, the third alternative would not have resulted in sufficient harvest reduction to achieve the goal of ending overfishing. Therefore, although this alternative would have resulted in lower short-term

adverse economic impacts to the recreational sector, this alternative would not achieve the Council's objective.

The fourth alternative would impose greater restrictions on recreational golden tilefish harvest, resulting in greater adverse economic impacts than the proposed action.

Ten alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the vermilion snapper fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective or the requirements of the Magnuson-Stevens Act.

Eight alternatives would have established lower commercial quotas (either 757,000 or 821,000 lb (343,369 or 372,399 kg) gutted weight) than the preferred alternative, in addition to alternative minimum size and trip limits. These quotas represent reductions in allowable harvest greater than is necessary to end overfishing of this resource. Further, each of the eight alternatives would result in greater adverse economic impacts than the proposed action.

Nine alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the vermilion snapper fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective or the requirements of the Magnuson-Stevens Act.

In addition to the minimum size limit increase of the proposed action, one alternative to the proposed action would reduce the daily bag limit to six fish. Although this alternative would increase the likelihood of ending overfishing relative to the proposed action, this alternative would result in greater adverse economic impacts than the proposed action.

A similar alternative would, in addition to the minimum size limit increase, impose lower, but differential, bag limits on the for-hire and recreational sectors. Similar to the alternative discussed above, although this alternative would increase the likelihood of ending overfishing relative to the proposed action, this alternative would result in greater adverse economic impacts than the proposed action.

Two alternatives to the proposed vermilion snapper recreational action would maintain the current minimum

size limit but impose fishery closures for different periods: October through December and January through February. Both alternatives are projected to result in lower adverse economic impacts than the proposed action. However, these estimates do not incorporate additional potential adverse impacts associated with potential fishing trip cancellation as a result of the closures. These impacts cannot be determined at this time. The addition of these impacts to these alternatives, however, may result in greater total adverse impacts compared to the proposed action. Further, although the proposed action may not end overfishing, depending on the level of the current vermilion snapper biomass, these alternatives are not expected to achieve as much progress toward the goal of ending overfishing as the proposed action and, as such, do not meet the Council's objectives.

Two alternatives to the proposed recreational vermilion snapper action would retain the closures specified in the alternatives discussed above and add reductions in the bag limit to six fish and five fish, respectively. Although each of these alternatives would be expected to achieve greater progress toward ending overfishing relative to the proposed action, each would also result in greater adverse economic impacts than the proposed action.

The ninth and final alternative to the proposed recreational vermilion snapper action would include the minimum size limit increase in the proposed action and close the fishery from January through February. This alternative would achieve greater harvest reductions than the proposed action, thereby accomplishing more progress toward ending overfishing. This action would also, however, result in greater adverse economic impacts than the proposed action. Due to uncertainty associated with the stock assessment for vermilion snapper, the Council believed it was best to cap landings at 1,100,000 lb (498,952 kg) gutted weight until a new stock assessment update was completed in 2001. A 30-percent reduction in landings during 2003–2004 would have ended overfishing. The proposed quota, which approximates the optimum yield, would prevent overfishing from occurring in the future.

Eight alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the black sea bass fishery. The status quo would allow

continued overfishing and would, therefore, not achieve the Council's objective.

The third alternative would have established a lower quota than that specified for the first 2 years under the proposed action, but 10 percent greater than the third-year quota. Thus, this alternative would be expected to result in greater adverse economic impacts than the proposed action in the first 2 years, but slightly lesser impacts in subsequent years. Although the effects of such could not be quantified, the Council determined that a more gradual progression to a lower quota would support greater adaptive behavior by participants and result in lower total adverse economic impacts.

The fourth alternative would have established the lower third-year quota target of the proposed action immediately and also would have established an increased minimum size limit and trip limits. This alternative would result in greater adverse economic impacts, \$0.32 million, than the proposed action.

The fifth alternative would have established a quota equal to that specified in the second year of the proposed action and an increased minimum size limit. This alternative would result in greater adverse economic impacts in the first 2 years, \$0.74 million, than the proposed action, but less impacts thereafter. This alternative would not, however, achieve the necessary harvest reductions to meet the Council's objective to end overfishing.

The sixth alternative would add trip limits and an increase in the minimum size limit to the measures contained in the proposed action. Because this alternative would be more restrictive than the proposed action, this alternative would result in greater adverse economic impacts, \$0.22–\$0.32 million over the course of the first 3 years.

The seventh alternative would not impose a quota but would, instead, in addition to the mesh size specification of the proposed action, limit harvest and/or possession of black sea bass to the recreational bag limit. This alternative would result in greater adverse economic impacts, \$0.26 million, than the proposed action.

The eighth and final alternative to the proposed action on the commercial black sea bass fishery would impose the mesh size specification of the proposed action and increase the minimum size limit. Although this alternative would result in less adverse economic impacts than the proposed action, this alternative would not achieve the

necessary harvest reductions to meet the Council's objective of ending overfishing.

Eight alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the black sea bass fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

The third alternative to the proposed action would immediately establish a lower allocation than the first 2 years of the proposed action, but greater than that of the third and subsequent years, as well as an immediate increase in the minimum size limit matching the specification in the second year of the proposed action. The bag limit specifications of both alternatives are identical. Since this alternative is more aggressive in achieving desired reductions, the short-term adverse impacts, \$ 1.5 million, are greater than those of the proposed action. Further, the progressive achievement of the target restrictions in the proposed action allow for more gradual adaptation to the new restrictions and the changes to the business environment they may engender.

The fourth alternative to the proposed action would immediately establish the third-year allocation of the proposed action, forgo the second increase in the minimum size limit, and reduce the bag limit to four fish per person per day. Although the quantifiable adverse economic impacts of this alternative are lower than those of the proposed action, these impacts do not account for additional potential adverse impacts associated with trip cancellation due to the severe reduction (80 percent) in the daily bag limit. These additional adverse impacts are expected to result in this alternative having a greater adverse economic impact than the proposed action.

The fifth alternative would establish a recreational allocation equal to that of the second year under the proposed action and limit the increase in the minimum size limit to 1 inch (2.5 cm). Although this alternative would result in lower adverse economic impacts, \$873,000, than the proposed action, the resultant harvest reductions would be insufficient to meet the Council's objective.

The sixth alternative would mimic the allocation specifications of the proposed action but would limit the minimum size limit increase to 1 inch (2.5 cm) while reducing the daily bag limit to four fish. Similar to the discussion of

the second alternative above, the analytical results do not capture the full potential impacts associated with the bag limit reduction, and this alternative is expected to result in greater adverse economic impact, *i.e.*, in excess of \$1.5 million, than the proposed action.

The seventh alternative would simply reduce the bag limit to 10 fish per person per day. This alternative would not achieve the necessary harvest reductions to meet the Council's objective.

The eighth and final alternative to the proposed action for the recreational black sea bass fishery would simply increase the minimum size limit 1 inch (2.5 cm). This alternative would not achieve the necessary harvest reductions to meet the Council's objective.

Five alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures to increase the allowable harvest in the recreational and commercial fisheries for red porgy. A recent stock assessment indicates the stock is rebuilding and catches can be increased without overfishing or compromising the approved rebuilding schedule.

The third alternative would be identical to the proposed action except for allowing a smaller recreational bag limit. This alternative would result in lower economic benefits than the proposed action.

The fourth alternative similarly imposes the smaller recreational bag limit and reduces the number of fish that can be harvested per commercial trip relative to the proposed action, while allowing the limit to remain in effect year-round rather than just May through December. Although this alternative would result in slightly greater benefits to the commercial sector, the benefits to the recreational sector would be less than those of the proposed action, and the Council determined that overall the proposed action would be more effective in allowing increased benefits relative to the status quo while protecting against harvest overages.

The fifth and final alternative to the proposed action on the red porgy fishery would implement the commercial trip limits of the second alternative discussed above, while allowing the higher daily recreational bag limit of the proposed action. Although this alternative would result in the higher economic benefits associated with the more liberal increases for both harvest sectors, the Council determined that the more conservative harvest potential associated with the commercial trip

limits of the proposed action would be more effective in insuring that harvest overages do not occur.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

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 final 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.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0013. Public reporting burden for the requirement to submit a letter of request to the RA for sea bass pot removal is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments on these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

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

Dated: September 18, 2006.

**Samuel D. Rauch III**,  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter III are amended as follows:

**15 CFR Chapter IX**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), the table is amended by adding in the left column under 50 CFR, in numerical order, "622.40(d)(2)", and in the right column, in the corresponding position, the control number "-0013", as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	* * * * *
50 CFR	
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**50 CFR Chapter VI**

**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 § 622.30, paragraph (e) is added to read as follows:

**§ 622.30 Fishing years.**

\* \* \* \* \*

(e) *South Atlantic black sea bass*—June 1 through May 31.

■ 5. In § 622.36, paragraph (b)(5) is revised to read as follows:

**§ 622.36 Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(b) \* \* \*

(5) *Red porgy*. During January, February, March, and April, the harvest

or possession of red porgy in or from the South Atlantic EEZ is limited to three per person per day or three per person per trip, whichever is more restrictive. In addition, this limitation is applicable in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

■ 6. In § 622.37, paragraphs (e)(1)(ii) and (e)(3)(i) are revised to read as follows:

**§ 622.37 Size limits.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) Vermillion snapper—12 inches (30.5 cm), TL.

\* \* \* \* \*

(3) \* \* \*

(i) *Black sea bass*. (A) For a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(vii):

(1) Through May 31, 2007—11 inches (27.9 cm), TL; and

(2) On and after June 1, 2007—12 inches (30.5 cm), TL.

(B) For a fish taken by a person not subject to the bag limit in § 622.39(d)(1)—10 inches (25.4 cm), TL.

\* \* \* \* \*

■ 7. In § 622.39, paragraphs (d)(1)(ii), (d)(1)(vi), (d)(1)(vii), and (d)(2)(ii) are revised to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) Groupers and tilefish, combined—5. However, within the 5-fish aggregate bag limit:

(A) No more than two fish may be gag or black grouper, combined;

(B) No more than one fish may be a snowy grouper;

(C) No more than one fish may be a golden tilefish; and

(D) No goliath grouper or Nassau grouper may be retained.

\* \* \* \* \*

(vi) Red porgy—3.

(vii) Black sea bass—15.

\* \* \* \* \*

(2) \* \* \*

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of three per day or three per trip, whichever is more restrictive.

\* \* \* \* \*

■ 8. In § 622.40, paragraphs (c)(3)(i) and (d)(2) are revised to read as follows:

**§ 622.40 Limitations on traps and pots.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) For sides of the pot other than the back panel:

(1) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(2) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(3) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(B) For the entire back panel, *i.e.*, the side of the pot opposite the side that contains the pot entrance, mesh that is at least 2 inches (5.1 cm) between sides.

\* \* \* \* \*

(d) \* \* \*

(2) *South Atlantic EEZ*—(i) *Sea bass pots*. (A) In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a “trawl” or trot line.

(B) A sea bass pot must be removed from the water in the South Atlantic EEZ when the quota specified in § 622.42(e)(5) is reached. The RA may authorize a grace period of up to 10 days for removal of pots after a closure is in effect based on exigent circumstances which include, but are not limited to, insufficient advance notice of a closure or severe weather. In addition, a person may request that the RA grant such a grace period based on severe personal hardship, such as equipment failure or the vessel operator’s health, by providing a letter outlining the nature and circumstances of the severe personal hardship to be received by the RA no later than the effective date of the closure. The RA will advise the requester of the approval or disapproval of the request. After a closure is in effect, a black sea bass may not be retained by a vessel that has a sea bass pot on board.

(ii) *Golden crab traps*. Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap.

■ 9. In § 622.42, paragraph (e) is revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(e) *South Atlantic snapper-grouper, excluding wreckfish*. The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.) The quotas are in gutted weight, that is, eviscerated but otherwise whole.

(1) *Snowy grouper*. (i) For the fishing year that commences January 1, 2006—151,000 lb (68,492 kg).

(ii) For the fishing year that commences January 1, 2007—118,000 lb (53,524 kg).

(iii) For the fishing year that commences January 1, 2008, and for subsequent fishing years—84,000 lb (38,102 kg).

(2) *Golden tilefish*—295,000 lb (133,810 kg).

(3) *Greater amberjack*—1,169,931 lb (530,672 kg).

(4) *Vermilion snapper*—1,100,000 lb (498,952 kg).

(5) *Black sea bass*. (i) For the fishing year that commences June 1, 2006—477,000 lb (216,364 kg).

(ii) For the fishing year that commences June 1, 2007—423,000 lb (191,870 kg).

(iii) For the fishing year that commences June 1, 2008, and for subsequent fishing years—309,000 lb (140,160 kg).

(6) *Red porgy*—127,000 lb (57,606 kg).

\* \* \* \* \*

■ 10. In § 622.43, paragraphs (a)(5) and (b)(1) are revised to read as follows:

**§ 622.43 Closures.**

(a) \* \* \*

(5) *South Atlantic greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, and red porgy*. The appropriate bag limits specified in § 622.39(d)(1) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species taken from the EEZ is prohibited. In addition, the bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested.

\* \* \* \* \*

(b) \* \* \*

(1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, or specified snapper-grouper species in

paragraphs (a)(1), (a)(3)(iii), (a)(4), or (a)(5) and (a)(6), respectively, of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

\* \* \* \* \*

■ 11. In § 622.44, paragraphs (c)(2), (c)(3), (c)(4), and (c)(5) are revised to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(c) \* \* \*

(2) *Golden tilefish*. (i) Until 75 percent of the fishing year quota specified in § 622.42(e)(2) is reached—4,000 lb (1,814 kg).

(ii) After 75 percent of the fishing year quota specified in § 622.42(e)(2) is reached—300 lb (136 kg). However, if 75 percent of the fishing year quota has not been taken on or before September 1, the trip limit will not be reduced. The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect a trip limit change specified in this paragraph, (c)(2)(ii), when the applicable conditions have been taken.

(iii) See § 622.43(a)(5) for the limitations regarding golden tilefish after the fishing year quota is reached.

(3) *Snowy grouper*. (i) During the 2006 fishing year, until the quota specified in § 622.42(e)(1)(i) is reached—275 lb (125 kg).

(ii) During the 2007 fishing year, until the quota specified in § 622.42(e)(1)(ii) is reached—175 lb (79 kg).

(iii) During the 2008 and subsequent fishing years, until the quota specified in § 622.42(e)(1)(iii) is reached—100 lb (45 kg).

(iv) See § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

(4) *Red porgy*. (i) From May 1 through December 31—120 fish.

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

(iii) See § 622.43(a)(5) for the limitations regarding red porgy after the fishing year quota is reached.

(5) *Greater amberjack*. Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg). See § 622.43(a)(5) for the limitations regarding greater amberjack after the fishing year quota is reached.

\* \* \* \* \*

■ 12. In § 622.45, paragraph (d)(8) is added to read as follows:

**§ 622.45 Restrictions on sale/purchase.**

\* \* \* \* \*

(d) \* \* \*

(8) No person may sell or purchase a snowy grouper, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.42(e) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

\* \* \* \* \*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9280]

RIN 1545-BE10

**Section 411(d)(6) Protected Benefits; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on August 9, 2006 (71 FR 45379) that provide guidance on certain issues under section 411(d)(6) of the Internal Revenue Code (Code), including the interaction between the anti-cutback rules of section 411(d)(6) and the nonforfeitability requirements of section 411(a).

**EFFECTIVE DATE:** This correction is effective August 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Pamela R. Kinard, at (202) 622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction are under section 411(d)(6) of the Code.

**Need for Correction**

As published, the final regulations (TD 9280), contain errors that may prove to be misleading and are in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C 7805 \* \* \*

■ **Par. 2.** Section 1.411(d)-3 is amended by revising paragraph (a)(3)(i), second sentence and (a)(4) *Example 4* (ii), second sentence to read as follows:

**§ 1.411(d)-3 Section 411 (d)(6) protected benefits.**

(a) \* \* \*

(3) \* \* \* However, such an amendment does not violate section 411(d)(6) to the extent it applies with respect to benefits that accrue after the applicable amendment date.

(4) \* \* \*

*Example 4* \* \* \*

(ii) \* \* \* A method of avoiding a section 411 (d)(6) violation with respect to account balances attributable to benefits accrued as of the applicable amendment date and earnings thereon would be for Plan D to provide for the vested percentage of G and each other participant in Plan E to be no less than the greater of the vesting percentages under the two vesting schedules (for example, for G and each other participant in Plan E to be 20% vested upon completion of 3 years of service, 40% vested upon completion of 4 years of service, and fully vested upon completion of 5 years of service) for those account balances and earnings.

\* \* \* \* \*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9280]

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**ACTION:** Correction to final regulations.