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

RIN 0648-AY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the South Atlantic

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) for review, approval, and implementation by NMFS. The Comprehensive ACL Amendment amends the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region, the Golden Crab Fishery of the South Atlantic Region, the Dolphin and Wahoo Fishery off the Atlantic States, and the Pelagic Sargassum Habitat of the South Atlantic Region. The Comprehensive ACL Amendment proposes actions to specify annual catch limits (ACLs), allowable biological catch (ABC), ABC control rules, and accountability measures (AMs) for species in the FMPs for Snapper-Grouper, Dolphin and Wahoo, Golden Crab, and Sargassum. The Comprehensive ACL Amendment proposes to specify ABC, and describe the current terminology and measures in place in the Sargassum FMP that are consistent with an ACL and AMs. For Sargassum, this amendment would not specifically set an ACL because there is currently a commercial quota in place which functions as an ACL, and there are commercial closure provisions in the event the quota is met or projected to be met which functions as an AM. Sector allocations, annual catch targets (ACTs), and management measures are also proposed for species in the Snapper-Grouper and Dolphin and Wahoo FMPs. In addition, the Comprehensive ACL Amendment proposes actions to the snapper-grouper fishery management unit (FMU), including the removal of some species, designation of ecosystem component

(EC) species, and the development of species groups.

DATES: Written comments must be received on or before December 19, 2011.

ADDRESSES: You may submit comments on the amendment identified by “NOAA-NMFS-2011-0087” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
 - *Mail:* Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on “submit a comment,” then enter “NOAA-NMFS-2011-0087” in the keyword search and click on “search”. To view posted comments during the comment period, enter “NOAA-NMFS-2011-0087” in the keyword search and click on “search”. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

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

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or

amendment is available for review and comment.

The four FMPs being revised by the Comprehensive ACL Amendment were prepared by the Council and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

Background

The 2006 revisions to the Magnuson-Stevens Act require that in 2011, for fish stocks determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve optimum yield (OY) within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Actions Contained in the Amendment*Golden Crab FMP*

The Comprehensive ACL Amendment proposes to specify an ABC, an ABC control rule, an ACL, and an AM for golden crab.

Dolphin and Wahoo FMP

The Comprehensive ACL Amendment proposes to specify ABCs, ABC control rules, ACLs, and AMs for dolphin and wahoo. Sector allocations, ACTs for dolphin and wahoo, and management measures for dolphin are also proposed.

Snapper-Grouper FMP

The Comprehensive ACL Amendment proposes to identify snapper-grouper species that do not need Federal management and can therefore be removed from the Snapper-Grouper FMP; designate selected snapper-grouper species as EC species; and establish species groups for selected snapper-grouper species for more effective management. The Comprehensive ACL Amendment would establish ABC control rules, ACLs for the commercial and recreational sectors, and ACTs (recreational sector only) for individual species and species groups. Additionally, the Comprehensive ACL Amendment would define the allocation of black grouper, mutton snapper, and yellowtail snapper across the jurisdictional boundary between the Gulf of Mexico Fishery Management Council (Gulf Council) and the South

Atlantic Council. Furthermore, the Comprehensive ACL Amendment allocates the harvest of species between the commercial and recreational sectors. The Comprehensive ACL Amendment also establishes AMs, which manage harvest within an applicable quota or ACL and manage future harvest, should a species or species group ACL be exceeded.

Removal of Stocks From the Snapper-Grouper FMP

There are currently 73 species in the Snapper-Grouper FMP. Many uncommonly harvested species were originally placed in the FMP because they were considered to be sub-tropical/tropical in distribution, and therefore limited in their range to south of Cape Hatteras, North Carolina, on the east coast of the U.S., and were part of a large multi-species fishery where co-occurring species were taken together with the same gear in the same area. The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries, for other fisheries where regulation would serve some useful purpose, and where the present or future benefits of regulation would justify the costs. The Council evaluated whether all species currently included in the snapper-grouper FMU are in need of Federal conservation and management and determined 13 species should be removed from the FMU. Species proposed for removal from the snapper-grouper FMU are black margate, bluestriped grunt, crevalle jack, French grunt, grass porgy, porkfish, puddingwife, queen triggerfish, sheepshead, smallmouth grunt, Spanish grunt, tiger grouper, and yellow jack.

Designation of Ecosystem Component Species in the Snapper-Grouper FMP

The Council chose six species to be selected as EC species in the Comprehensive ACL Amendment. The proposed EC species are bank sea bass, cottonwick, longspine porgy, ocean triggerfish, rock sea bass, and schoolmaster. The designation of these species as EC species retains them in the snapper-grouper FMU, but does not require that these species have an ACL and AM specified. EC species would also no longer be subject to any other Federal management measures, such as bag limits and size limits.

Species Groupings in the Snapper-Grouper FMP

The Council decided to establish both species complex ACLs and single species ACLs within the Comprehensive ACL Amendment. Single species ACLs would be established for both assessed

and targeted species, species that have an ACL equal to zero, and species that cannot be placed into a complex based on the criteria below. Complexes for species groups would be established using associations based on life history, catch statistics from commercial logbook and observer data, recreational headboat logbook and private/charter survey, and fishery-independent data. The Comprehensive ACL Amendment would establish selected snapper-grouper species into the complexes for selected deep-water species, shallow-water groupers, snappers, jacks, grunts, and porgies.

ABC Control Rules for the Sargassum, Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs

Standard methods for determining the appropriate ABC would allow the Council's Scientific and Statistical Committee (SSC) to determine an objective and efficient assignment of ABC. The SSC's recommendation of an ABC takes into account scientific uncertainty regarding the harvest levels that would lead to overfishing. The quality and quantity of landings information varies according to the stock in question, thus different control rules are needed for data-adequate (assessed species) and data-poor (un-assessed species) stocks.

Allocations for Species in the Snapper-Grouper and Dolphin and Wahoo FMPs

The Comprehensive ACL Amendment would set jurisdictional allocations for black grouper, yellowtail snapper, and mutton snapper between the South Atlantic and Gulf of Mexico. The amendment would also establish allocations for the commercial and recreational sectors for snapper-grouper species and dolphin and wahoo that do not currently have allocations specified.

Specification of ACLs and OY for the Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs

The Comprehensive ACL Amendment would assign initial ACLs and OY, for each of the species retained for Federal management in the amendment, excluding EC species. An ACL would be set equal to the OY for a species or species group for selected snapper-grouper, dolphin and wahoo, and golden crab (commercial sector only). ACL would be set equal to the OY and equal to the ABC for species in this amendment requiring ACLs. ACLs would be specified for species in both the commercial and recreational sectors for species in the Dolphin and Wahoo and Snapper-Grouper FMPs. For Sargassum, this amendment would not

specifically set an ACL, however, there is currently a commercial quota in place which functions as an ACL and for which commercial closure provisions are in effect in the event the quota is met or projected to be met.

ACT/AMs for the Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs

For species in the Snapper-Grouper and Dolphin and Wahoo FMPs, ACTs for the commercial sector would not be established in this amendment but would be set for the recreational sector. ACTs would not be established for the Golden Crab FMP. In-season and post-season AMs are proposed for the commercial sector of the Golden Crab, Dolphin and Wahoo, and Snapper-Grouper FMPs that would maintain catch levels within the proposed ACLs, or restore catch levels to those limits if exceeded. AMs would be established for selected snapper-grouper, dolphin and wahoo, and golden crab. For the Snapper-Grouper-FMP, when a complex ACL is exceeded, all species in that complex would be subject to AMs, and when an individual ACL is exceeded, the individual stock would be subject to AMs. For the recreational sector (Dolphin and Wahoo and Snapper-Grouper FMPs), AMs would be implemented during the year following any potential overage of the ACL during the previous year. ACLs and AMs would apply to the applicable species for both the commercial and recreational sectors.

Additional Management Measures for Wreckfish in the Snapper-Grouper FMP and Dolphin in the Dolphin and Wahoo FMP

The Comprehensive ACL Amendment would also implement a one wreckfish per vessel recreational daily bag limit and a recreational wreckfish closed season of January 1 through June 30 and September 1 through December 31, each year. Additionally, the Comprehensive ACL Amendment proposes to prohibit bag limit sales of dolphin from for-hire vessels and establish a minimum size limit for dolphin of 20 inches (50.8 cm) fork length from Florida through South Carolina.

Consideration of Public Comments

A proposed rule that would implement measures outlined in the Comprehensive ACL Amendment has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is

affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by December 19, 2011, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed.

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

Dated: October 17, 2011.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110211137-1599-01]

RIN 0648-BA87

Fisheries Off West Coast States; Highly Migratory Species Fisheries; Swordfish Retention Limits

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to modify retention limits for swordfish, *Xiphias gladius*, harvested in the U.S. West Coast-based deep-set tuna longline (DSL) fishery. The DSL fishery is managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The proposed rule would implement the Pacific Fishery Management Council's (Council) recommendation to modify HMS FMP regulations governing the possession and landing limits of swordfish captured in the DSL fishery, contingent on hook type and fisheries observer presence. If a vessel without an observer onboard uses any J-hooks (tuna hooks), the trip limit would be 10 swordfish. If a vessel without an observer onboard uses only circle hooks, the trip limit would be 25 swordfish. If the vessel carries a NMFS-approved observer during the entire fishing trip,

there would be no limit on swordfish retained. Regulations prohibiting the use of shallow-set longline gear to target swordfish would remain in place.

DATES: Comments must be received by November 21, 2011.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0211, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0211 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

- **Fax** (562) 980-4047; Attn: Rodney R. McInnis.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, 760-431-9440, ext. 303.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at (<http://swr.nmfs.noaa.gov/>). An electronic copy of the current HMS FMP and accompanying appendices are available on the Pacific Fishery Management Council's Web site at

<http://www.pcouncil.org/hms/hmsfmp.html>.

The HMS FMP was developed by the Council in response to the need to coordinate state, Federal, and international management of HMS stocks. The management unit in the FMP consists of highly migratory species (tunas, billfish, and sharks) that occur within the West Coast (California, Oregon, and Washington) Exclusive Economic Zone (EEZ) and to a limited extent on adjacent high seas waters. NMFS, on behalf of the U.S. Secretary of Commerce, partially approved the HMS FMP on February 4, 2004 (69 FR 18444). The majority of HMS FMP implementing regulations became effective on April 7, 2004. Reporting and recordkeeping provisions became effective on February 10, 2005.

Since being adopted in 2004, the HMS FMP has been amended twice. On June 7, 2007, NMFS approved Amendment 1 to the HMS FMP to incorporate recommended international measures to end overfishing of the Pacific stock of bigeye tuna, *Thunnus obesus*, in response to formal notification from NMFS that overfishing was occurring on this stock. On June 12, 2011, NMFS approved Amendment 2 to the HMS FMP (76 FR 56328) to ensure that it is consistent with revised guidelines to implement National Standard 1 of the MSA in order to more effectively prevent overfishing and rebuild overfished stocks, or stocks that may become overfished.

In a letter dated July 16, 2010, the Council received a request to modify HMS FMP longline regulations at 50 CFR 660.712. To avoid interactions with sea turtles, those regulations prohibit vessels based on the West Coast from using longline gear to make shallow sets. Longline vessels that make deep sets with longline (DSL) are limited to landing 10 swordfish per trip. The trip limit was implemented to prevent vessels departing ostensibly to fish DSL gear targeting bigeye and yellowfin tuna, from switching to make shallow sets using longline (SSL) that is used to target swordfish, and that might result in higher incidental catch rates of sea turtles. The letter to the Council requested that these regulations be modified to increase the trip limits on swordfish, in order to make them consistent with regulations implementing the Western Pacific Fishery Management Council's Pacific Pelagics Fishery Ecosystem Plan (FEP) governing DSL fishing retention limits. Specifically, the letter requested that the Council modify 50 CFR 660.712 governing the DSL fishery by recommending removal of the 10