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

[Docket No. 100812345-2142-03]

RIN 0648-XC229

**Snapper-Grouper Fishery of the South Atlantic; Reopening of the 2012 Commercial Sector for Yellowtail Snapper in the South Atlantic**

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

**ACTION:** Temporary rule; reopening.

**SUMMARY:** NMFS reopens the 2012 commercial sector for yellowtail snapper in the South Atlantic exclusive economic zone (EEZ). NMFS previously determined the commercial ACL for yellowtail snapper would be reached by September 11, 2012, and closed the commercial sector for yellowtail snapper in the South Atlantic EEZ at 12:01 a.m. on September 11, 2012. Updated landings estimates indicate the ACL will not be reached by that date. Therefore, NMFS is reopening the commercial sector for yellowtail snapper. The purpose of this action is to allow the commercial sector to maximize harvest benefits and at the same time protect the yellowtail snapper resource.

**DATES:** The reopening is effective 12:02 a.m., local time, September 11, 2012, through December 31, 2012, the end of the fishing season, unless the ACL is reached before that date, at which time the Assistant Administrator may file a notification to that effect with the Office of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone: 727-824-5305, or email: [Catherine.Hayslip@noaa.gov](mailto:Catherine.Hayslip@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes yellowtail snapper and is managed under the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region. The FMP was prepared by the South Atlantic Fishery Management Council (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.

**Background**

The 2007 reauthorization of the Magnuson-Stevens Act implemented new requirements that established ACLs and AMs to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

The Comprehensive ACL Amendment to the Snapper-Grouper FMP, the Golden Crab Fishery of the South Atlantic Region FMP, the Dolphin and Wahoo Fishery off the Atlantic States FMP, and the Pelagic Sargassum Habitat of the South Atlantic Region FMP published March 16, 2010 (77 FR 15916). In part, the final rule for the Comprehensive ACL Amendment specified ACLs and AMs for species in the Snapper-Grouper FMP that are not undergoing overfishing, including yellowtail snapper. Implementation of ACLs and AMs for yellowtail snapper is intended to prevent overfishing from occurring in the future, while maintaining catch levels consistent with achieving optimum yield for the resource.

The AM at § 622.49(b)(14)(i) requires NMFS to close the commercial sector for yellowtail snapper for the remainder of the fishing year when the ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projected the commercial ACL for yellowtail snapper of 1,142,589 lb (518,270 kg), round weight, would be reached on or before September 11, 2012, and closed the commercial sector for yellowtail snapper on that date (77 FR 53776, September 4, 2012). However, based on updated landings estimates, NMFS has determined that only 75 percent of the available commercial ACL will be landed by September 11, 2012. Therefore, NMFS will reopen the commercial sector to allow the remainder of the ACL to be harvested.

Under the reopening procedures located at § 622.43(c), when a sector has been closed based on a projection of when the ACL specified in § 622.49 has been reached and subsequent data indicate that the ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the ACL to be harvested. Accordingly, NMFS is reopening the commercial sector for yellowtail snapper in the South Atlantic EEZ from 12:02 a.m., local time,

September 11, 2012, through December 31, 2012, the end of the fishing year, unless the ACL is reached before that date. If the ACL is reached before that date, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register.

**Classification**

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic yellowtail snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under § 622.43(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary and contrary to the public interest because the commercial ACL for yellowtail snapper established in the Comprehensive ACL Amendment and located at § 622.49(b)(14)(i)(A) and the reopening procedures located at § 622.43(c) have already been subject to notice and comment and all that remains is to notify the public that additional harvest is available under the established ACL and, therefore, the commercial sector for yellowtail snapper will reopen.

Additionally, there is a need to immediately notify the public of the reopening of the commercial sector for yellowtail snapper because the closure is set for September 11, 2012, and this reopening will allow fishers to continue their fishing practices with minimal disruption to business practices. Therefore, this temporary rule is intended to minimize economic harm to fishermen while still protecting the yellowtail snapper resource.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 10, 2012.

**Lindsay Fullenkamp,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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