

presented provides a basis for us to find that it would lead a reasonable person to believe that the measure proposed in the petition may be warranted. We find the biological information regarding Lolita's genetic heritage and consideration of captive individuals under the ESA meets this standard, based on the information presented and referenced in the petition, as well as all other information readily available in our files.

Information Solicited

We are soliciting information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning Lolita's genetic heritage and status. We will consider all of the available information in our determination of whether including Lolita in the Southern Resident killer whale ESA listing is warranted. If we propose to include Lolita in the DPS, we would seek public comment before making a final decision. We will coordinate our review of the petition to include Lolita in the Southern Resident DPS with our ongoing review of the concurrent petition to delist the DPS. If we propose to delist the Southern Resident DPS, we would seek public comment before making a final decision.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Reporting and recordkeeping requirements.

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or on our Web page at: http://www.nwr.noaa.gov/protected_species/marine_mammals/cetaceans_whales_dolphins_porpoise/toothed_whales/killer_whales/esa_status_of_puget_sound_killer_whales.html

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013-10024 Filed 4-24-13; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004515-3385-01]

RIN 0648-BC63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 28

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 28 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, this rule would establish a process for determining whether the limited harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) could occur during a given fishing year and establish a process for setting commercial and recreational fishing seasons for red snapper beginning in 2013. Amendment 28 also specifies the process and formulas for setting commercial and recreational annual catch limits (ACLs) for red snapper if limited fishing seasons may occur. This rule would implement those ACLs and specify accountability measures (AMs) when the limited harvest and possession of red snapper is allowed. During limited fishing seasons, the rule would also eliminate the current red snapper minimum size limit, establish a recreational bag limit and establish a commercial trip limit for red snapper. In this rule, NMFS intends to continue the rebuilding of the red snapper stock and to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the red snapper resource.

DATES: Written comments must be received on or before May 29, 2013.

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2013-0040" by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to www.regulations.gov

#/docketDetail;D=NOAA-NMFS-2013-0040, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 28, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/pdfs/SGAmend28.pdf>.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727-824-5305, or email: rick.devictor@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes red snapper, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Red snapper are overfished and undergoing overfishing. The harvest and possession of red snapper have been prohibited since January 4, 2010, initially through temporary rules (74 FR 63673, December 4, 2009 and 75 FR 27658, May 18, 2010), and then through the final rule to implement Amendment 17A to the FMP (75 FR 76874, December 9, 2010). Amendment 17A continued the prohibitions on a permanent basis by implementing an ACL for red snapper of zero (landings only). Amendment 17A also implemented a rebuilding plan for red snapper, which

specifies that red snapper biomass must increase to the target rebuilt level in 35 years, starting from 2010. The final rule implementing Amendment 17A also included a large area closure for most snapper-grouper species, however, this area closure did not become effective because it was determined not to be necessary to end the overfishing of red snapper (76 FR 23728, April 28, 2011). At its June 2012 meeting, the Council received new information from NMFS regarding discard estimates for red snapper. Using these data, the Council and NMFS determined that a limited season for red snapper was possible in 2012. At the Council's request, NMFS implemented emergency rulemaking to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ in 2012 (77 FR 51939, August 28, 2012).

Status of the Stock

The most recent Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 24, was completed in October 2010. Much like the stock assessment completed in 2008, this assessment showed red snapper to be overfished and undergoing overfishing, but also showed that red snapper were undergoing overfishing at a lower rate than found in the 2008 stock assessment. The next benchmark stock assessment for red snapper is scheduled for 2014.

Measures Contained in This Proposed Rule

This rule would implement several management measures to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ. When the Council approved, and NMFS implemented, the temporary rule through emergency action in 2012, they determined that retention of a limited number of red snapper (13,097 fish) would not jeopardize the rebuilding of the red snapper stock because the estimated discard mortality level for 2012 was below the acceptable biological catch (ABC). In Amendment 28, the Council has developed a process to evaluate whether a similar limited harvest season could occur each year, beginning in 2013.

Process for Determining the Limited Annual Red Snapper Harvest

Amendment 28 describes the annual process developed by the Council for determining whether a limited fishing season for red snapper will occur and how much red snapper may be harvested. The ABC is determined through the Council's ABC control rule

and the rebuilding projections from the most recent stock assessment. Estimated landings and dead discards of red snapper from the previous year should be available around March of each year, and NMFS would use that information in formulas approved by the Council in Amendment 28. If NMFS determines, using the formulas, that the estimated landings and dead discards that occurred in the previous year are equal to or greater than the ABC for the current year, no harvest would be allowed and the ACL would remain equal to zero. However, if NMFS determines, using the formulas, that the previous year's estimated landings and dead discards are less than the ABC, then the ACL would be set to the amount of harvest that may be allowed for the current year.

Setting the Commercial and Recreational Red Snapper Fishing Seasons

If NMFS determines limited commercial and recreational fishing seasons are allowed for that fishing year, NMFS would announce the commercial and recreational fishing season start dates in the **Federal Register** and by other methods, as deemed appropriate. The commercial fishing season would begin on or close to the second Monday in July, and the recreational fishing season, which would consist of weekends only (Fridays, Saturdays, and Sundays), would begin on or close to the second Friday of July. If the fishing seasons do not open exactly on these dates, they would open as close to these dates as possible. NMFS would not announce the season end date for the commercial sector before the season starts, but would monitor harvest and close the commercial sector when the commercial ACL has been reached or projected to be reached by filing an in-season closure notification with the Office of the Federal Register. After the commercial sector closes, sale and purchase of red snapper are prohibited and harvest and possession of red snapper are limited to the bag and possession limits. NMFS would project when the recreational ACL would be reached and announce the fishing season end date in the **Federal Register**. The recreational season length would be based on an evaluation of historical harvest levels and fishing effort.

If the NMFS Regional Administrator (RA) determines tropical storm or hurricane conditions exist, or are projected to exist, in the South Atlantic during the commercial or recreational fishing seasons, this rule would allow the RA to modify the opening and closing dates by filing a notification to

that effect with the Office of the Federal Register, and announcing via NOAA Weather Radio and Fishery Bulletin any change in the red snapper commercial or recreational fishing seasons. Additionally, the Council decided that if the projected commercial or recreational fishing season is determined by NMFS to be 3 days or less, then the commercial or recreational fishing season would not open for that fishing year because that short time period would not provide sufficient fishing opportunity for the public.

ACLs

Amendment 28 includes formulas for determining the commercial and recreational ACLs on an annual basis. The formulas are based on total removals (landings plus discards) from prior fishing years. The formulas would provide the total ACL for limited fishing seasons. Using the current allocation ratio for red snapper (28.07 percent commercial and 71.93 percent recreational), NMFS would then determine the commercial and recreational ACLs. When finalized data from the prior fishing years are available and NMFS determines that limited fishing seasons are allowable, NMFS would publish a notification with the Office of the Federal Register to announce the commercial and recreational ACLs for limited fishing seasons for that fishing year.

AMs

During limited fishing seasons, the Council and NMFS would establish in-season AMs to prevent these ACLs from being exceeded. If red snapper harvest is allowed in a given fishing year, the commercial in-season AM requires that if commercial landings reach or are projected to reach the commercial ACL, then NMFS would close the commercial sector for red snapper for the remainder of the fishing year. After the commercial sector closes, sale and purchase of red snapper would be prohibited and harvest and possession of red snapper would be limited to the bag and possession limits until the recreational fishing season closes. The recreational in-season AM is the length of the recreational fishing season as determined by NMFS and announced in the **Federal Register**. After the recreational fishing season closes, the bag and possession limits for red snapper would be zero. If both the commercial and recreational sectors are closed, it would be unlawful to harvest or possess red snapper.

Other Management Measures

In order to reduce the probability of an overage of the commercial and recreational ACLs during the limited open seasons, this rule would implement a 75-lb (34-kg) commercial trip limit and a 1-fish per person recreational bag limit. The rule would also remove the 20-inch (51-cm), total length (TL), minimum size limit for both the commercial and recreational sectors to decrease regulatory discards of red snapper (fish returned to the water because they are below the minimum size limit).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this rule is consistent with Amendment 28, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of the rule is to continue the rebuilding of the red snapper stock and to increase the social and economic benefits to fishermen and fishing communities that utilize the red snapper component of the snapper-grouper fishery while also minimizing safety at sea concerns, the probability of ACL overages, and discard mortality of red snapper. The Magnuson-Stevens Act serves as the legal basis for the rule.

This rule is expected to directly affect commercial fishing vessels that possess commercial snapper-grouper permits and for-hire vessels that possess for-hire snapper-grouper permits for the South Atlantic. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is \$7.0 million

(NAICS code 713990, recreational industries).

From 2003 through 2007, the average number of vessels with commercial South Atlantic snapper-grouper permits was 944, of which 749 were transferable and 195 were non-transferable. Transferable permits have no limit on landings per trip, except for species subject to trip limits, while non-transferable permits are restricted to 225 lb (102 kg) of landings per trip, unless the regulations specify a lower amount. For 2008 through 2010, the average number of vessels with commercial snapper-grouper permits decreased to 788, of which 643 were transferable permits and 145 non-transferable permits. As of July 9, 2012, the number of vessels with commercial snapper-grouper permits had decreased further to 694, of which 568 were transferable and 126 were non-transferable.

Prior to the closure, any commercial vessel with a commercial snapper-grouper permit could commercially harvest red snapper in the South Atlantic. Commercially harvested red snapper are landed mostly in Georgia and northeast Florida (landings from Georgia and Florida are combined for confidentiality considerations), followed by North Carolina and South Carolina, and are mainly caught with vertical lines. On average, 220 commercial vessels landed at least 1 lb (0.45 kg) of red snapper per year between 2003 and 2007. Of these 220 commercial vessels, 102 landed less than 100 lb (45 kg) of red snapper per year, 84 landed between 101 lb (46 kg) and 1,000 lb (455 kg), and only 34 landed more than 1,000 lb (455 kg). In addition, red snapper was not the primary revenue species on most commercial trips that harvested red snapper during those years. On average, red snapper was the primary source of trip revenue on only 163 commercial trips per year, or only 12 percent of the commercial trips on which it was landed. These trips accounted for approximately 31 percent of the total commercial red snapper landings.

From 2005 through 2009, the average number of vessels commercially harvesting at least 1 lb (0.45 kg) of red snapper per year increased to 230, and peaked at 270 vessels in 2009. The impending prohibition on the commercial harvest of red snapper in 2010, as well as the closure of vermilion snapper to commercial harvest in September 2009, most likely caused this increase in participation. Vermilion snapper is the primary target species on trips catching red snapper and a primary substitute species for red snapper in seafood markets.

From 2003 through 2007, commercial landings of red snapper averaged approximately 121,000 lb (55,000 kg) annually, which generated average annual gross revenue of \$488,030 (2011 dollars). From 2005 through 2009, commercial landings of red snapper averaged approximately 171,000 lb (77,727 kg) while gross revenue averaged approximately \$709,441 per year. Thus, during this time, the average price of commercially harvested red snapper was approximately \$4.15 per pound. Further, average annual red snapper commercial landings and gross revenue were approximately 743 lb (337 kg) and \$3,085 per vessel, respectively. Because the commercial harvest and sale of red snapper were prohibited in 2010 and 2011, landings and gross revenue data from these years are the most currently available for red snapper.

From 2003 through 2007, an average of 890 commercial vessels per year harvested snapper-grouper species. For 2008 through 2011, an average of 865 commercial vessels harvested snapper-grouper species per year. Average annual commercial landings of all snapper-grouper species in the South Atlantic from 2003 through 2007 were approximately 6.43 million lb (2.92 million kg) which generated approximately \$14.98 million in gross revenue. For 2008 through 2011, these figures decreased to 5.03 million lb (2.29 million kg) and \$13.66 million, respectively. From 2003 through 2007, total landings of all species by vessels harvesting snapper-grouper averaged approximately 11.24 million lb (5.11 million kg) which generated \$24.74 million in gross revenue per year. For 2008 through 2011, average total landings of all species by vessels harvesting snapper-grouper increased slightly to 12.21 million lb (5.55 million kg) per year, while average annual gross revenue decreased slightly to \$23.86 million. Thus, for 2008 through 2011, average annual gross revenue per vessel in the snapper-grouper fishery was approximately \$27,584. Red snapper accounted for none of these vessels' gross revenue in 2010 and 2011 due to the prohibitions on commercial harvest and sale. In 2011, the maximum annual gross revenue for a commercial snapper-grouper vessel was \$618,272.

From 2003 through 2008, the average number of snapper-grouper for-hire permits in the South Atlantic was 1,811. In 2009 and 2010, the average number of South Atlantic snapper-grouper for-hire permits per year increased to 1,953. However, as of July 9, 2012, the number of for-hire vessels with South Atlantic for-hire snapper-grouper permits was only 1,524. Florida is the homeport state

for most of these vessels. For-hire permits do not distinguish charter vessels from headboats and thus the specific number of charter vessels and headboats with for-hire snapper-grouper permits cannot be estimated. The number of for-hire vessels that landed snapper-grouper also cannot be estimated based on currently available data.

Prior to the closure, any for-hire vessel with a for-hire snapper-grouper permit could harvest red snapper recreationally in the South Atlantic. From 2003 through 2008, recreational red snapper harvest in the South Atlantic averaged approximately 403,000 lb (183,182 kg) annually. Charter vessels and headboats accounted for approximately 110,000 lb (50,000 kg) and 62,000 lb (28,182 kg) of this harvest, respectively. Although the harvest or possession of red snapper in the South Atlantic was prohibited in 2010 and 2011, some red snapper continued to be harvested by the recreational sector. From 2009 through 2011, recreational red snapper harvest averaged about 346,000 lb (157,273 kg), although most of this harvest was in 2009. Charter vessels and headboats accounted for approximately 75,000 lb (34,091 kg) and 51,000 lb (23,182 kg) of this harvest, respectively.

Recreational snapper-grouper harvest in the South Atlantic averaged approximately 10.8 million lb (4.91 million kg) per year from 2005 through 2009. Charter vessels and headboats accounted for approximately 1.6 million lb (727,273 kg) and 1.4 million lb (636,364 kg) of this harvest, respectively. In 2010 and 2011, recreational snapper-grouper harvest averaged approximately 11.8 million lb (5.36 million kg) annually, with charter vessels and headboats each accounting for 1.2 million lb (545,455 kg) of this harvest, respectively.

Red snapper target effort in the recreational sector averaged approximately 57,300 trips per year in the South Atlantic during 2005–2009. While a prohibition on the possession of recreationally harvested red snapper need not result in the cancellation of a target trip, the popularity of red snapper as a food fish that recreational anglers would prefer to retain rather than release suggests that target effort would be expected to decline in response to a prohibition. As expected, red snapper target effort significantly dropped to about 4,000 trips in 2010 and became practically non-existent in 2011.

For-hire vessels receive value from the services they provide. Producer surplus is the measure of the economic value these operations receive. Producer

surplus is the difference between the gross revenue a business receives for a good or service, such as a charter vessel or headboat trip, and the cost the business incurs to provide that good or service. Estimates of the producer surplus associated with snapper-grouper or red snapper for-hire trips are not available. However, proxy values in the form of net operating revenue (NOR) are available. NOR for charter vessels is estimated to be \$132 (2011 dollars) per charter trip. Since targeting of red snapper in the recreational sector was practically non-existent in 2011, NOR from trips targeting red snapper was likely zero in 2011 for charter vessels. In 2009, charter vessels in the South Atlantic had average gross revenues of approximately \$109,700 (2011 dollars). No charter vessels earned more than \$500,000 in gross revenues in 2009.

NOR per angler trip is lower for headboats than for charter vessels. NOR estimates for a representative headboat trip are \$48 in the Gulf of Mexico, including all of Florida, and \$63–\$68 in North Carolina. For full-day and overnight headboat trips, NOR is estimated to be \$74–\$77 in North Carolina. These estimates are in 2009 dollars and comparable estimates are not available for Georgia and South Carolina. Based on this information, NOR per headboat angler trip is estimated to be approximately \$70 in 2011 dollars. Since targeting of red snapper in the recreational sector was practically non-existent in 2011, NOR from trips targeting red snapper was likely zero in 2011 for headboats. Headboats in the South Atlantic had average gross revenues of approximately \$194,570 (2011 dollars).

Based on the information above, all commercial fishing vessels and for-hire fishing vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

For the action to establish a process to determine future ACLs and season lengths, establish a commercial fishing season start date of the second Monday in July, establish a recreational fishing season start date of the second Friday in July, establish a 75-lb (34-kg) commercial trip limit, establish a recreational bag limit of 1 fish per person per day, and eliminate the minimum size limit for red snapper, the expected, direct economic effects cannot be estimated quantitatively. Because this action only establishes a process and formulas for estimating potential ACLs and the resulting season lengths in 2013 and future years, and the data to be used in those formulas are not yet available, quantitative estimates of ACLs

and season lengths for the commercial and recreational sectors are not currently available for 2013 and future years. Because the ACLs and season lengths for the commercial and recreational sectors are currently unknown, quantitative estimates of potential changes in landings and gross revenue for the commercial sector as well target trips and NOR for the for-hire sector in 2013 and future years cannot be provided at this time.

However, this action generates a positive probability the ACL will be sufficiently large to allow for a commercial and recreational season. In turn, there is a positive probability that gross revenue from landings of red snapper in the commercial sector and, to a lesser extent, NOR in the for-hire sector from red snapper target trips would be greater than zero. Thus, the direct economic effects of this action are generally expected to be positive in the short-term. Long-term direct economic effects are also expected to be positive, as the probability of a fishing season would still be positive, but are dependent on information arising from future stock assessments and the effect of such information on estimates of ABC in future years.

If there is a commercial fishing season, gross revenue from the commercial harvest of red snapper would be positive and thus so too would be the direct economic effects. These direct economic effects are expected to be slightly enhanced by the commercial season start date of the second Monday in July as red snapper are typically caught on trips targeting vermilion snapper and gag, which are likely to be open to commercial harvest at that time. Closure of vermilion snapper to commercial harvest may largely preclude commercial harvest of red snapper and thus the positive economic effects from a commercial fishing season. Elimination of the red snapper minimum size limit would also be expected to slightly enhance these positive economic effects as it would allow commercial vessels to harvest the ACL more quickly, thereby reducing costs and increasing profits. Conversely, the 75-lb (34-kg) commercial trip limit is expected to slightly reduce these positive economic effects by spreading harvest over more trips, thereby increasing costs and decreasing profits.

Similarly, if there is a recreational fishing season, NOR from trips targeting red snapper by for-hire vessels may be positive. However, relative to the commercial vessels, this outcome is less likely for for-hire vessels as the recreational ACL and the for-hire sector's share of the harvest would have

to be sufficiently great to induce targeting of red snapper and thereby increase target effort. Since the recreational ACL is expected to be relatively small in the short-term and the for-hire sector historically only accounted for 10 percent of red snapper target effort in the recreational sector, the increase in for-hire vessels' target effort is likely to be minimal in the short-term. NOR will only increase if target effort for red snapper increases.

Because target effort for red snapper has been historically high in July, a recreational fishing season start date of the second Friday in July may slightly increase NOR as red snapper are presumably more highly valued and thus trips are more likely to target red snapper at this time of year. Similarly, a one-fish bag limit may also slightly increase NOR by spreading harvest over a larger number of trips, which would increase NOR if the number of target trips increases. Elimination of the minimum size limit may also slightly increase NOR by allowing anglers to keep whatever size fish they catch, which would increase the value of a trip to anglers and thereby increase the probability of a trip being taken, or increasing trip length, which generates higher gross revenue per trip.

The analysis above indicates that the proposed changes would not be expected to cause a significant reduction in profits for a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 622

Accountability measure, Annual Catch Limit, Fisheries, Fishing, Red Snapper, South Atlantic.

Dated: April 23, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

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

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

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

■ 2. In § 622.181, paragraph (b)(2) is revised to read as follows:

§ 622.181 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(2) *Red snapper.* Red snapper may not be harvested or possessed in or from the South Atlantic EEZ, except if NMFS determines a limited amount of red snapper may be harvested or possessed in or from the South Atlantic EEZ, as specified in § 622.193(y). Red snapper caught in the South Atlantic EEZ must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the prohibition on the harvest or possession of red snapper applies in the South Atlantic, regardless of where such fish are harvested or possessed, *i.e.*, in state or Federal waters.

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■ 3. In § 622.183, paragraph (b)(5) is added to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(5) *Closures of the commercial and recreational sectors for red snapper.*—(i) The commercial and recreational sectors for red snapper are closed (*i.e.*, red snapper may not be harvested or possessed, or sold or purchased) in or from the South Atlantic EEZ, except if NMFS determines a limited amount of red snapper may be harvested or possessed in or from the South Atlantic EEZ, as specified in § 622.193(y). If NMFS determines that commercial and recreational fishing seasons for red snapper may be established in a given fishing year, NMFS will announce the season opening dates in the **Federal Register**. The recreational fishing season would consist of consecutive Fridays, Saturdays, and Sundays, unless otherwise specified. NMFS will project the length of the recreational fishing season and announce the recreational fishing season end date in the **Federal Register**. See 622.193(y), for establishing the end date of the commercial fishing season.

(ii) If the RA determines tropical storm or hurricane conditions exist, or

are projected to exist, in the South Atlantic, during a commercial or recreational fishing season, the RA may modify the opening and closing dates of the fishing season by filing a notification to that effect with the Office of the Federal Register, and announcing via NOAA Weather Radio and a Fishery Bulletin any change in the dates of the red snapper commercial or recreational fishing season.

(iii) If the projected commercial or recreational fishing season is determined by NMFS to be 3 days or less, then the commercial or recreational fishing season will not open for that fishing year.

§ 622.185 [Amended]

■ 4. In § 622.185, paragraph (a)(1) is removed and reserved.

■ 5. In § 622.187, paragraphs (b)(4) and (9) are revised to read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(4) *Snappers, combined*—10.

However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and red snapper and vermilion snapper. (See § 622.181(b)(2) for the prohibitions on harvest or possession of red snapper, except during a limited recreational fishing season, and § 622.181(c)(1) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

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(9) *Red snapper*—0, except during a limited recreational fishing season, as specified in § 622.183(b)(5), during which time the bag limit is 1 fish.

* * * * *

■ 6. In § 622.191, paragraph (a)(9) is added to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(9) *Red snapper.* During a limited commercial fishing season, as specified in § 622.183(b)(5), and until the commercial ACL specified in § 622.49(b)(25)(i) is reached, 75 lb (34 kg), gutted weight. See § 622.49(b)(25)(i) for the limitations regarding red snapper after the commercial ACL is reached.

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■ 7. In § 622.192, paragraph (j) is revised to read as follows:

§ 622.192 Restrictions on sale/purchase.

* * * * *

(j) No person may sell or purchase a red snapper harvested from or possessed

in the South Atlantic, *i.e.*, state or Federal waters, by a vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper has been issued, except if NMFS determines a limited commercial fishing season for red snapper is allowable, as specified in § 622.183(b)(5).

■ 8. In § 622.193, paragraph (y) is added to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(y) *Red snapper*—(1) *Commercial sector*. The commercial ACL for red snapper is zero. However, if NMFS determines that the previous year's estimated red snapper landings and dead discards are less than the ABC, limited red snapper harvest and possession may be allowed for the current fishing year and the commercial ACL value would be determined using the formula described in the FMP. The AA will file a notification with the Office of the Federal Register to announce the limited commercial ACL for the current fishing year. NMFS will monitor commercial landings during the limited season, and if commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL, based on the formula described in the FMP, the AA will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the year. On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited and harvest or possession of red snapper is limited to the bag and possession limits. This bag and possession limit 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 or possessed, *i.e.*, in state or Federal waters.

(2) *Recreational sector*. The recreational ACL for red snapper is zero. However, if NMFS determines that the previous year's estimated red snapper landings and dead discards are less than the ABC, limited red snapper harvest and possession may be allowed for the current fishing year and the recreational ACL value would be determined using the formula described in the FMP. The AA will file a notification with the Office of the Federal Register to announce the limited recreational ACL and the length of the recreational fishing season for the current fishing year. The

length of the recreational fishing season for red snapper serves as the in-season accountability measure. See § 622.183(b)(5) for details on the recreational fishing season. On and after the effective date of the recreational closure notification, the bag and possession limits for red snapper are zero.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130403319-3319-01]

RIN 0648-BD13

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2013

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2013 summer flounder, scup, and black sea bass recreational fisheries. This rule also proposes to implement an increase in the 2013 and 2014 black sea bass specifications, consistent with a new acceptable biological catch recommendation. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Comments must be received by 5 p.m. local time, on May 14, 2013.

ADDRESSES: You may submit comments on this document, identified NOAA-NMFS-2013-0060, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2013-0060, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Fax:* (978) 281-9135, Attn: Comments on 2013 Proposed Summer Flounder, Scup, and Black Sea Bass

Recreational Measures, NOAA-NMFS-2013-0060.

- *Mail and Hand Delivery:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2013 FSB Recreational Measures."

Instructions: 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, Excel, or Adobe PDF file formats only.

Copies of the Supplemental Environmental Assessment and Initial Regulatory Flexibility Analysis (SEA/IRFA) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35 E. 13.3' N. lat. (the latitude of Cape