

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

[Docket No. 130312235–3658–02]

RIN 0648–BD04

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 18**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Regulatory Amendment 18 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 18), as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council). This rule updates the annual catch limits (ACLs) for vermilion snapper and red porgy, modifies the vermilion snapper commercial trip limit, and removes the recreational 5-month seasonal closure for vermilion snapper. The purpose of this rule is to help achieve optimum yield (OY) for snapper-grouper resources in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** This rule is effective September 5, 2013.

**ADDRESSES:** Electronic copies of Regulatory Amendment 18, which includes an environmental assessment, a Regulatory Flexibility Act, and a regulatory impact review may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

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

On May 8, 2013, NMFS published a proposed rule for Regulatory Amendment 18 and requested public

comment (78 FR 26740). The proposed rule and Regulatory Amendment 18 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

**Management Measures Contained in This Final Rule**

This final rule revises the commercial and recreational ACLs for vermilion snapper and red porgy, revises the vermilion snapper commercial trip limit, and removes the recreational closed season for vermilion snapper.

*Vermilion Snapper ACLs*

A Southeast Data, Assessment, and Review (SEDAR) stock assessment update for South Atlantic vermilion snapper was completed in October 2012 (SEDAR 17 update). The SEDAR 17 update indicates vermilion snapper is not undergoing overfishing and is not overfished. Additionally, the SEDAR 17 update indicates the vermilion snapper biomass exceeds the target equilibrium biomass. This means that the acceptable biological catch (ABC) level and the ACL may be increased to allow for harvest of that excess biomass without jeopardizing the sustainability of the stock. The Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) established an ABC control rule for assessed snapper-grouper species. The Comprehensive ACL Amendment established an ABC for vermilion snapper of 1,109,000 lb (503,034 kg), round weight. Using the ABC control rule and the results of the SEDAR 17 update, the South Atlantic Council's Scientific and Statistical Committee (SSC) recommended increasing the ABC for vermilion snapper to 1,372,000 lb (622,329 kg), round weight, for 2013; then decreasing the ABC to 1,312,000 lb (595,113 kg), round weight, for 2014; 1,289,000 lb (584,681 kg), round weight, for 2015; and 1,269,000 lb (575,609 kg), round weight, for 2016 and subsequent years. The ABC is gradually decreased over 3 years to allow for the harvest of excess biomass and is then held at a constant level when the population size reaches the equilibrium target level. The South Atlantic Council accepted the SSC's recommendation.

This final rule increases the vermilion snapper ACLs based on the revised ABC values. Amendment 16 to the FMP (Amendment 16) established sector allocations for vermilion snapper of 68 percent for the commercial sector and 32 percent for the recreational sector (74 FR 30964, June 29, 2009). Additionally, Amendment 16 established two commercial fishing seasons for vermilion snapper. The first season is

January through June, and the second is July through December. Using the SSC's ABC recommendation, the ACL formula established in the Comprehensive ACL Amendment where ABC = ACL = OY, and the established allocation formula, this rule revises the commercial ACLs in round weight as follows: 932,960 lb (423,200 kg) for 2013; 892,160 lb (404,700 kg) for 2014; 876,520 lb (397,600 kg) for 2015; and 862,920 lb (391,400 kg) for 2016 and subsequent fishing years. The commercial ACLs are further divided equally between the first and second commercial fishing seasons, resulting in commercial ACLs for each season of 466,480 lb (211,592 kg), round weight (or 420,252 lb (190,623 kg), gutted weight) for 2013; 446,080 lb (202,338 kg), round weight (or 401,874 lb (182,287 kg), gutted weight) for 2014; 438,260 lb (198,791 kg), round weight (or 394,829 lb (179,091 kg), gutted weight) for 2015; and 431,460 lb (195,707 kg), round weight (or 388,703 lb (176,313 kg), gutted weight) for 2016 and subsequent fishing years. Any unused portion of the commercial ACL from the first part of the fishing year will be added to the commercial ACL for the second part of the fishing year.

The recreational ACLs are set at: 395,532 lb (179,410 kg), gutted weight, 439,040 lb (199,145 kg), round weight, for 2013; 378,234 lb (171,564 kg), gutted weight, 419,840 lb (190,436 kg), round weight, for 2014; 371,604 lb (168,557 kg), gutted weight, 412,480 lb (187,098 kg), round weight, for 2015; and 365,838 lb (165,941 kg), gutted weight, 406,080 lb (184,195 kg), round weight, for 2016 and subsequent fishing years.

*Vermilion Snapper Commercial Trip Limit*

In the past, in-season closures have been required because the commercial ACLs have been harvested before the end of each split season. Increasing the vermilion snapper ACLs allows for increased harvest and increases the probability the commercial split seasons will be extended. However, even with a larger commercial ACL, in-season commercial closures are still expected. Therefore, this final rule reduces the commercial trip limit for vermilion snapper from 1,500 lb (680 kg), gutted weight, to 1,000 lb (454 kg), gutted weight (or 1,100 lb (503 kg), round weight). This rule also reduces the commercial trip limit to 500 lb (227 kg), gutted weight (or 555 lb (252 kg), round weight) after 75 percent of the commercial ACL is reached or projected to be reached. Reducing the commercial trip limit and implementing a trip limit step down should help control the rate of commercial harvest and reduce the

probability that in-season closures are implemented during either split season.

#### *Vermilion Snapper Recreational Seasonal Closure*

This rule removes the 5-month November through March recreational seasonal closure for vermilion snapper that was established in Amendment 16. This seasonal closure was implemented to address overfishing of the species (74 FR 30964, June 29, 2009). However, the SEDAR 17 update indicated that vermilion snapper is not overfished and is no longer undergoing overfishing. Further, an analysis conducted by NMFS indicates the recreational sector will likely harvest between 64 percent and 75 percent of the 2013 recreational ACL. Although the ACL will decrease slightly each year for the next several years, it is unlikely that the recreational vermilion snapper ACL will be met or exceeded in any given year in the near future. Amendment 17B to the FMP implemented recreational AMs for vermilion snapper that if the ACL is exceeded, any ACL overage is mitigated by reducing the recreational ACL for the following fishing year (75 FR 82280, December 30, 2010). Thus, no adverse biological impacts to the vermilion snapper resource are anticipated as a result of removing the seasonal closure.

In addition, in early 2013, the Southeast Fisheries Science Center (SEFSC) implemented a new electronic reporting system for headboats operating in the South Atlantic and Gulf of Mexico. The Gulf of Mexico Fishery Management Council and South Atlantic Council are currently developing amendments that would require federally permitted headboats to report all landings electronically at an increased frequency to the SEFSC. The SEFSC is also developing a similar program for charterboats. These improvements to the recreational harvest monitoring program are expected to increase the accuracy and timeliness of landings information, and help reduce the likelihood of recreational ACL overages.

#### *Red Porgy ACLs*

A SEDAR stock assessment update was completed for red porgy in October 2012 (2012 SEDAR 1 update). The objective of the 2012 SEDAR 1 update was to update the 2002 SEDAR 1 benchmark assessment and the 2006 SEDAR 1 update for red porgy. The 2012 SEDAR 1 update indicates the red porgy stock is not undergoing overfishing but is still overfished; however, the 2012 SEDAR 1 update also indicates the stock is no longer rebuilding. All rebuilding projections

performed in the 2012 SEDAR 1 update indicate that red porgy will not be rebuilt by the end of its rebuilding timeframe (2018). Therefore, the South Atlantic Council has requested a new benchmark assessment for the stock to be completed in 2014. After the new benchmark assessment is conducted, the South Atlantic Council may reconsider the rebuilding plan and modifications to management measures as necessary.

Based on the outcome of the 2012 SEDAR 1 update, and the ABC control rule established in the Comprehensive ACL Amendment, the SSC recommended a new ABC for red porgy that is lower than the current ABC of 395,304 lb (179,307 kg), round weight (landed catch). The South Atlantic Council accepted the SSC's recommendation and, therefore, Regulatory Amendment 18 implements the following ABCs: For 2013, the ABC for red porgy decreases to 306,000 lb (138,799 kg), round weight; for 2014, the ABC increases to 309,000 lb (140,160 kg), round weight; and for 2015 and subsequent fishing years, the ABC increases to 328,000 lb (148,778 kg), round weight. These ABC values are based on the yield at 75 percent of  $F_{MSY}$  (the fishing mortality at MSY).

Based on these new ABCs, this final rule reduces the commercial and recreational ACLs for red porgy. Currently, the red porgy stock ACL is equal to the ABC and is divided equally between the commercial and recreational sectors according to the formula established in the Comprehensive ACL Amendment. Thus, this rule sets the commercial and recreational ACLs for red porgy, at 153,000 lb (69,400 kg), round weight (or 147,115 lb (66,730 kg), gutted weight) for 2013; 154,500 lb (70,080 kg), round weight (or 148,558 lb (67,385 kg), gutted weight) for 2014; and 164,000 lb (74,389 kg), round weight, (or 157,692 lb (71,528 kg), gutted weight) for 2015 and subsequent fishing years.

#### **Additional Management Measures Contained in Regulatory Amendment 18**

Regulatory Amendment 18 also includes several actions that are not contained in this final rule. Based on the new ABCs, Regulatory Amendment 18 specifies a new MSY and OY for vermilion snapper. Using the SEDAR 17 update results, the values for MSY and OY are updated to incorporate the most recent harvest information for the stock. The vermilion snapper MSY value is revised to 1,563,000 lb (708,965 kg), round weight. The vermilion snapper OY values are revised to 1,372,000 lb (622,329 kg), round weight for 2013;

1,312,000 lb (595,113 kg), round weight for 2014; 1,289,000 lb (584,681 kg), round weight for 2015; and 1,269,000 lb (575,609 kg), round weight for 2016 and subsequent fishing years. Regulatory Amendment 18 also revises the OY to equal the ABC based on the SEDAR 17 update.

Additionally, Regulatory Amendment 18 modifies the MSY and OY values for red porgy according to the new ABCs. The red porgy MSY value is revised to 834,000 lb (378,296 kg), round weight. The red porgy OY values are revised to 306,000 lb (138,799 kg), round weight for 2013; 309,000 lb (140,160 kg), round weight for 2014; and 328,000 lb (148,778 kg), round weight for 2015 and subsequent fishing years. The OY for red porgy is set equal to the ABC and the ACL as specified in the ACL formula established in the Comprehensive ACL Amendment. Regulatory Amendment 18 also updates the recreational ACT for red porgy based on the revised ABC using the ACT control rule established in the Comprehensive ACL Amendment. However, the recreational ACT is not included in the regulatory text, because it is a performance measure and not an actual limit on harvest.

#### **Comments and Responses**

NMFS received six comment submissions on the proposed rule, which included five letters from individuals and one letter from a Federal agency. One of the individual submissions commented on issues beyond the scope of those addressed in this rule. The Federal agency stated that it had no comment. Three of the comments support the actions taken in this rule. For the reasons explained above, NMFS agrees with the comments that support the removal of the recreational 5-month seasonal closure for vermilion snapper, the increase in the vermilion snapper ACL, and reduction of the vermilion snapper commercial trip limit. The comments that oppose one or more of the management measures in Regulatory Amendment 18 and the proposed rule are summarized and responded to below.

*Comment 1:* The red porgy ACL should not be reduced.

*Response:* NMFS disagrees that it is unnecessary to reduce the ACL for red porgy. Red porgy is currently in the 13th year of an 18-year rebuilding plan that was established in 2000. In 2006, an update assessment indicated that red porgy was no longer undergoing overfishing and was rebuilding, but the stock remained overfished. In response to this determination, the South Atlantic

Council developed a constant fishing mortality rate rebuilding strategy for red porgy and specified a 395,304-lb (179,307-kg), round weight, total allowable catch. In 2012, another update assessment also determined that red porgy was not undergoing overfishing but was overfished. The update also indicated that rebuilding is not occurring as expected due to poor recruitment and that the red porgy stock will not be rebuilt by the end of the rebuilding period, even in the absence of fishing mortality. Therefore, the South Atlantic Council requested a new SEDAR benchmark stock assessment for 2014. Until then, the SSC recommended, and the Council set, harvest levels for red porgy based on the yield at 75 percent of  $F_{MSY}$ . This results in lower ACLs but is necessary to ensure that fishing mortality remains less than  $F_{MSY}$  and will provide greater opportunity for the stock to rebuild until the Council can review the new benchmark assessment.

*Comment 2:* The fishing seasons for all snapper-grouper species should be opened simultaneously and then closed as each stock meets its respective ACL.

*Response:* The only snapper grouper-species considered in Regulatory Amendment 18 were vermilion snapper and red porgy, and modifying the fishing season for red porgy was not addressed in the amendment. Regulatory Amendment 18 did include alternatives for various vermilion snapper fishing seasons, including establishing concurrent black sea bass and vermilion snapper fishing season openings to provide additional opportunities for harvest and to potentially reduce any derby fishing conditions (the race to catch fish). However, the South Atlantic Council wanted to consider additional alternatives for vermilion snapper fishing seasons and decided to address those in a separate regulatory amendment to avoid delaying the increase in the vermilion snapper ACL.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Regulatory Amendment 18 and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

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

A FRFA was prepared for this action. The FRFA incorporates the IRFA, a summary of the significant economic issues raised by public comment,

NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. No changes in the final rule were made in response to public comment.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, an initial regulatory flexibility analysis was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013 rule, NMFS has reviewed the final regulatory flexibility analysis (FRFA) prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

NMFS agrees that the South Atlantic Council's choice of preferred alternatives would best achieve the South Atlantic Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble to this final rule provides a statement and need for, and objectives of, this rule.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this rule.

NMFS expects this final rule to directly affect commercial fishermen and for-hire vessel operators in the South Atlantic snapper-grouper fishery. The Small Business Administration established small entity 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 independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$19.0

million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2007–2011, an annual average of 249 vessels with valid Federal permits to operate in the commercial snapper-grouper fishery landed at least 1 lb (0.4 kg) of vermilion snapper. These vessels generated dockside revenues of approximately \$7.5 million (2011 dollars) from all South Atlantic species caught in the same trips as vermilion snapper, of which \$3.1 million (2011 dollars) were from vermilion snapper. Each vessel, therefore, generated an average of approximately \$30,000 in gross revenues, of which \$12,000 were from vermilion snapper. For the same period, an annual average of 190 vessels with valid Federal permits to operate in the commercial snapper-grouper fishery landed at least 1 lb (0.4 kg) of red porgy. These vessels generated dockside revenues of approximately \$6.2 million (2011 dollars) from all species caught in the same trips as red porgy, of which \$226,000 (2011 dollars) were from red porgy. Each vessel, therefore, generated an average of approximately \$32,000 in gross revenues, of which \$1,000 were from red porgy. Commercial vessels that operate in the vermilion snapper or red porgy components of the snapper-grouper fishery may also operate in other fisheries, the revenues of which are not reflected in these totals. Based on revenue information, all commercial vessels affected by the rule can be considered small entities.

From 2005–2010, an annual average of 1,985 vessels had valid Federal permits to operate in the for-hire component of the recreational sector of the snapper-grouper fishery. As of January 22, 2013, 1,462 vessels held South Atlantic for-hire snapper-grouper Federal permits, and about 75 of these vessels are estimated to have operated as headboats in 2013. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) per vessel for charter boats are estimated to be \$126,032 for Florida vessels, \$53,443 for Georgia vessels, \$100,823 for South Carolina vessels, and \$101,959 for North Carolina vessels. For headboats, the corresponding estimates are \$209,507 for Florida vessels and \$153,848 for vessels in the other South Atlantic states. For state headboat estimates other than Florida, aggregated economic information is provided because the

headboat sample sizes were small and providing more detailed revenue estimate information on a state-by-state basis could disclose sensitive financial information. Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

NMFS expects the final rule to directly affect all federally permitted commercial vessels harvesting vermilion snapper or red porgy and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that this final rule will affect a substantial number of small entities.

Because NMFS determines that all entities expected to be affected by the actions in this final rule are small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

The vermilion snapper commercial and recreational ACLs for 2013 through 2016, and subsequent fishing years, will be increased relative to the 2012 ACL values. This action will likely provide the snapper-grouper commercial sector a longer fishing season that will result in higher industry revenues and possibly profits to commercial vessels. Relative to the 2012 vermilion snapper commercial ACL, the commercial ACL increases will generate additional ex-vessel revenues to commercial vessels. Based on past ex-vessel data applied to the increased ACLs, these additional revenues will be about \$817,974 (2011 dollars) in 2013, and as the commercial ACL decreases to its lowest level in the 2016 fishing year, and subsequent years, the additional revenues will also be reduced to about \$586,000 (2011 dollars).

The possibility of increased profits for commercial vessels from an increase in revenues will have to be balanced with the reduced vermilion snapper commercial trip limit. The trip limit, in conjunction with the increased commercial ACLs, is expected to extend the first commercial season by approximately 3½ weeks beyond the 2012 closure date, and the second season by approximately 3 weeks beyond the 2012 closure date. Before reaching 75 percent of the commercial ACL, the trip limit will benefit those who presently are harvesting less than 1,000 lb (454 kg), gutted weight, per trip, because it will allow them to continue to harvest that same amount per trip for an extended period and therefore generate more revenues and likely more profits for the entire fishing

year. However, the trip limit will effectively increase the fishing cost per harvested fish of those vessels already harvesting more than 1,000 lb (454 kg), gutted weight, per trip, although these fishermen could still take advantage of an extended season. A similar situation with respect to those catching above or below the trip limit will occur once the trip limit is reduced to 500 lb (227 kg), gutted weight. If the extended season brings in relatively higher ex-vessel prices, those not adversely affected by the commercial trip limit will very likely experience profit increases and those adversely affected by the trip limit will not necessarily experience profit reductions. Given this condition, it appears that the net effects on vessel profits will be positive. However, more vessels will be adversely affected once the trip limit of 500 lb (227 kg), gutted weight, takes effect. This trip limit could result in greater profit reductions to adversely affected vessels. The overall net effects of the commercial ACL increases and commercial trip limit reductions on vessel profits cannot be ascertained.

In principle, the increase in the vermilion snapper recreational ACL will benefit the for-hire vessels, but this result is highly dependent on whether the seasonal closure is eliminated. In recent years, the recreational sector has not fully reached its ACL, and this could be a result of the November through March closure of the vermilion snapper recreational sector. Eliminating this seasonal closure will very likely increase the trips of for-hire vessels targeting vermilion snapper so that net operating revenues, or profits, of these vessels will also likely increase. An in-season recreational sector quota closure, however, will constrain any increases in the profits of for-hire vessels, but projections indicate that the recreational ACLs are unlikely to be reached during the fishing year, at least in the short-term. It is, therefore, likely that the recreational ACL increases, in conjunction with the elimination of the seasonal closure, will result in profit increases for the for-hire vessels. Assuming that the recreational ACL is not reached, and therefore no in-season AM closure is triggered, eliminating the recreational seasonal closure for vermilion snapper will increase the net operating revenues of charter boats by approximately \$47,000 (2011 dollars) annually, and those of headboats by approximately \$158,000 (2011 dollars) annually.

The red porgy commercial and recreational ACLs for 2013 through 2015 will be reduced from the current ACL, which would, in principle, negatively

affect both commercial and for-hire vessels. Since increasing the commercial ACL in 2009 (74 FR 58902, November 16, 2009), the red porgy commercial sector has exceeded its ACL only once (in 2011), and in other years red porgy commercial landings were substantially lower than the sector's ACL. Based on a running average of commercial landings as a proxy for future landings, the red porgy commercial ACLs for 2013 through 2015 are unlikely to be exceeded and therefore will not trigger an in-season closure of the commercial sector. Thus, unless there is a significant increase in commercial landings through a substantial increase in the stock size or fishing effort, the reduced commercial ACLs will likely not reduce the landings, revenues, and profits of commercial vessels. If the commercial ACLs are reached but not exceeded, commercial vessels could generate additional revenues from the commercial ACLs. Relative to the landings and revenues in 2012 and assuming the commercial ACLs are reached, additional revenues (2011 dollars) to commercial vessels will be approximately \$259,000 in 2013, \$261,000 in 2014, and \$277,000 in 2015, and thereafter.

Annually from 2007 through 2011, recreational landings of red porgy have remained at very low levels, averaging approximately 110,000 lb (49,941 kg), round weight. In 2012, total recreational landings of approximately 137,000 lb (62,199 kg), round weight, were less than 30 percent of the recreational sector's ACL. Therefore, the reduced recreational ACL will most likely have no effects on the profits of for-hire vessels, at least in the short-term. The long-term effects on profits depend on whether for-hire vessel trips targeting red porgy substantially increase. If such an increase in for-hire vessel trips ever occurs, for-hire profits will also increase.

The following discussion analyzes the alternatives that were not preferred by the South Atlantic Council, or alternatives for which the South Atlantic Council chose the no action alternative.

Two alternatives, including the preferred alternative, were considered for revising the vermilion snapper commercial and recreational ACLs. The only other alternative is the no action alternative, which would maintain the ACLs at a lower level than the preferred alternative. Selecting the no action alternative would lead to forgone profit increases for commercial and for-hire vessels that would otherwise be realized under the preferred alternative. The no

action alternative was not selected because a new stock assessment update was recently completed for vermilion snapper and thus it would not have been based on the best available science.

Three alternatives, including the preferred alternative, were considered for revising the commercial trip limit for vermilion snapper. The first alternative, the no action alternative, would maintain the trip limit at 1,500 lb (680 kg), gutted weight, which would be higher than that in the preferred alternative. Although, in principle, this alternative would have no effects on commercial vessel profits, there would be a higher probability of an ever-shortening commercial season, thereby adversely affecting the profits of many commercial vessels. The second alternative is a trip limit of 1,000 lb (454 kg), gutted weight, the same as the preferred alternative, but without the step down to a 500-lb (227-kg), gutted weight, trip limit when 75 percent of the commercial ACL has been met or is projected to be met. This alternative would result in shorter first and second commercial fishing seasons than the preferred alternative. As with the preferred alternative, it would increase the cost per landed fish of those already harvesting above the trip limit, although those vessels could increase their overall revenues by taking more fishing trips during the extended commercial season. The net effect on their profits would be positive only if ex-vessel prices substantially improved during the extended season. However, those vessels currently landing below the commercial trip limit would likely experience increased revenues and likely profits for the entire fishing year due to the extended season. As with the preferred alternative, this alternative's overall net effects on the profits of commercial vessels cannot be ascertained. It is noted that this alternative would adversely affect fewer vessels than the preferred alternative. However, considering that the commercial sector has been reaching its ACL in recent years, this alternative would have a higher probability of allowing overages to occur than the preferred alternative. Overages of the commercial ACL could lead to overfishing of vermilion snapper which would necessitate more restrictive measures that could, in turn, reduce the future revenues and profits of commercial vessels. As discussed in the amendment, the alternatives, other than the preferred alternative, were not selected because they did not best meet the objectives of Regulatory Amendment 18.

Two alternatives, including the preferred alternative, were considered for modifying the recreational seasonal closure for vermilion snapper. The only other alternative is the no action alternative, which would maintain the November through March closure of the recreational sector for vermilion snapper. This alternative would lead to forgone for-hire vessel profits that would otherwise be realized with the preferred alternative. As discussed in the amendment, the alternatives, other than the preferred alternative, were not selected because they did not best meet the objectives of Regulatory Amendment 18.

Three alternatives, including the preferred alternative, were considered for revising the commercial and recreational ACLs for red porgy. The first alternative, the no action alternative, would retain the current ACL, which would be higher than the ACLs under the preferred alternative. Although this alternative would, in principle, provide for better profitability prospects for both the commercial and for-hire vessels, its effects in the short-term would be equivalent to those of the preferred alternative because, based on historical landings through 2012, the commercial and recreational landings would likely be less than the commercial and recreational ACLs of the preferred alternative. The second alternative is similar to the preferred alternative, except that it would set the sector ACLs for 2013 through 2018, and subsequent years until modified. The effects of this alternative on commercial and for-hire vessels would be identical to those of the preferred alternative for the 2013 through 2015 fishing years. In the 2016 through 2018 fishing years, this alternative would provide for increased sector ACLs and thus, in principle, would provide commercial vessels a better environment for generating higher revenues and profits. Assuming the commercial sector fully reached its annual ACL in 2016 through 2018, this alternative would allow for additional revenues of approximately \$127,000 (2011 dollars) over the preferred alternative for the 3-year period (2016–2018). However, using a running average of commercial landings through 2012 as a proxy for future landings, the commercial ACLs under this alternative would likely not be reached. Therefore, the effects of this alternative on commercial vessels are virtually identical to those of the preferred alternative for the 3-year period (2016–2018). This alternative and the preferred alternative would most likely have identical effects on for-

hire vessels in 2016 through 2018. Recreational landings of red porgy have stayed at very low levels, making it unlikely that the recreational ACLs under this alternative, or the preferred alternative, would be reached. The South Atlantic Council will receive a new benchmark stock assessment for red porgy in 2014. As described in Regulatory Amendment 18, the assessment results will be considered by the South Atlantic Council in 2015, and any necessary changes to the ACLs or other management measures will be developed during 2015 with possible implementation in 2016. Hence the ACLs for 2016, and beyond, may be revised based on the best scientific information available at that time. The non-preferred alternatives were not selected because they did not best meet the objectives of Regulatory Amendment 18. Additionally, the no action alternative was not selected based on the results of the recent stock assessment and the need to use the best available science for deciding upon the ACL alternatives.

The South Atlantic Council also considered two alternatives to modify the commercial fishing season for vermilion snapper, from which they selected the no action alternative. The no action alternative would maintain the split of the commercial fishing year, with January through June as the first season and July through December as the second season. This alternative would split the commercial ACL between the two seasons.

The second alternative consists of two sub-alternatives. The first sub-alternative would split the commercial fishing year into January through May as the first season and June through December as the second season. The second sub-alternative would split the commercial fishing year into January through April as the first season and May through December as the second season. In both sub-alternatives, the commercial ACL would be split equally between the two seasons.

The South Atlantic Council noted the complexity of modifying the commercial fishing season for vermilion snapper, and decided to move it to Regulatory Amendment 14, currently under development, for consideration with possible additional alternatives. The timing of the opening and closing of the season for vermilion snapper can impact the seasons for other snapper-grouper species, particularly the shallow-water grouper complex and black sea bass. The South Atlantic Council decided that a different amendment that would jointly consider the fishing seasons for vermilion

snapper and black sea bass was the better approach. As a result of that decision, completion of Regulatory Amendment 18 would not be delayed by the consideration of a broader set of actions within the amendment, thus allowing the realization of more socio-economic benefits from increased ACLs for vermilion snapper.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Red porgy, Snapper-Grouper, South Atlantic, Vermilion snapper.

Dated: August 1, 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 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.*

#### § 622.183 [Amended]

■ 2. In § 622.183, paragraph (b)(4) is removed and reserved.

■ 3. In § 622.190, the introductory text of paragraph (a), and paragraphs (a)(4)(i), (a)(4)(ii), and (a)(6) are revised to read as follows:

#### § 622.190 Quotas.

\* \* \* \* \*

(a) *South Atlantic snapper-grouper, excluding wreckfish.* The quotas apply to persons who are not subject to the bag limits. (See § 622.11 for applicability of the bag limits.) The quotas are in gutted weight, that is eviscerated but otherwise whole, except for the quotas in paragraphs (a)(4), (a)(5), and (a)(6) of

this section which are in both gutted weight and round weight.

\* \* \* \* \*

(4) \* \* \*

(i) For the period January through June each year.

(A) For the 2013 fishing year—420,252 lb (190,623 kg), gutted weight; 466,480 lb (211,592 kg), round weight.

(B) For the 2014 fishing year—401,874 lb (182,287 kg), gutted weight; 446,080 lb (202,338 kg), round weight.

(C) For the 2015 fishing year—394,829 lb (179,091 kg), gutted weight; 438,260 lb (198,791 kg), round weight.

(D) For the 2016 and subsequent fishing years—388,703 lb (176,313 kg), gutted weight; 431,460 lb (195,707 kg), round weight.

(ii) For the period July through December each year.

(A) For the 2013 fishing year—420,252 lb (190,623 kg), gutted weight; 466,480 lb (211,592 kg), round weight.

(B) For the 2014 fishing year—401,874 lb (182,287 kg), gutted weight; 446,080 lb (202,338 kg), round weight.

(C) For the 2015 fishing year—394,829 lb (179,091 kg), gutted weight; 438,260 lb (198,791 kg), round weight.

(D) For the 2016 and subsequent fishing years—388,703 lb (176,313 kg), gutted weight; 431,460 lb (195,707 kg), round weight.

\* \* \* \* \*

(6) *Red porgy*—(i) For the 2013 fishing year—147,115 lb (66,730 kg), gutted weight; 153,000 lb (69,400 kg), round weight.

(ii) For the 2014 fishing year—148,558 lb (67,385 kg), gutted weight; 154,500 lb (70,080 kg), round weight.

(iii) For the 2015 and subsequent fishing years—157,692 lb (71,528 kg), gutted weight; 164,000 lb (74,389 kg), round weight.

\* \* \* \* \*

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

#### § 622.191 Commercial trip limits.

\* \* \* \* \*

(a) \* \* \*

(6) *Vermilion snapper.* (i) Until 75 percent of either quota specified in § 622.190(a)(4)(i) or (ii) is reached or projected to be reached, 1,000 lb (454 kg), gutted weight; 1,110 lb (503 kg), round weight.

(ii) After 75 percent of either quota specified in § 622.190(a)(4)(i) or (ii) is reached or projected to be reached, 500 lb (227 kg), gutted weight; 555 lb (252 kg), round weight. When the conditions in this paragraph (a)(6)(ii) have been reached, the Assistant Administrator will implement this trip limit change by filing a notification with the Office of the Federal Register.

(iii) See § 622.190(c)(1) for the limitations regarding vermilion snapper after either quota specified in § 622.190(a)(4)(i) or (ii) is reached or projected to be reached.

\* \* \* \* \*

■ 5. In § 622.193, paragraphs (f) and (v) are revised to read as follows:

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

\* \* \* \* \*

(f) *Vermilion snapper*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable commercial ACL (commercial quota) specified in § 622.190(a)(4)(i) or (ii), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that portion of the fishing year applicable to the respective quota.

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable recreational ACL specified in paragraph (f)(2)(iv) of this section and vermilion snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the recreational sector for vermilion snapper for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of vermilion snapper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies 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, *i.e.*, in state or Federal waters.

(ii) Without regard to overfished status, if vermilion snapper recreational landings exceed the applicable recreational ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(iii) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iv) The recreational ACL for vermilion snapper is 395,532 lb (179,410 kg), gutted weight, 439,040 lb (199,145 kg), round weight, for 2013; 378,234 lb (171,564 kg), gutted weight, 419,840 lb (190,436 kg), round weight, for 2014; 371,604 lb (168,557 kg), gutted

weight, 412,480 lb (187,098 kg), round weight, for 2015; and 365,838 lb (165,941 kg), gutted weight, 406,080 lb (184,195 kg), round weight, for 2016 and subsequent fishing years.

\* \* \* \* \*

(v) *Red porgy*—(1) *Commercial sector*.

(i) If commercial landings for red porgy, as estimated by the SRD, reach or are projected to reach the applicable commercial ACL (commercial quota) specified in § 622.190(a)(6), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) If commercial landings exceed the applicable commercial ACL, and red porgy are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector*. (i) If recreational landings for red porgy, as estimated by the SRD, exceed the applicable recreational ACL specified in paragraph (v)(2)(ii) of this section then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational fishing season will not be reduced during the following fishing year if recreational landings do not exceed the applicable ACL or if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(ii) The recreational ACL for red porgy is 147,115 lb (66,730 kg), gutted weight, 153,000 lb (69,400 kg), round weight, for 2013; 148,558 lb (67,385 kg), gutted weight, 154,500 lb (70,080 kg), round weight, for 2014; 157,692 lb (71,528 kg), gutted weight, 164,000 lb (74,389 kg),

round weight, for 2015 and subsequent fishing years.

\* \* \* \* \*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121009528-2729-02]

RIN 0648-XC749

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2013 Winter II Quota

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS adjusts the 2013 Winter II commercial scup quota. This action complies with Framework Adjustment 3 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which established a process to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

DATES: Effective November 1, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281-9224.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the Federal Register on November 3, 2003 (68 FR 62250), implementing a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period (January 1 through April 30) to be added to the quota for the Winter II period (November 1 through December 31), and to allow adjustment of the commercial possession limit for the Winter II period commensurate with the amount of quota rolled over from the Winter I period.

For 2013, the initial Winter II quota is 3,750,249 lb (1,701 mt), and the best available landings information indicates

that 3,182,749 lb (1,444 mt) remain of the Winter I quota of 10,613,157 lb (4,814 mt). Consistent with the intent of Framework 3, the full amount of unused 2013 Winter I quota is transferred to Winter II, resulting in a revised 2013 Winter II quota of 6,932,998 lb (3,145 mt). Because the amount transferred is greater than 2,000,000 lb (907 mt), the possession limit per trip will increase to 8,000 lb (3,629 kg) during the Winter II quota period, consistent with the final rule Winter I to Winter II possession limit increase table published in the 2013 final scup specifications Table 7 (77 FR 76942, December 31, 2012).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), has determined good cause exists pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this in-season adjustment because it is impracticable and contrary to the public interest. The landings data upon which this action is based are not available on a real-time basis and, consequently, were compiled only a short time before the determination was made that this action is warranted. If implementation of this in-season action is delayed to solicit prior public comment, the objective of the fishery management plan to achieve the optimum yield from the fishery could be compromised; deteriorating weather conditions during the later part of the fishery year will reduce fishing effort and could result in the annual quota from being fully harvested. This would conflict with the agency's legal obligation under the Magnuson-Stevens Fishery Conservation and Management Act to achieve the optimum yield from a fishery on a continuing basis, resulting in a negative economic impact on vessels permitted to fish in this fishery.

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

Dated: July 31, 2013.

Kelly Denit,

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

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