

In accordance with the provisions of E.O. 12866, this regulation was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on November 23, 2022.

#### List of Subjects in 42 CFR Part 600

Administrative practice and procedure, Health care, Health insurance, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 600 as set forth below:

#### PART 600—ADMINISTRATION, ELIGIBILITY, ESSENTIAL HEALTH BENEFITS, PERFORMANCE STANDARDS, SERVICE DELIVERY REQUIREMENTS, PREMIUM AND COST SHARING, ALLOTMENTS, AND RECONCILIATION

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** Section 1331 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, 124 Stat. 119), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat. 1029).

■ 2. Amend § 600.610—

■ a. By revising paragraphs (a)(1) and (b)(1); and

■ b. In paragraph (c)(2)(ii) by removing the phrase “during the application of the BHP funding methodology” and adding in its place the phrase “during the application or development of the BHP funding methodology”.

The revisions read as follows:

#### § 600.610 Secretarial determination of BHP payment amount.

(a) \* \* \*

(1) Beginning in FY 2015, the Secretary will determine and publish in a **Federal Register** document the BHP payment methodology for the next calendar year or, beginning in calendar year 2022, for multiple calendar years. Beginning in calendar year 2023—

(i) In years in which the Secretary does not publish a new BHP methodology, the Secretary will update the values of factors needed to calculate the Federal BHP payments via sub regulatory guidance, as appropriate.

(ii) In years that the Secretary publishes a revised payment methodology, the Secretary will publish a proposed BHP payment methodology

upon receiving certification from the Chief Actuary of CMS.

\* \* \* \* \*

(b) \* \* \*

(1) Beginning in calendar year 2023, in years that the Secretary publishes a revised payment methodology, the Secretary will determine and publish the final BHP payment methodology and BHP payment amounts in a **Federal Register** document.

\* \* \* \* \*

Dated: December 12, 2022.

**Xavier Becerra,**

Secretary, Department of Health and Human Services.

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**BILLING CODE 4120–01–P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 221214–0269]

RIN 0648–BL46

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Amendment 50

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 50 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). For red porgy, this final rule revises the sector annual catch limits (ACLs), commercial seasonal quotas, commercial trip limits, recreational bag and possession limits, recreational fishing season, and recreational accountability measures (AMs). In addition, Amendment 50 establishes a new rebuilding plan, and revises the acceptable biological catch (ABC), annual optimum yield (OY), and sector allocations. The purpose of this final rule and Amendment 50 is to end overfishing of red porgy, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

**DATES:** This final rule is effective January 19, 2023.

**ADDRESSES:** Electronic copies of Amendment 50, which includes a

fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-50-catch-level-adjustments-rebuilding-schedule-and-allocations-red-porgy/>.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, telephone: 727–824–5305, or email: [frank.helies@noaa.gov](mailto:frank.helies@noaa.gov).

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

#### Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

On September 9, 2022, NMFS published a notice of availability for Amendment 50 and requested public comment (87 FR 55376). On September 26, 2022, NMFS published a proposed rule for Amendment 50 and requested public comment (87 FR 58302). NMFS approved Amendment 50 on December 7, 2022. The proposed rule and Amendment 50 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 50 and implemented by this final rule is described below.

In 1990, a stock assessment for red porgy was completed and NMFS determined that the stock was subject to overfishing and overfished. As a result of that stock status, through Amendment 4 to the FMP the Council established an initial rebuilding plan and a minimum size limit for red porgy (56 FR 56016, October 31, 1991). The rebuilding plan was put into effect in 1991 with a target time to rebuild of 10 years. The stock was again assessed in 1999 and again was determined to be subject to overfishing and overfished.

Through an emergency rule published in 1999, NMFS prohibited the harvest and possession of red porgy in or from the exclusive economic zone (EEZ) off the southern Atlantic states (64 FR 48324, September 3, 1999). NMFS subsequently extended the emergency rule to prohibit the harvest and possession of red porgy through August 28, 2000 (65 FR 10039, February 25, 2000).

The final rule to implement Amendment 12 to the FMP replaced the emergency rule and closed commercial harvest during the red porgy peak spawning season, reduced the commercial trip limit, and reduced the recreational bag limit (65 FR 51248, August 23, 2000). Amendment 12 also specified a new 18-year rebuilding plan, which began with the implementation of the emergency rule that prohibited harvest on September 3, 1999. The red porgy stock was assessed again in 2002, as the first stock in the South Atlantic to be assessed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 1). The SEDAR 1 assessment indicated the stock was overfished but not undergoing overfishing. Subsequent update assessments in 2006 and 2012 also resulted in the same stock status determinations as the 2002 SEDAR 1 assessment.

The most recent SEDAR stock assessment for South Atlantic red porgy (SEDAR 60) was completed in April 2020. The assessment included data through 2017 and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program Fishing Effort Survey (MRIP FES), as discussed later in this final rule. The Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 60 at their April 2020 meeting and found that the assessment was conducted using the best scientific information available, and was adequate for determining stock status and supporting fishing level recommendations. The findings of the assessment indicated that the South Atlantic red porgy stock is undergoing overfishing and is overfished. NMFS also determined that the red porgy stock has not made adequate progress towards rebuilding.

The findings of SEDAR 60 showed a declining trend in average recruitment throughout the time series reviewed in the assessment, and that red porgy has made little progress towards rebuilding, given the low recruitment in recent years. The projections within SEDAR 60 indicate the reduced ABCs would have only a very minor impact on stock rebuilding. If recruitment continues to

be low, the productivity of the stock and the benchmark management reference points would need to be reevaluated. The red porgy stock is currently scheduled to be assessed again in 2025.

Following a notification from NMFS to a Council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the Council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. The Council developed Amendment 50 in response to the results of SEDAR 60.

In addition to the revisions to the commercial quotas and sector ACLs, modified red porgy management measures are needed to constrain commercial and recreational harvest to the proposed fishing levels. This final rule reduces commercial trip limits and recreational bag and possession limits, and implements a 2-month recreational fishing season. The Council intends that these actions will allow retention of red porgy over the longest period of time projected during the fishing year while preventing overfishing. This final rule also adjusts the recreational AMs to ensure they are effective at keeping recreational landings from exceeding the recreational ACL and correct for overages when they occur. This final rule and Amendment 50 do not adjust commercial AMs.

The Council determined that the actions in Amendment 50 will end overfishing of South Atlantic red porgy, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

#### **Management Measures Contained in This Final Rule**

This final rule revises the sector ACLs, commercial seasonal quotas, commercial trip limits, recreational bag and possession limits, recreational fishing season, and recreational AMs. All weights described in this final rule are in gutted weight, unless otherwise specified.

#### *Total ACLs*

As implemented through Regulatory Amendment 18 to the FMP, the current total ACL and annual OY for red porgy are equal to the current ABC of 328,000 lb (148,778 kg), round weight. In Amendment 50, the Council is revising the ABC based on SEDAR 60 and the recommendation of the SSC, and keeping the ABC, total ACL, and annual OY equal to each other.

This final rule revises the total ACL equal to the recommended ABC of 75,000 lb (34,019 kg), round weight, 72,115 lb (32,711 kg), gutted weight, for

2022; 81,000 lb (36,741 kg), round weight, 77,885 lb (35,328 kg), gutted weight, for 2023; 87,000 lb (39,463 kg), round weight, 83,654 lb (37,945 kg), gutted weight, for 2024; 91,000 lb (41,277 kg), round weight, 87,500 lb (39,689 kg), gutted weight, for 2025; and 95,000 lb (43,091 kg), round weight, 91,346 lb (41,434 kg), gutted weight, for 2026 and subsequent fishing years.

#### *Sector Allocations and ACLs*

Amendment 50 revises the commercial and recreational allocations for red porgy. The current sector ACLs for red porgy are based on the commercial and recreational allocations of the total ACL at 50.00 percent and 50.00 percent, respectively, and were established through Amendment 15B to the FMP (74 FR 58902, November 16, 2009).

The new red porgy sector allocations in Amendment 50 will result in commercial and recreational allocations of 51.43 percent and 48.57 percent, respectively. The Council determined the revised sector allocations by applying the allocation formula adopted through the Comprehensive ACL Amendment to the FMP, which is  $ACL = ((\text{mean landings } 2006\text{--}2008) * 0.5)) + ((\text{mean landings } 1986\text{--}2008) * 0.5)$ , to the revised total ACL that includes updated recreational landings from the MRIP FES method.

Utilizing the revised allocation formula will incorporate revised recreational landings from the MRIP FES, which will result in a slight shift of allocation to the commercial sector. Although commercial fishing, compared to recreational fishing, tends to occur in deeper water, where mortality of discarded fish is greater, the Council reasoned that a slightly increased allocation to the commercial sector will potentially reduce the number of fish that are discarded if the commercial ACL is reached in-season and a sector closure becomes necessary, thus promoting conservation.

The commercial ACLs will be 37,089 lb (16,823 kg), for 2022; 40,056 lb (18,169 kg), for 2023; 43,023 lb (19,515 kg), for 2024; 45,001 lb (20,412 kg), for 2025; and 46,979 lb (21,309 kg), for 2026 and subsequent years.

The recreational ACLs will be 35,026 lb (15,888 kg), for 2022; 37,829 lb (17,159 kg), for 2023; 40,631 lb (18,430 kg), for 2024; 42,499 lb (19,277 kg), for 2025; and 44,367 lb (20,125 kg), for 2026 and subsequent years.

Regulatory Amendment 27 to the FMP established two commercial fishing seasons for red porgy with 30 percent of the commercial ACL allocated to Season 1 (January through April) and 70

percent allocated to Season 2 (May through December) (85 FR 4588, January 27, 2020). Any remaining commercial quota from Season 1 would be added to the commercial quota in Season 2. Any remaining quota from Season 2 would not be carried forward into the next fishing year. Amendment 50 and this final rule will not alter the current fishing seasons or commercial season ACL allocations.

Under Amendment 50, the commercial quotas in 2022 for Season 1 will be 11,127 lb (5,047 kg) and Season 2 will be 25,962 lb (11,776 kg); in 2023, Season 1 will be 12,017 lb (5,451 kg) and Season 2 will be 28,039 lb (12,718 kg); in 2024, Season 1 will be 12,907 lb (5,855 kg) and Season 2 will be 30,116 lb (13,660 kg); in 2025, Season 1 will be 13,500 lb (6,123 kg) and Season 2 will be 31,501 lb (14,289 kg); and for 2026 and subsequent years, Season 1 will be 14,094 lb (6,393 kg) and Season 2 will be 32,886 lb (14,917 kg).

#### *Commercial Trip Limits*

Amendment 13C to the FMP established the current commercial trip limit for red porgy of 120 fish from May 1 through December 31, with no harvest allowed from January 1 through April 30 (71 FR 55096, September 21, 2006). Regulatory Amendment 27 to the FMP removed the January 1 through April 30 spawning season commercial closure, and established the current 60 fish trip limit from January 1 through April 30, to reduce discarding of red porgy by the commercial sector during the early part of the fishing year. This final rule modifies the commercial trip limits for red porgy to be 15 fish for both Seasons 1 and 2.

The Council decided that under the revised 15-fish commercial trip limit, the lowest trip limit considered, commercial fishermen could retain an amount of red porgy over the longest amount of time during the fishing seasons, and this will increase the likelihood of red porgy remaining open to commercial harvest and available to consumers for as long as possible. Additionally, the Council expects the revised commercial trip limit to minimize discards of incidentally harvested red porgy when fishermen target other snapper-grouper species, such as gray triggerfish and vermilion snapper.

#### *Recreational Bag and Possession Limits*

The current recreational bag and possession limits for red porgy in the South Atlantic, specified by the final Rule Amendment 13C to the FMP, are three per person per day, or three per person per trip, whichever is more

restrictive. This final rule reduces the recreational bag and possession limits to one fish per person per day, or one fish per person per trip, whichever is more restrictive.

Given the substantial reduction in harvest needed to end red porgy overfishing immediately, and to increase the likelihood of rebuilding the stock, the Council selected the lowest bag limit considered in Amendment 50 to continue to allow recreational retention and help constrain harvest to the reduced recreational ACL.

#### *Recreational Fishing Season*

Recreational harvest of red porgy is currently allowed year-round until the recreational ACL is met or is projected to be met. This final rule establishes a recreational fishing season for red porgy where harvest will be allowed only from May 1 through June 30. The recreational sector will be closed annually from January 1 through April 30 and from July 1 through December 31. During the revised seasonal closures, the recreational bag and possession limits for red porgy will be zero.

Given the substantial reductions in harvest that are needed to address the determination that the stock is undergoing overfishing and overfished, shortening the time recreational fishing is allowed helps to reduce the risk that recreational catches will exceed the reduced sector ACL. The Council selected the most conservative recreational fishing season alternative in Amendment 50 to reduce the chance the recreational ACL will be exceeded, while still allowing for some recreational harvest opportunities.

#### *Recreational AMs*

The current AMs were established through Amendment 34 to the FMP (81 FR 3731, January 22, 2016) and includes an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL, regardless of whether the stock is overfished. The current AMs also include post-season adjustments. If recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. If the total ACL is exceeded and red porgy are overfished, the length of the recreational fishing season and the recreational ACL are reduced by the amount of the recreational ACL overage.

This final rule revises the recreational AMs for red porgy. Given the new 2-month fishing season, both the current in-season closure and stock status based post-season AMs will be replaced with

a new post-season AM. The revised recreational AM would be triggered in the following fishing year if the recreational ACL is exceeded. If recreational landings exceed the recreational ACL, the length of the following year's recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the Regional Administrator determines, using the best scientific information available, that a reduction is not necessary.

The Council's intent in revising the recreational AMs is to avoid an in-season closure of the recreational sector and extend maximum fishing opportunities to the sector during the 2-month recreational season. The revised AM will remove the current potential duplicate AM application of a reduction in the recreational season length and a payback of the recreational ACL overage if the total ACL was exceeded. Under the revised measure, the AM trigger will not be tied to the total ACL, but only to the recreational ACL. The modification of the current recreational AMs will ensure that overages in the recreational sector do not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the new AM being implemented would apply to the recreational fishing season in the year following a recreational ACL overage.

#### *Management Measures in Amendment 50 Not Codified by This Final Rule*

In addition to the measures within this final rule, Amendment 50 revises the overfishing limit (OFL) for red porgy equal to the ABC and updates other biological reference points. The amendment also establishes a new rebuilding plan, and revises the ABC, the annual OY, and the sector allocations.

#### *Rebuilding Plan for the South Atlantic Red Porgy Stock*

As previously discussed, the Council implemented an 18-year rebuilding plan for the South Atlantic red porgy stock through Amendment 12 to the FMP that was expected to rebuild the stock by the end of 2017 (65 FR 51248, September 22, 2000). Because the South Atlantic red porgy stock did not rebuild within that time, and is still overfished, Amendment 50 establishes a new rebuilding plan schedule equal to the time estimated to rebuild the stock while maintaining fishing mortality at 75 percent of the maximum fishing mortality threshold during the

rebuilding period. This rebuilding period will be 26 years, beginning in 2022 and ending in 2047.

#### *ABC and Annual OY*

The current ABC for red porgy was implemented in Regulatory Amendment 18 to the FMP, based upon a stock assessment update (2012 SEDAR 1 Update) and the Council's SSC's recommendations (78 FR 47574, August 6, 2013).

In April 2020, the Council's SSC reviewed the latest stock assessment (SEDAR 60) and recommended new ABC levels as determined by SEDAR 60. The assessment and associated ABC recommendations incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 50, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates occurs because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. The MRIP FES is considered by the Council's SSC, the Council, and NMFS to be a more reliable estimate of recreational effort and more robust compared to the MRIP CHTS method. The new ABC recommendations within Amendment 50 also represent the best scientific information available as determined by the SSC.

In addition, the Council chose to specify OY for red porgy on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv), and using the formula implemented through the Comprehensive ACL Amendment to the FMP (77 FR 15915, March 16, 2012).

#### **Comments and Responses**

NMFS received four comments from individuals during the public comment period on the notice of availability and proposed rule for Amendment 50. NMFS acknowledges the four comments in favor of the action in Amendment 50 and the proposed rule and agrees with them. No comments were received

opposing Amendment 50 or the proposed rule. No changes were made to the final rule as a result of public comment.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 50, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a final regulatory flexibility analysis (FRFA) in support of Amendment 50. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by public comments in response to the IRFA and NMFS' responses to those comments. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of the action, and the legal basis for this rule is contained in Amendment 50 and in the preambles to the proposed rule and this final rule and are not repeated here. The following constitutes the FRFA prepared for this final action.

The Magnuson-Stevens Act provides the statutory basis for this final rule. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

No public comments were received specifically in response to the IRFA, nor were there any public comments received that related to the potential economic impacts on small entities. No changes to this final rule were made in response to public comments.

All monetary estimates in the following analysis are in 2019 dollars.

This final rule will directly affect both anglers (recreational fishers) and commercial fishing businesses that harvest red porgy in the South Atlantic EEZ. Anglers, however, are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether

fishing from charter vessel or headboat (for-hire) fishing, private or leased vessels. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis. For-hire fishing businesses would be indirectly affected, and because the effects on for-hire businesses would be indirect, they fall outside the scope of the RFA.

Any business that operates a commercial fishing vessel that harvests red porgy in the South Atlantic EEZ must have a valid Federal South Atlantic snapper-grouper permit assigned to that vessel. From 2015 through 2019, an annual average of 161 (24 percent) snapper-grouper permitted vessels reported landings of red porgy. Therefore, NMFS estimates that 161 snapper-grouper permitted vessels will be directly affected by this rule.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) 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 its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. The average annual total revenue for a snapper-grouper permitted vessel that landed red porgy from 2015 through 2019 was \$68,539, which is substantially less than the above threshold. Moreover, none of the permitted vessels that land red porgy have annual revenue close to or greater than \$11 million. Hence, NMFS estimates that all of the businesses that operate snapper-grouper permitted vessels that land red porgy are small.

Actions 1 and 2 of Amendment 50, which will establish a rebuilding plan and revise the OFL, ABC, annual OY, and total ACL for red porgy, would have indirect impacts on small businesses and their magnitudes are dependent on subsequent action.

Action 3 of Amendment 50 revises the sector allocations and increases the commercial allocation of the total ACL from 50 percent to 51.43 percent. Currently, the commercial ACL is 157,692 lb (71,528 kg), gutted weight, 164,000 lb (157,692 kg), whole weight. In combination, Actions 2 (total ACL) and 3 (sector allocations) would reduce the commercial ACL by 120,603 lb (54,705 kg) for 2022, and then to 110,713 lb (50,219 kg) for 2026 and subsequent years. If average annual commercial ACL landings from 2015

through 2019 represent future baseline landings from 2022 through 2026, Action 3 would generate an average annual reduction of commercial ACL landings of 68,822 lb (31,217 kg) during that 5-year period. At an average dockside price of \$2.35 per lb, if the average 161 snapper-grouper permitted vessels with red porgy landings account for all commercial ACL landings of red porgy, they would collectively have annual losses of dockside revenue of \$161,733 or individually have an average reduction of \$1,005 (1.47 percent) per vessel. However, commercial landings reported by snapper-grouper permitted vessels represent, on average, 91.34 percent of commercial ACL landings from 2015 through 2019. As such, the 161 permitted vessels would collectively have average annual reductions of red porgy landings of 62,822 lb (28,496 kg) (91.34 percent of 68,822 lb (28,496 kg)) and dockside revenue of \$147,727, or individually have average annual reductions of 427 lb (194 kg) and \$918 (1.34 percent) per vessel.

Commercial landings of red porgy are not equally divided across the states. For purposes of protecting confidential information, Florida and Georgia vessels, landings and revenues are combined. On average, Florida and Georgia combined account for 28.73 percent of annual landings by weight and North Carolina and South Carolina account for 35.38 percent and 35.90 percent, respectively. Consequently, the average revenue losses per vessel under Action 3 (allocation) vary by state. NMFS estimates that the 49 Florida or Georgia vessels that land red porgy would each have an annual loss of \$870 (1.24 percent of total dockside revenue), the 70 North Carolina vessels that land red porgy would each have an annual loss of \$747 (1.41 percent of total dockside revenue), and the 42 South Carolina vessels that land red porgy would each have an annual loss of \$1,251 (1.48 percent of total dockside revenue).

Action 4 (commercial trip limits) in Amendment 50 reduces the commercial trip limits for red porgy in the South Atlantic EEZ from 60 to 15 fish in

Season 1 (January 1 through April 3) and 120 to 15 fish in Season 2 (May 1 through December 31). Because of the prohibition on commercially harvesting red porgy that had previously been in effect from January through April from January 1, 2015, to February 26, 2020, landings per trip during March and April of 2020 are used to evaluate baseline trips and landings per trip during March and April of Season 1. The resulting March and April figures are then doubled to produce estimates of the baseline number of trips and landings during Season 1. Baseline landings per trip during Season 2 are evaluated using landings from May 1 through December 31 from 2015 through 2019.

During Season 1, an estimated seven (14.29 percent) of 49 Florida and Georgia vessels report 82 trips that land over 15 red porgy. Similarly, an estimated 17 (24.29 percent) of 70 North Carolina vessels and 13 (30.95 percent) of 42 South Carolina vessels report 86 and 84 trips, respectively, that land over 15 red porgy during Season 1. NMFS estimates that the average trip that lands over 15 red porgy during Season 1 would lose 63 lb (29 kg) in Florida or Georgia, 45 lb (20 kg) in North Carolina, and 62 lb (28 kg) in South Carolina. The average losses in dockside revenue per vessel during Season 1 would be \$1,734 for the 7 snapper-grouper permitted vessels that land red porgy in Florida or Georgia, \$535 for the 17 snapper-grouper permitted vessels that land the species in North Carolina, and \$941 for the 13 snapper-grouper permitted vessels that land red porgy in South Carolina.

From 2015 through 2019, an annual average of up to 52 vessels made 293 trips that landed red porgy in Florida or Georgia during Season 2 (May through December), and 68.60 percent of those trips made by 29 vessels landed more than 15 fish. During that same 5-year period, an annual average of 70 vessels made 590 trips that landed red porgy in North Carolina during Season 2, and 52.88 percent of those trips made by 47 vessels landed more than 15 fish. Furthermore, an annual average of 42 vessels made 362 trips that landed red

porgy in South Carolina during Season 2 and 66.85 percent of the trips made by 36 vessels landed more than 15 fish. NMFS estimates that the average trip that currently lands over 15 red porgy in Florida or Georgia would lose 127 lb (58 kg) of red porgy, while the average trips that land over 15 red porgy in North Carolina and South Carolina would lose 75 lb (34 kg) and 103 lb (47 kg), respectively. With an average dockside price of \$2.35/lb, the annual average of 29 vessels that land over 15 red porgy per trip during Season 2 in Florida or Georgia would have estimated annual reductions of \$2,069 per vessel. Similarly, the average annual 47 vessels that land over 15 fish per trip in North Carolina and 38 vessels that land over 15 fish per trip in South Carolina during Season 2 would have an estimated annual revenue loss of \$1,170 and \$1,627 per vessel, respectively.

Actions 5 (recreational bag limits and recreational fishing season) and 6 (recreational AMs) in Amendment 50 will have direct impacts on anglers (recreational fishers), and no direct impacts on small businesses. Therefore, descriptions of those actions and analysis of their impacts are neither required nor provided.

The estimated impacts of each of the proposed actions on a vessel with a Federal commercial snapper-grouper permit that reports landings of red porgy are summarized in Table 1. Note that not all vessels are equally affected by the actions. For example, while Action 3 would affect 100 percent of the 49 Florida and Georgia vessels, the Season 1 trip limit of Action 4 would affect 14.29 percent of those 49 vessels. Because of that, the total impact per vessel of the combined actions is not the same for all vessels. Seven Florida and Georgia vessels would experience the maximum total adverse impact of \$4,674, assuming they are also affected by the Season 2 trip limit, while 20 Florida and Georgia vessels would experience the minimum total adverse impact of \$870. The range of the total impact per vessel is summarized in Table 2.

TABLE 1—SUMMARY OF ESTIMATED ANNUAL ADVERSE IMPACTS PER VESSEL BY STATE BY ACTION

| Action | Brief Description     | Florida and Georgia                        | North Carolina                            | South Carolina                            |
|--------|-----------------------|--|---|---|
| 1      | Rebuilding Timeframe  | No direct impact.                          |   |   |
| 2      | Total ACL & Annual OY | No direct impact.                          |   |   |
| 3      | Commercial ACL        | \$870 per vessel for 49 (100%) vessels.    | \$747 per vessel for 70 (100%) vessels.   | \$1,251 per vessel for 42 (100%) vessels. |
| 4      | Season 1 Trip Limit   | \$1,734 per vessel for 7 (14.29%) vessels. | \$535 per vessel for 17 (24.29%) vessels. | \$535 per vessel for 13 (30.95%) vessels. |

TABLE 1—SUMMARY OF ESTIMATED ANNUAL ADVERSE IMPACTS PER VESSEL BY STATE BY ACTION—Continued

| Action  | Brief Description            | Florida and Georgia                   | North Carolina                              | South Carolina                              |
|---------|------------------------------|---------------------------------------|---|---|
|         | Season 2 Trip Limit .....    | \$2,069 for 29 (59.18%) vessels ..... | \$1,179 per vessel for 47 (67.14%) vessels. | \$1,627 per vessel for 38 (90.48%) vessels. |
| 5 ..... | Recreational bag limit ..... | No direct impact.                     |   |   |
| 6 ..... | Recreational AMs .....       | No direct impact.                     |   |   |

TABLE 2—RANGE OF TOTAL ANNUAL IMPACTS PER VESSEL FOR COMBINED ACTIONS

| State       | Maximum total adverse impact per vessel | Number (%) of vessels with maximum total impact | Maximum percentage of annual revenue loss per vessel | Minimum total adverse impact per vessel | Number (%) of vessels with minimum total impact | Minimum percentage of annual revenue loss per vessel |
|-------------|---|---|--|---|---|--|
| FL/GA ..... | \$4,673                                 | 7 (14.29%)                                      | 6.64   | \$870                                   | 40 (40.92%)                                     | 1.24   |
| NC .....    | 2,461                                   | 17 (24.29%)                                     | 4.65   | 747                                     | 23 (32.86%)                                     | 1.41   |
| SC .....    | 3,413                                   | 13 (30.95%)                                     | 4.03   | 1,251                                   | 4 (9.52%)                                       | 1.48   |

As described in Amendment 50, annual net revenue from operations for vessels in the commercial snapper-grouper fishery was approximately 5 percent of their average annual total revenue from 2014 through 2016, while average net cash flow was about 19 percent of their average annual gross revenue during this time. Given that the rule could reduce a vessel's annual total revenue by an estimated 4.03 percent to 6.64 percent, NMFS determined that this final rule would have a significant adverse impact on a substantial number of small entities.

Three alternatives to Action 2, which would revise the total ACL, were considered, but not selected by the Council. Two of those alternatives would have larger decreases in the total ACL and subsequently larger reductions in the commercial ACL. As such, those two alternatives would have a larger adverse impact on small businesses. The third alternative, the status quo, would have no adverse impact on small businesses beyond the baseline.

The status-quo alternative to Action 3 (sector allocations), which would keep the commercial allocation of the total ACL at 50 percent, was considered, but not selected by the Council. It would have had a larger adverse economic impact on small businesses than the selected alternative.

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 will publish one or more guides to assist small entities in complying with the rule and will designate such publications as "small entity compliance guides." The agency will explain the actions a small entity is required to take to comply with a rule

or group of rules. As part of this rulemaking process, a fishery bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.*, bulletin) will be available on the website (see ADDRESSES). Hard copies of the guide and this final rule will be available upon request (see ADDRESSES).

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

Accountability measures, Annual catch limits, Commercial, Fisheries, Fishing, Recreational, Red porgy, South Atlantic.

Dated: December 14, 2022.

**Andrew James Strelcheck,**  
Acting 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.*

■ 2. In § 622.183, add paragraph (b)(9) to read as follows:

**§ 622.183 Area and seasonal closures.**

\* \* \* \* \*

(b) \* \* \*

(9) *Red porgy recreational sector closure.* The recreational sector for red porgy is closed from January 1 through April 30, and July 1 through December 31, each year. During a closure, the bag and possession limits for red porgy in or from the South Atlantic EEZ are zero.

■ 3. In § 622.187, revise paragraphs (b)(6) and (c)(2) to read as follows:

**§ 622.187 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(6) *Red porgy.* 1.

\* \* \* \* \*

(c) \* \* \*

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

■ 4. In § 622.190, revise paragraphs (a) introductory text and (a)(6)(i) and (ii) 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), (5), and (7) of this section which are in both gutted weight and round weight.

\* \* \* \* \*

(6) \* \* \*

(i) For the period January 1 through April 30 each year.

(A) For the 2022 fishing year—11,127 lb (5,047 kg).

(B) For the 2023 fishing year—12,017 lb (5,451 kg).

(C) For the 2024 fishing year—12,907 lb (5,855 kg).

(D) For the 2025 fishing year—13,500 lb (6,123 kg).

(E) For the 2026 and subsequent fishing years—14,094 lb (6,393 kg).

(ii) For the period May 1 through December 31 each year.

(A) For the 2022 fishing year—25,962 lb (11,776 kg).

(B) For the 2023 fishing year—28,039 lb (12,718 kg).

(C) For the 2024 fishing year—30,116 lb (13,660 kg).

(D) For the 2025 fishing year—31,501 lb (14,289 kg).

(E) For the 2026 and subsequent fishing years—32,886 lb (14,917 kg).

\* \* \* \* \*

■ 5. In § 622.191, revise paragraphs (a)(4)(i) and (ii) to read as follows:

**§ 622.191 Commercial trip limits.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(i) From January 1 through April 30—15 fish.

(ii) From May 1 through December 31—15 fish.

\* \* \* \* \*

■ 6. In § 622.193, revise paragraphs (v)(1)(ii) and (v)(2) and add paragraph (v)(3) to read as follows:

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

\* \* \* \* \*

(v) \* \* \*

(1) \* \* \*

(ii) If commercial landings for red porgy, as estimated by the SRD, exceed the commercial ACL, and the combined commercial and recreational ACL as specified in paragraph (v)(3) of this

section, is exceeded during the same fishing year, 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 to reduce the commercial ACL in the following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for red porgy, as estimated by the SRD, exceed the recreational ACL specified in paragraph (v)(2)(ii) of this section, then during the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL. However, the length of the recreational fishing season will not be reduced in the following fishing year if NMFS determines, using the best scientific information available, that no fishing season reduction is necessary.

When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season, the bag and possession limits for red porgy in or from the South Atlantic EEZ are zero.

(ii) The recreational ACL for red porgy is 35,026 lb (15,888 kg), gutted weight, for the 2022 fishing year; 37,829 lb (17,139 kg), gutted weight, for 2023 fishing year; 40,631 lb (18,430 kg), gutted weight, for the 2024 fishing year; 42,499 lb (19,277 kg), gutted weight, for the 2025 fishing year; and 44,367 lb (20,125 kg), gutted weight, for the 2026 and subsequent fishing years.

(3) *Combined commercial and recreational ACLs.* The combined commercial and recreational ACL for red porgy is 72,115 lb (32,711 kg), gutted weight, 75,000 lb (34,019 kg), round weight, for the 2022 fishing year; 77,885 lb (35,328 kg), gutted weight, 81,000 lb (36,741 kg), round weight, for 2023 fishing year; 83,654 lb (37,945 kg), gutted weight, 87,000 lb (39,463 kg), round weight, for the 2024 fishing year; 87,500 lb (39,689 kg), gutted weight, 91,000 lb (41,277 kg), round weight, for the 2025 fishing year; and 91,346 lb (41,434 kg), gutted weight, 95,000 lb (43,091 kg), round weight, for the 2026 and subsequent fishing years.

\* \* \* \* \*

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