

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

[Docket No. 230919–0226]

RIN 0648–BL98

**Snapper-Grouper Fishery of the South Atlantic Region; Golden Crab Fishery of the South Atlantic Region; Dolphin and Wahoo Fishery of the Atlantic; Acceptable Biological Catch Control Rules**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement amendments to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), the Golden Crab Fishery of the South Atlantic Region (Golden Crab FMP), and the Dolphin and Wahoo Fishery of the Atlantic (Dolphin and Wahoo FMP), referenced here as the Acceptable Biological Catch (ABC) Control Rule Amendments. If implemented, this proposed rule would modify the ABC control rules, allow the phase-in of ABC changes, allow some carry-over of an unharvested portion of the annual catch limit (ACL) to the following fishing year, and modify the FMP framework procedures to implement carry-overs of ACLs when appropriate. The purpose of this proposed rule is to ensure catch level recommendations are based on the best scientific information available, prevent overfishing while achieving optimum yield (OY), and increase flexibility in setting catch limits. NMFS also proposes an administrative clarification to existing regulations for the Snapper-Grouper FMP framework procedure.

**DATES:** Written comments must be received no later than November 1, 2023.

**ADDRESSES:** You may submit comments on the proposed rule, identified by “NOAA–NMFS–2023–0067,” by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA–NMFS–2023–0067” in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

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

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (for example, name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments—enter “N/A” in the required fields if you wish to remain anonymous.

An electronic copy of the ABC Control Rule Amendments, which includes an environmental assessment, a fishery impact statement, and a regulatory impact review, may be obtained from the NMFS Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/comprehensive-acceptable-biological-catch-abc-control-rule-amendment-revisions-abc-control>.

**FOR FURTHER INFORMATION CONTACT:** Nikhil Mehta, telephone: 727–824–5305, or email: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper and golden crab fisheries are managed under the Snapper-Grouper FMP and Golden Crab FMP, respectively. The dolphin and wahoo fishery of the Atlantic is managed under the Dolphin and Wahoo FMP. These three FMPs were prepared by the South Atlantic Fishery Management Council (Council) and are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council has developed, and submitted to NMFS for review and approval, the Comprehensive Acceptable Biological Catch Control Rule Amendment: Revisions to the Acceptable Biological Catch Control Rules and Specifications for Carry-Overs and Phase-Ins. The Council document is composed of Amendment 45 to the Snapper-Grouper FMP, Amendment 11 to the Golden Crab FMP, and Amendment 11 to the Dolphin and Wahoo FMP.

**Background**

The Council and NMFS manage snapper-grouper species and golden crab in Federal waters from North Carolina south to the Florida Keys. The

dolphin and wahoo fishery is managed in Federal waters from Maine south to the Florida Keys.

The Council’s Scientific and Statistical Committee (SSC) developed an ABC control rule in 2008, using uncertainty and risk traits to determine the acceptable risk of overfishing. The ABC control rule is the method by which the ABC for a stock is set, ideally based on an overfishing limit (OFL) from a stock assessment but at times established using more data-limited methodologies. The acceptable risk of overfishing is denoted as P-Star (P\*) and is applied through assessment projections to develop the SSC’s ABC recommendation. During development of the Comprehensive ACL Amendment by the Council, the SSC recommended adding additional levels of specificity to the ABC control rules to better address unassessed and data-limited stocks. The Comprehensive ACL Amendment included the ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs in 2012 (77 FR 15916, March 16, 2012). In 2015, the ABC control rule for the Snapper-Grouper FMP was revised by adding the Only Reliable Catch Stocks (ORCS) approach for applicable snapper-grouper stocks in Amendment 29 to the Snapper-Grouper FMP (80 FR 30947, June 1, 2015). The ORCS approach was recommended by the Council’s SSC for calculating ABC values for unassessed stocks when only reliable catch information is available, and was determined to be based on the best scientific information available.

In October 2016, NMFS published a final rule to revise the guidelines for National Standard 1 (NS1) of the Magnuson-Stevens Act (81 FR 71858, October 18, 2016). NS1 states that fishery conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. One of the objectives of the 2016 NS1 revisions was to provide additional flexibility within current statutory limits to address fishery management issues. For example, the revised NS1 guidelines allow for changes in catch limits to be phased in over time and is also described as “phase-in” in the ABC Control Rule Amendments and this proposed rule. The revised guidelines also allow for some of the unused portion of an ACL to be carried over from 1 fishing year to the next, which is also described as “carry-over” in this proposed rule. Fishery management councils, NMFS regions, and stakeholders have expressed considerable interest in using the phase-

in and carry-over provisions in ABC control rules. In 2020, recommendations and best practices for how to develop and apply these provisions were provided in a NOAA Technical Memorandum (NMFS-F/SPO-203, July 2020). The goals of the technical memo were to: (1) provide examples of how carry-over and phase-in provisions have been implemented in fisheries so that we can learn from past experiences; (2) describe some possible approaches to design and implement carry-over and phase-in provisions; and (3) identify characteristics of fish stocks, fisheries, and management approaches that may impact the benefits and risks of applying carry-over and phase-in provisions. If implemented by NMFS, this proposed rule would incorporate carry-over and phase-in provisions by modifying the existing ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs by clarifying the incorporation of scientific uncertainty and management risk, modifying the approach used to determine the acceptable risk of overfishing, and prioritizing the use of stock rebuilding plans for overfished stocks.

### Management Measure Contained in This Proposed Rule

#### *Modify Framework Procedures*

The ABC Control Rule Amendments and this proposed rule would modify the framework procedures in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs to allow for the future transfer, if pre-qualifying criteria are met, of an unharvested portion of a stock, total, or sector-specific ACL to the following fishing year (details are described in the *Allow Carry-Over of Unharvested Portion of ACLs* section of this proposed rule).

The current framework procedure for the Snapper-Grouper FMP in the regulations at 50 CFR 622.194 was implemented by Amendment 29 to the FMP in 2015. The current framework procedure allows for changes via rulemaking to: biomass levels, age-structured analyses, target dates for rebuilding overfished species, maximum sustainable yield (MSY) (or proxy), OY, ABC, total allowable catch (TAC), quotas (including a quota of zero), ACLs, annual catch targets (ACTs), accountability measures (AMs), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of essential

fish habitat (EFH), EFH, EFH habitat areas of particular concern (HAPCs), or coral HAPCs, restrictions on gear and fishing activities applicable in EFH and EFH HAPCs, and establish or modify spawning special management zones (SMZs).

The current framework procedure for the Golden Crab FMP in the regulations at 50 CFR 622.252 was implemented by the final rule for the original Golden Crab FMP in 1996 (61 FR 43952, August 27, 1996). The current framework procedure allows for changes via rulemaking to: biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the NMFS Regional Administrator (RA) to close the fishery when a quota is reached or is projected to be reached, definitions of EFH, EFH HAPCs, or Coral HAPCs.

The current framework procedure for the Dolphin and Wahoo FMP in the regulations at 50 CFR 622.194 was implemented by Amendment 5 to the Dolphin and Wahoo FMP in 2014 (79 FR 32878, June 9, 2014). The current framework procedure allows for changes via rulemaking to: biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY (or proxy), OY, ABC, TAC, quotas (including a quota of zero), ACLs, ACTs, AMs, MFMT, MSST, trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of EFH, EFH HAPCs, or Coral HAPCs, restrictions on gear and fishing activities applicable in EFH and EFH HAPCs, and establish or modify spawning SMZs.

The existing framework procedures for the three FMPs in this proposed rule already enable the Council to ask the SSC to consider recommending a temporary, higher ABC. However, the existing approach is not efficient for changes to catch levels and would likely not allow the Council and NMFS to develop and implement changes to catch levels, given the timing of Council and SSC meetings, the time required to develop a framework action, and the time needed for NMFS to implement changes to catch levels within a fishing year based on landings from the previous year.

If NMFS implements this proposed rule, the potential for carry-over of an ACL would not be immediate. Before NMFS could implement an ACL carry-over, NMFS would have to implement this proposed rule. Then, other preceding steps by the Council, SSC, and NMFS must occur.

A future stock assessment must determine if carry-over is possible for that species and specify the appropriate catch level. Then, the SSC would determine and recommend an ABC to the Council and the Council would develop an FMP amendment or framework action for the species with the option of ACL carry-over. If the required rulemaking for a catch level change that would follow was implemented by NMFS, then that species would be eligible for future carry-over through a subsequent abbreviated framework action under the abbreviated framework procedures described in this proposed rule. To support potential carry-over justification, a Term of Reference, would be added to each future stock assessment to project the maximum amount of landings beyond the ABC that could be carried over in 1 year while not resulting in overfishing, or in the stock becoming overfished, within the projection period.

When the Council develops a subsequent fishery management action in response to a stock assessment to specify or revise an ABC and ACL for a stock or sector, the Council would determine whether carry-over would be authorized if annual conditions cause a stock ACL or sector ACL to qualify for carry-over. In doing so, the Council would consider the potential need for, and benefits of, carry-over for a stock that could become eligible according to criteria specified in the ABC control rule. The Council would also consider the duration of time when the specified ABC and ACL are effective. An FMP amendment or framework action that specifies carry-over for a stock or sector would include analysis of the relevant biological, economic, and social information necessary to meet the criteria and guidance of the ABC control rule.

Following the conclusion of each fishing year, Council staff would notify the Council if any stocks and sectors for which carry-over is approved qualify based on the previous year's landings, and may necessitate using preliminary landings estimates from the previous year if those landings data are not yet finalized. If a stock or sector qualifies for carry-over according to specifications of the ABC and annual landings meet criteria specified in the

ABC control rule, NMFS would implement carry-over of eligible landings from the previous year via a temporary rule published in the **Federal Register** through the existing FMP framework procedure and rulemaking process.

The proposed carry-over procedure for eligible fish stocks or fishery sectors generally would not require additional advisory panel (AP) input or SSC recommendation, because input relevant to an ABC being approved with potential for carry-over would be part of the prior development process for the FMP amendment or framework in which the ABC and ACL for a stock or sector are already specified. Application of the carry-over procedure is expected to be routine and formulaic.

The NMFS RA would review any Council recommendations for carry-over and supporting information. If the RA concurs that the Council's recommendations are consistent with the objectives of the applicable FMP, the Magnuson-Stevens Act, and all other applicable law, the RA would be authorized to implement the Council's proposed action through publication of appropriate notification in the **Federal Register**.

If the Council chooses to deviate from the criteria and guidance of the proposed ABC control rules, this abbreviated process would not apply.

Further details of the proposed process can be found in section 2.4.1 and Appendix J of the ABC Control Rule Amendments. An example of the carry-over can be found in Appendix H of the ABC Control Rule Amendments.

The proposed process would allow carry-overs to occur in a more timely manner than that of an FMP amendment or framework action. A faster process is necessary due to the year-to-year nature of carry-overs. Under-harvest of an ACL may only be carried over in the immediate next year. Therefore, defining a stock's eligibility and the amount of ACL being carried over must occur quickly enough such that the fishery has time to harvest the carried over amount within the fishing year following a year of under-harvest. The proposed process also provides the Council discretion in determining whether carry-over should be applied to a potentially eligible stock when setting the ABC and ACL.

It is important to note that this proposed rule would not change current ABCs or ACLs for any species managed under the FMPs affected by the ABC Control Rule Amendments.

### Management Measures in the ABC Control Rule Amendments Not Codified by This Proposed Rule

In addition to the measures within this proposed rule, the ABC Control Rule Amendments would modify the ABC control rules, allow the phasing in of ABC changes, and allow carry-over of unharvested portion of the ACL, for Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs.

#### Modify the ABC Control Rules

As discussed above, the current ABC control rule for the Snapper-Grouper FMP was revised by Amendment 29, and the Comprehensive ACL Amendment implemented the ABC control rules for the Golden Crab, and Dolphin and Wahoo FMPs in 2012. For assessed species, the current ABC control rules classify assessments according to level 1. Level 1 has tier classifications that determine the P\* by reducing from an initial value of 50 percent according to uncertainty of assessment results and stock vulnerability (risk tolerance). ABC is determined through projections of assessment information using the accepted probability of overfishing. For unassessed species, ABC is determined by levels 2 through 5, applying one of the following data-limited methods, as data allow (listed from highest to lowest priority): Depletion-Based Stock Reduction Analysis, Depletion-Corrected Average Catch, Only Reliable Catch Stocks (only included in the Snapper-Grouper FMP as level 5), and a decision tree based on species catch history. Determination of ABC for overfished stocks undergoing rebuilding is not specified. Details on the control rule levels, tiers, and classifications are described in Table 2.1.1.1 of the ABC Control Rule Amendments. In summary, level 1 is assigned to assessed stocks and levels 1 through 4 are assigned to unassessed stocks for the Golden Crab, and Dolphin and Wahoo FMPs. Level 5 is assigned to the applicable unassessed stocks in the Snapper-Grouper FMP. Level 1 has tiers that further quantitative classification and methodology to calculate the ABC based on life-history, catch history, scientific uncertainty, stock status, and productivity and susceptibility analysis (PSA).

The proposed rule would modify the ABC control rules for the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs by categorizing stocks based on the available information, scientific uncertainty evaluation, and incorporation of the Council's risk tolerance policy through an accepted

P\*. The Council would specify the P\* based on relative stock biomass and a stock risk rating. When possible, the SSC would determine the OFL and characterize its uncertainty based primarily on the stock assessment and secondarily on the SSC's expert opinion. The OFL and its uncertainty would then be used to derive and recommend the ABC, based on the risk tolerance specified by the Council. The detailed step-by-step procedure detailing how the ABC is derived for assessed stocks can be found in section 2.1.1 of the ABC Control Rule Amendments. ABC for unassessed stocks would be recommended by the SSC based on applicable data-limited methods. Unassessed stocks would be assigned the moderate biomass level unless there is a recommendation from the SSC that justifies assignment of a different level. For overfished stocks, the Council would specify a stock rebuilding plan, considering recommendations from the SSC, and the AP of the respective FMP. The ABC enacted while the rebuilding plan is in effect would be based on recommendations from the Council's SSC. The probability of success for rebuilding plans (1 minus P\*) would be at least 50 percent. Control rule categories for assessments are described in detail in Table 2.1.1.2 of the ABC Control Rule Amendments.

In summary, four categories would facilitate an ABC determination based on scientific uncertainty and SSC guidance. The Council, with advice from the SSC and AP, would evaluate management risk for each stock through a stock risk rating. Stock risk ratings include information currently used in the PSA, but also incorporate socio-economic (for example, potential for discard losses, annual commercial value, recreational desirability, *etc.*) and environmental attributes (for example, climate change) (see Appendix E of the ABC Control Rule Amendments for more details). These recommendations would be revisited when new information becomes available (for example, a new stock assessment). The Council would then specify the risk rating as low, medium, or high risk of overfishing. A higher risk of overfishing would indicate that risk tolerance (*i.e.*, the accepted probability of overfishing) should be lower. These stock risk ratings, along with relative biomass levels, would be used to determine the Council's default risk tolerance for each stock. Default P\* values based on relative biomass and stock risk rating are shown in Table 2.1.1.3 of the ABC Control Rule Amendments. As an

example, a stock with high biomass and medium stock risk rating would have a  $P^*$  of 45 percent. This would be lower than the OFL, in accordance with Magnuson-Stevens Act. The SSC can recommend the Council reconsider the stock risk rating. This could happen, for example, with the emergence of new scientific studies or new information discovered through a stock assessment.

The modified ABC control rules would also allow the Council to deviate, to a greater or lesser amount, from the default accepted probability of overfishing by up to 10 percent for an individual stock, based on its expert judgment, new information, or recommendations by the SSC or other expert advisors. Accepted probability of overfishing may not exceed 50 percent. Using a 50 percent probability of overfishing implies negligible scientific uncertainty and sets OFL equal to ABC. At  $P^*$  equals 0.50, removals above ABC caused by deviations in biological parameters (for example, natural mortality (M), recruitment) could cause an overfishing determination and delay rebuilding plans. Therefore, adjusting  $P^*$  above the value recommended by the SSC would be infrequent and well justified based on new scientific understanding and the Council's risk tolerance. Additionally, when requested by the Council, the SSC would recommend the ABC for up to 5 years as both a constant value across years and as individual annual values for the same period of years. These options provide more flexibility to both the Council and SSC in the ABC determination.

The proposed rule would not change the current ABC levels for any species managed under the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. Modifying the ABC control rules as proposed would give the SSC the ability to recommend adjusting or deriving uncertainty of future assessment results (ultimately impacting projections of future catch) if they determine uncertainty is not adequately estimated through information used in the assessment. Evaluation of risk tolerance would also be improved by considering factors beyond the current PSA and expanding the range of reference points used to describe and incorporate relative biomass. For unassessed stocks, the proposed modifications would expand the number of methods that could be considered for estimating OFL and ABC. The addition of economic factors in the ABC control rules would allow the Council to better consider the long-term economic implications when examining management risk which could lead to

better economic outcomes and increase net economic benefits in a fishery for a given species. The inclusion of social factors in the ABC control rules would allow the Council to directly consider the importance of a given species to fishing communities and businesses when determining risk tolerance and would have long-term social benefits in the form of a more appropriate ABC.

#### *Allow the Phase-In of ABC Changes*

Currently, the phase-in of ABC changes is not allowed in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. The proposed rule would establish criteria specifying when the phase-in of ABC changes would be allowed and specify the approach for the phase-in of ABC changes.

The proposed rule would allow the phase-in of increases to ABC as specified by the Council, with advice from the SSC and AP. Increases to ABC (assuming the presence of comparable data between assessments) are generally indicative of an increase in relative biomass and improving stock condition. This allows greater consideration of ecological, social, and economic effects of an increased ABC, and increased flexibility in how that change can be implemented. Because ABCs during an increasing phase-in would be less than those initially recommended by the SSC, the phase-in period is not limited (*i.e.*, it can exceed the maximum timeframe specified for the phase-in decreases). The Council may specify ABC to be less than the SSC's recommended ABC, but it may not exceed the SSC's recommendation. Phasing in an ABC increase would set ABC below the SSC's recommendation. If the phase-in is included in projections used to develop the SSC's ABC recommendation, there also may be an increase to the recommended long-term ABC (*i.e.*, the ABC that persists after the phase-in is complete). Thus, phasing in increases to ABC over a longer time period could result in a greater increase to long-term ABC, and phasing in increases over a shorter period could result in a smaller increase to long-term ABC.

The proposed rule would allow the phase-in of decreases to ABC when a new ABC is less than 80 percent of the existing ABC, and over a period not to exceed 3 years, which is the maximum phase-in period allowed by the NS1 guidelines. The criterion requiring a minimum threshold of difference between the current and new ABCs to be 20 percent defines a significant enough change to merit phasing in the change and is more flexible than other minimum threshold levels considered

in the ABC Control Rule Amendments. Phase-ins may be used regardless of the stock relative biomass. The Council would consider whether to apply a phase-in on a case-by-case basis when specifying a stock ABC through an amendment after a new ABC has been recommended by the SSC. A longer phase-in period provides more flexibility and allows a more gradual change from the existing ABC to the new ABC.

The phase-in of the ABC is an option the Council can consider to address the social and economic effects from management changes. Adopting this flexibility does not require the Council to phase in all ABC changes, nor does adopting one approach prevent the Council from choosing a more restrictive schedule of ABC phase-ins (less than 3 years). When considering whether to phase in an ABC change, the Council would compare the risk to the stock against the expected social and economic benefits of the alternative ABC. Management strategy evaluations may be used to quantify such trade-offs. The Council would be able to consult with its scientific and fishery advisors to help develop a rationale and implementation plan for phase-ins. The proposed phase-in of ABC changes is consistent with the NMFS 2020 guidance and incorporates flexibility as per the revised NS1 guidelines into the FMPs for Snapper-Grouper, Golden Crab, and Dolphin and Wahoo.

#### *Allow Carry-Over of Unharvested Portion of ACLs*

Currently, carry-over of unharvested portion of ACLs is not allowed in the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs. The proposed rule would establish criteria specifying circumstances when an unharvested portion of the originally specified sector ACL can be carried over from 1 year to increase the available harvest in the immediate next year. Carry-overs may not be delayed, and only amounts from the originally specified sector ACL may be carried over. Carry-over of the unharvested portion of a sector ACL would be allowed if:

- (1) The stock status is known;
- (2) The stock is neither overfished nor experiencing overfishing;
- (3) An overfishing limit for the stock is defined;
- (4) ABC decreases are not being phased-in;
- (5) There are measures that restrict annual landings to the ACL; and
- (6) The post-season AM that reduces the ACL in the following year according

to any landings overages is in place for that stock and sector.

The proposed rule would also specify limits on how much of the unharvested portion of a sector ACL may be carried over from 1 year to increase the sector ACL in the next year. The ABC and the total ACL may be temporarily increased to allow this carry-over. The temporary ABC may not exceed the OFL. The revised total ACL may not exceed the temporary ABC or the total ACL plus the carried over amount, whichever is less. If a stock experiences overfishing, either as the result of a stock assessment or as determined by NMFS' annual evaluation of landings, that stock would no longer qualify for carry-over. Additional conditions to annually qualify for carry-over can be added on a stock-by-stock basis. For example, to prevent overharvest of other species commonly caught with the target species (referred to as co-caught species) during years with a carried-over ACL, a future FMP amendment specifying an ABC and ACL with carry-over could additionally require that the previous year's harvest for co-caught species also be less than or equal to the ACL for carry-over to occur. When applicable, the Council would specify whether fisheries that have split seasons or sub-sector allocations (such as gear allocations) should be eligible for inter-annual carry-over on a case-by-case basis.

Carry-overs would also be sector-specific. The Snapper-Grouper and Dolphin and Wahoo FMPs have both commercial and recreational sectors whereas the Golden Crab FMP includes only a commercial sector. Thus, if only one sector is carrying over unused ACL, the carried-over amount would be allocated only to that sector, subject to limitations defined above. If more than one sector is carrying over unused ACL in the same year, each sector carry-over amount would be completely allocated to the sector from which it was derived, unless the sum of all carry-over amounts plus the specified total ACL is greater than the OFL. In this case, the difference between the temporary revised ABC and the specified total ACL would be allocated using sector allocation percentages specified by the FMP. A revised sector ACL and revised ABC would remain in place for a single fishing year. Following a year that included carry-over, evaluations of carry-over amounts for future years would be based on the ABC and sector ACLs specified by the FMP rather than on the temporarily revised values.

The proposed carry-over criteria and conditions are consistent with the NMFS 2020 guidance. The proposed

carry-over criteria and conditions would also make carry-over applicable to only a few stocks managed by the Council under the Snapper-Grouper FMP at the time this action was developed. However, allowing carry-over does fulfill Federal guidance on carry-overs that requires allowance of this management tool to be included in an FMP, and provide additional management flexibility to better enable harvest of optimum yield of a healthy stock.

#### **Proposed Changes to Codified Text Not in the ABC Control Rule Amendments**

NMFS proposes to clarify existing regulations in 50 CFR 622.194(a) about the scope of allowable management changes using the framework procedure in the Snapper-Grouper FMP. Specifically, NMFS proposes to clarify allowable changes via framework to EFH, EFH HAPCs, and coral HAPCs.

In 2000, NMFS implemented two final rules that updated the Snapper-Grouper FMP framework procedures to include EFH, EFH HAPCs, and coral HAPCs that enabled more timely implementation of subsequent management measures than is possible via an FMP amendment (65 FR 37292, June 14, 2000; 65 FR 51248, August 23, 2000). Since NMFS implemented those final rules, no other subsequent rulemaking affected the framework procedure for EFH, EFH HAPCs, and coral HAPCs. Specifically, and along with other actions, the referenced final rules implemented Council recommendations to allow for the establishment of or modifications to EFH habitat areas of particular concern (HAPCs) or coral HAPCs via framework procedure. However, existing regulations appear more generally. Further, regulations state both "definitions of EFH" and "EFH," and these could be interpreted as duplicative.

NMFS has determined the allowable changes via framework action in the regulations could more clearly describe the existing parameters for EFH, EFH HAPCs, and coral HAPCs. Accordingly, NMFS proposes to revise § 622.194(a) without changing the Council's original management recommendations.

#### **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 the amendment, the Snapper-Grouper, Golden Crab, and Dolphin and Wahoo FMPs, other provisions of the Magnuson-Stevens Act, and other

applicable law, subject to further consideration after public comment.

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

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. The objectives of this proposed rule are to ensure catch level recommendations are based on the best scientific information available, prevent overfishing while achieving OY, and include flexibility in setting catch limits as allowed by the Magnuson-Stevens Act and in accordance with NMFS' guidance on carry-over and phase-in provisions.

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

This proposed rule, if implemented, would revise the ABC control rules and framework procedures in the Snapper-Grouper FMP, Golden Crab FMP, and Dolphin and Wahoo FMP. Specifically, this proposed rule would revise the ABC control rules to better distinguish the roles of the Council and its SSC in determining risk and uncertainty components, include provisions for phasing in ABC changes, include provisions for carrying over unharvested portions of ACLs, and revise framework procedures to include a procedure for implementing carry-overs when allowance of carry-over is specified in the FMP and the sector meets annual eligibility requirements. Even though this proposed rule would alter the existing regulations to allow for the possibility for transfer of an unharvested total or sector-specific ACL to the following fishing year, it would not implement any new management measures. As such, this proposed rule would not regulate any small entities.

Because this proposed rule, if implemented, is not expected to directly regulate any small entities, it is not expected to affect a substantial number of small entities. Further, because no entities are expected to be directly affected by this proposed rule, the profits of small entities are also not expected to change and thus no

economic impacts on small entities are expected.

Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

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

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

Atlantic, Fisheries, Fishing, South Atlantic.

Dated: September 26, 2023.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 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 § 622.194, revise paragraph (a) to read as follows:

**§ 622.194 Adjustment of management measures.**

\* \* \* \* \*

(a) Biomass levels, age-structured analyses, target dates for rebuilding overfished species, maximum

sustainable yield (or its proxy), optimum yield, acceptable biological catch, total allowable catch, quotas (including a quota of zero), annual catch limits, annual catch targets, accountability measures, maximum fishing mortality threshold, minimum stock size threshold, trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of essential fish habitat (EFH), establishment of or modifications to EFH habitat areas of particular concern (HAPCs) or coral HAPCs, restrictions on gear and fishing activities applicable in EFH and EFH HAPCs, establish or modify spawning SMZs, and allow transfer of the unharvested total or sector ACL to the following fishing year.

\* \* \* \* \*

■ 3. In § 622.252, revise paragraph (a) to read as follows:

**§ 622.252 Adjustment of management measures.**

\* \* \* \* \*

(a) Biomass levels, age-structured analyses, maximum sustainable yield, acceptable biological catch, total allowable catch, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the Regional Administrator to close the fishery when a quota is

reached or is projected to be reached, definitions of essential fish habitat (EFH), EFH habitat areas of particular concern (HAPCs), or coral HAPCs, and allow transfer of the unharvested ACL to the following fishing year.

\* \* \* \* \*

■ 4. In § 622.281, revise paragraph (a) to read as follows:

**§ 622.281 Adjustment of management measures.**

\* \* \* \* \*

(a) Biomass levels, age-structured analyses, maximum sustainable yield, optimum yield, overfishing limit, total allowable catch, acceptable biological catch (ABC), ABC control rule, annual catch limits, annual catch targets, accountability measures, trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, overfishing definitions and other status determination criteria, time frame for recovery of Atlantic dolphin or wahoo if overfished, fishing year (adjustment not to exceed 2 months), authority for the Regional Administrator to close a fishery when a quota is reached or is projected to be reached or reopen a fishery when additional quota becomes available, definitions of essential fish habitat (EFH), EFH habitat areas of particular concern (HAPCs), or coral HAPCs, and allow transfer of the unharvested total or sector ACL to the following fishing year.

\* \* \* \* \*

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