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**National Oceanic and Atmospheric  
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**50 CFR Part 622  
Fisheries of the Caribbean, Gulf of  
Mexico, and South Atlantic; Snapper-  
Grouper Fishery Off the Southern  
Atlantic States; Amendment 17A;  
Emergency Rule To Delay Effectiveness of  
the Snapper-Grouper Area Closure; Final  
Rule and Temporary Rule**

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

[Docket No. 0907271170-0576-03]

RIN 0648-AY10

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 17A**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule establishes an annual catch limit (ACL) of zero for red snapper, which means all harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) is prohibited, and for a vessel with a Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, harvest and possession of red snapper is prohibited in or from State or Federal waters. This rule also implements an area closure for South Atlantic snapper-grouper that extends from southern Georgia to northern Florida where harvest and possession of all snapper-grouper species is prohibited (except when fishing with black sea bass pots or spearfishing gear for species other than red snapper), and requires the use of non-stainless steel circle hooks when fishing for snapper-grouper species with hook and line gear north of 28° N. latitude in the South Atlantic EEZ. Additionally, Amendment 17A establishes a rebuilding plan for red snapper and requires a monitoring program as the accountability measure (AM) for red snapper. The intended effects of this rule are to end overfishing of South Atlantic red snapper and rebuild the stock.

**DATES:** This rule is effective December 3, 2010, except for the amendments to § 622.35, which are effective January 3, 2011, and the amendments to § 622.41, which are effective March 3, 2011.

**ADDRESSES:** Copies of the Final Environmental Impact Statement (FEIS), Final Regulatory Flexibility Analysis (FRFA), and Record of Decision (ROD) may be obtained from Kate Michie,

Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727-824-5305; fax: 727-824-5308; e-mail: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

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

**Background**

On July 29, 2010, NMFS published a notice of availability for Amendment 17A and requested public comment (75 FR 44753). On August 13, 2010, NMFS published the proposed rule to implement Amendment 17A and requested public comment (75 FR 49447). NMFS approved Amendment 17A on October 27, 2010. The rationale for the measures contained in Amendment 17A is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

**Effectiveness of Management Measures Prohibition on Harvest and Possession of Red Snapper**

The prohibition on the harvest and possession of red snapper in the South Atlantic EEZ, and in State or Federal waters for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, and the prohibition on the sale or purchase of red snapper harvested from or possessed in the South Atlantic (including State and Federal waters) for a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, will be effective December 3, 2010.

The interim rule implementing these red snapper prohibitions will expire on December 5, 2010. Therefore, to prevent a lapse in these prohibitions, these measures must become effective on or before December 5, 2010.

A red snapper benchmark assessment was completed through the Southeast Data, Assessment, and Review (SEDAR) process in late October 2010, which provides additional information on the effectiveness of these prohibitions. A final report of the assessment was published on October 25, 2010, and is available at [http://www.sefsc.noaa.gov/sedar/download/SEDAR%2024\\_SAR\\_](http://www.sefsc.noaa.gov/sedar/download/SEDAR%2024_SAR_)

[October%202010\\_26.pdf?id=DOCUMENT](#). The assessment indicates that red snapper are overfished and undergoing overfishing and that the current harvest prohibition for red snapper is providing substantial protection to the stock. A lapse could also lead to more severe harvest reductions for the snapper-grouper fishery as a whole with associated adverse socioeconomic impacts.

**Snapper-Grouper Area Closure**

The new benchmark assessment (SEDAR 24) has recently been completed for red snapper and has been reviewed by the Council's Scientific and Statistical Committee (SSC) and will be considered by the Council at their meeting in December 2010. The assessment has determined that red snapper are overfished and experiencing overfishing, but the stock is in better condition than indicated by the previous assessment (SEDAR 15) with the magnitude of overfishing less than what was indicated in the previous assessment. Results of the new assessment suggest less restrictive management measures, such as a smaller area closure, would be adequate to end overfishing of red snapper. Therefore, NMFS is considering using the emergency action authority under section 305(c) of the Magnuson-Stevens Act to address the implications of the new assessment and to provide the Council time to determine whether modifications should be made to the red snapper management measures based upon the results of SEDAR 24, if appropriate.

**Circle Hooks**

NMFS is delaying the requirement in § 622.41(n) to use non-stainless steel circle hooks when fishing for South Atlantic snapper-grouper with hook-and-line gear and natural baits north of 28° N. latitude for 3 months. The circle hook requirement will be effective March 3, 2011. This delay in effectiveness will provide additional time for manufacturers and retail outlets to prepare for the demand for these newly required products and will provide time for commercial and recreational fishers to comply with these new gear requirements.

**Comments and Responses**

NMFS received 138 comments on Amendment 17A and the proposed rule, including 1 comment from a State agency, 1 comment from a Federal agency, 1 petition signed by 45 individuals, 5 letters from non-governmental organizations, one of which was endorsed by 30,388

individuals who support approval of Amendment 17A, and 130 comments from individuals (including 41 copies of an identical postcard from an Amendment 17A opposition postcard campaign). Of these comments, 111 expressed opposition to Amendment 17A, 24 expressed support, and 3 comments were unrelated to Amendment 17A actions. Specific comments relevant to the actions contained in the amendment and the rule as well as NMFS' respective responses, are summarized below.

*Comment 1:* The Environmental Protection Agency (EPA) and 4 non-governmental organizations are concerned that the rebuilding schedule favors fishermen to the maximum extent, rather than balancing benefits to the resource and socioeconomic impacts on the fishing community. The EPA suggests that fishing pressure from fisheries for species that co-occur with red snapper should be reduced in order to reduce red snapper bycatch, and red snapper bycatch should be kept as landings and counted towards the co-occurring species' fishery quotas. Additionally, the EPA suggests that adaptive management measures should be applied over the recovery period; however, such adaptive management measures should balance impacts on the fishing community and on the resource.

*Response:* Thirty-five years is the maximum rebuilding schedule recommended for South Atlantic red snapper based on the Magnuson-Stevens Act National Standard 1 Guidelines and is consistent with the Magnuson-Stevens Act mandate to rebuild the fishery as quickly as possible, taking into account the status and biology of the stock, the needs of fishing communities, and other factors. The Council chose this schedule recognizing that based on the information provided to them from SEDAR 15, a total red snapper harvest prohibition alone was not sufficiently restrictive to end overfishing and that shorter rebuilding schedules would require impractical reductions in red snapper bycatch.

NMFS acknowledges the cumulative effects of the Amendment 17A proposed regulations, recent fisheries regulations, and other circumstances other than regulations (rise in fuel costs, decrease in dock space, national economic recession leading to a decrease in for-hire trips, etc.) will likely have negative economic and social effects on snapper-grouper fishermen. By choosing the 35-year rebuilding schedule, negative socioeconomic impacts will be minimized to the extent practicable while still achieving conservation

objectives, consistent with the Magnuson-Stevens Act.

The shortest possible rebuilding schedule (15 years) would require most or all of the EEZ and State waters be closed to fishing over the 15-year period to eliminate all incidental mortality of red snapper. The significant and irreversible socioeconomic impacts of such an action makes a 15-year rebuilding schedule impractical. While the 25-year schedule evaluated in the amendment would have less adverse socioeconomic effects when compared to a 15-year rebuilding plan, such effects are not warranted by the limited biological benefits of achieving the rebuilding goal just 10 years earlier than under the 35-year rebuilding schedule.

It is not possible to implement a shorter rebuilding schedule without significantly increasing the magnitude of negative socioeconomic impacts. Because red snapper are widely distributed and co-occur with other snapper-grouper species, even slight increases in the rate at which the red snapper stock rebuilds greatly increases the need for more restrictive management measures. Economic analyses indicate it is unlikely that the future benefits of rebuilding the red snapper stock more quickly would outweigh the short-term costs associated with the more restrictive regulations required by shorter rebuilding schedules.

The Council is exploring, through Amendment 22 to the Snapper-Grouper FMP, alternative strategies for managing red snapper catch and bycatch as the stock rebuilds, which could include a bycatch retention policy if that is determined to be a feasible option.

*Comment 2:* Two commenters expressed support for the exemption to fish with black sea bass pots within the snapper-grouper closed area. One commenter expressed opposition to this exemption. The EPA questioned how "ghost fishing" with black sea bass pots was addressed in the Council's decision to allow the use of black sea bass pots within the closed area.

*Response:* The majority of the black sea bass component of the snapper-grouper fishery is north of the closed area, and only a small percentage of red snapper are taken in black sea bass pots. Therefore, the Council determined this gear type was sufficiently selective so that it may be deployed within the closed area without adversely affecting the rebuilding efforts of red snapper. Allowing this gear also helps to offset, to some degree, some of the negative socioeconomic impacts expected from the area closure.

During its March 2010 meeting, after the draft environmental impact statement (DEIS) was filed with the EPA for publication in the **Federal Register**, the Council chose not to exempt the use of black sea bass pots within the closed area, citing concerns about the "ghost fishing" that takes place in lost pots and the potential interactions with protected species. However, at its June 2010 meeting, the Council modified its decision to allow the use of black sea bass pots, because they are a highly selective gear type that could be used to fish for species other than red snapper within the closed area without affecting red snapper rebuilding. Additionally, the Council is developing Amendment 18A to the FMP, which includes actions to limit the number of black sea bass pots allowed per vessel, thereby limiting participation in the black sea bass component of the snapper-grouper fishery, and requires pots to be returned to port at the completion of a fishing trip. If approved, these controls should limit effort shift into the black sea bass component of the snapper-grouper fishery, minimizing the occurrence of black sea bass pot "ghost fishing" on snapper-grouper species, and interactions with protected species.

*Comment 3:* Two commenters expressed support for the exemption to use spearfishing gear within the snapper-grouper closed area when fishing for species other than red snapper. One commenter expressed opposition to this exemption. The EPA expressed concerns with the exemption related to potential collection of undersized fish, exceeding quotas, and spearfishing injury.

*Response:* Overall, spearfishing gear is considered a highly selective gear type that is least likely to produce red snapper bycatch or bycatch mortality, and it is the most selective gear type available if the user is well-versed in species identification. Therefore, the use of spearfishing gear within the closed area for species other than red snapper is unlikely to adversely affect red snapper rebuilding efforts, while helping to offset, to a small degree, some of the negative socioeconomic impacts expected from the area closure.

Amendment 17A analyses conclude that spearfishing does have the potential to remove greater biomass of reef fish than rod and reel fishing. Spearfishing has been shown to result in the removal of larger fish from the population than with rod and reel. According to the biological impact analysis in Amendment 17A, removing larger fish from a population can have a negative effect on overall ecosystem health by altering the composition of the natural

communities; however, any such effect is expected to be more than offset by the conservation benefits derived from the hook-and-line gear prohibition within the area closure. If the use of spearfishing gear increases as a result of this exemption, it may be reasonable to assume incidences of spear-related injuries may also increase. However, the Council determined the potential negative impacts of allowing the use of spearfishing gear did not outweigh the potential offset of negative socioeconomic impacts that may result from the area closure.

*Comment 4:* Eighteen commenters expressed support for the requirement to use non-stainless steel circle hooks north of 28° N. latitude with live bait. Three commenters expressed opposition to the circle hook requirement, citing that it would inhibit effective harvest of certain species and would incur a significant economic burden. The EPA expressed support of the requirement, but stated that regulatory discard mortalities are often related to barotrauma caused by rapid surfacing rather than hooking injuries, and certain species such as yellowtail snapper and mangrove snapper are not readily caught with circle hooks.

*Response:* Many studies indicate that hooking injuries are a major source of mortality in red snapper. Requiring circle hooks in the area of the South Atlantic EEZ north of 28° N. latitude may help reduce discard mortality of red snapper where they are most abundant, although the exact amount is not quantifiable at this time. However, the Council concluded that taking advantage of any reasonable method to reduce red snapper bycatch mortality is warranted considering its overfished condition.

Barotrauma is also cited as a significant cause of bycatch mortality for red snapper. NMFS previously considered a Council-approved measure to use venting tools for snapper-grouper species to reduce bycatch mortality caused by barotraumata in Amendment 16 to the FMP. The measure requiring the use of venting tools was disapproved based on data indicating the benefits of venting are not clear for all species, including red snapper, and venting could potentially cause harm in some cases. NMFS determined that additional guidance is needed to identify species that would benefit from venting to ensure the maximum benefit is provided to these species. If future research on the use of venting tools, and/or any other barotrauma mitigation methods, indicate red snapper would benefit from the required use of such tools or techniques, the Council has the

option to consider the issue again in a future FMP amendment.

During the development of Amendment 17A, some constituents expressed concern that circle hooks would preclude them from being able to catch some specific fish species including yellowtail snapper and mangrove snapper due to the physical structure of a fish's mouth and the way the fish takes bait. The majority of the species of concern are landed south of 28° N. latitude where red snapper are less abundant; therefore, the Council chose to limit the circle hook requirement to areas north of 28° N. latitude.

*Comment 5:* The EPA supported fishery-independent monitoring for red snapper, as well as fishery-dependent monitoring where fishermen work together with researchers.

*Response:* The Council chose to require implementation of a fishery-independent monitoring program for red snapper to augment and expand the existing fishery-independent data program for snapper-grouper because fishery-independent data can be less variable and more verifiable than fishery-dependent data. The choice to utilize a fishery-independent monitoring program for red snapper does not in any way infer that fishery-dependent data collection programs may not be used for monitoring red snapper in the South Atlantic. The AM chosen by the Council and approved by NMFS includes a fishery-dependent data gathering component that will be used to monitor catch per unit effort (CPUE) throughout the rebuilding process. Furthermore, it is likely that in the future, some research and monitoring efforts may be designed to include hybrid sampling programs that use both fishery-independent and fishery-dependent data gathering methods.

*Comment 6:* If the approved rebuilding schedule is not adequate in minimizing socioeconomic impacts, the EPA recommended additional offsets be considered by NMFS and the Council for fishery participants of all demographics, particularly any affected minority and low-income fishermen.

*Response:* Amendment 17A contains a detailed analysis of potential socioeconomic impacts of the actions to end overfishing of red snapper and rebuild the stock to a sustainable level. The Council has chosen, and NMFS has approved, alternatives intended to minimize, to the extent practicable, adverse socioeconomic impacts as required under the Magnuson-Stevens Act. A Fishery Impact Statement (FIS) and a Social Impact Analysis (SIA) were

completed as part of the Amendment 17A development process. The SIA included an analysis of potential impacts of this rule on low-income and minority groups. The full FIS and SIA can be found in Appendix U of Amendment 17A. The alternatives chosen are also projected to effectively end overfishing of South Atlantic red snapper and rebuild the population within the designated rebuilding timeframe.

A new benchmark assessment for red snapper conducted through the SEDAR process (SEDAR 24; 2010) indicates the stock is undergoing overfishing and is overfished to lesser degrees than estimated in the previous SEDAR assessment (SEDAR 15) and in Amendment 17A. Therefore, additional action may be appropriate to further minimize the unavoidable adverse economic impacts of ending overfishing and rebuilding the stock. The Council will review the results of SEDAR 24 at their December 2010 meeting and may propose additional actions at that time, as appropriate.

*Comment 7:* The EPA and one individual requested a discussion of potential impacts of the Deepwater Horizon/BP oil spill event on red snapper and the fishing community.

*Response:* Thus far, there has been no indication that oil from the Deepwater Horizon/BP oil spill, which occurred on April 20, 2010, has made its way into South Atlantic waters. The spill remained concentrated in the northern Gulf of Mexico before it was capped and is no longer considered a significant threat for dispersing oil. Therefore, implementation of Amendment 17A is not expected to be impacted by oil spill-related events that have transpired in the Gulf of Mexico over the past 7 months.

*Comment 8:* Seventeen commenters specifically oppose the prohibition on harvest and possession of red snapper in the South Atlantic EEZ and in State waters for vessels holding Federal snapper-grouper permits. Five commenters specifically support the prohibition on red snapper harvest.

*Response:* The 2008 red snapper SEDAR stock assessment (SEDAR 15) concluded that red snapper are overfished and undergoing overfishing. When a determination is made that a stock is experiencing overfishing or is overfished, the Magnuson-Stevens Act requires NMFS and the Council to develop a plan to end overfishing and rebuild the stock. The prohibition on red snapper harvest and possession implemented through Amendment 17A is required to meet this statutory mandate. SEDAR 15 indicates a harvest

prohibition in State and Federal waters alone is not capable of ending overfishing because many red snapper taken incidentally when harvesting other snapper-grouper species do not survive capture and release. For this reason, NMFS also is approving the Council's proposal to establish an area closure within which all harvest and possession of snapper-grouper is prohibited (except when fishing with black sea bass pots or spearfishing gear for species other than red snapper). These management measures are expected to end overfishing as required by the Magnuson-Stevens Act.

*Comment 9:* Twenty-two commenters specifically oppose the snapper-grouper area closure, and three commenters support it.

*Response:* Based on the results of the SEDAR 15 benchmark assessment, prohibiting the harvest of red snapper alone will not end overfishing because red snapper are often incidentally captured and discarded while fishermen are targeting co-occurring species. Additionally, the release mortality of red snapper is very high. Therefore, to sufficiently reduce the overall mortality of red snapper enough to end overfishing and rebuild the stock, NMFS approved a prohibition on all harvest and possession of red snapper in the South Atlantic EEZ and also approved an area closure within which harvest and possession of all snapper-grouper species is prohibited except when using spearfishing gear or black sea bass pots to fish for species other than red snapper.

The area closure alternative proposed by the Council and approved by NMFS encompasses an area where large amounts of red snapper are harvested. Furthermore, the preferred area closure minimized to the extent practicable the unavoidable adverse economic impacts of ending overfishing as required by the Magnuson-Stevens Act. Amendment 17A also includes an action to require a fishery-independent monitoring program to track the progress of rebuilding efforts, in order to reduce the size of the area closure and allow the harvest of red snapper as the stock rebuilds.

A new benchmark assessment just completed for red snapper, SEDAR 24, indicates the stock is undergoing overfishing and is overfished to a lesser degree than estimated in SEDAR 15. Therefore, additional action may be appropriate to further minimize the unavoidable adverse economic impacts of ending overfishing and rebuilding the stock. The Council will review the results of SEDAR 24 at their December 2010 meeting and may propose

additional actions at that time, as appropriate.

*Comment 10:* Two commenters stated the proposed area closure could push effort inshore or offshore and thus negatively impact juvenile populations of red snapper and other coastal fisheries, and/or deepwater snapper-grouper species.

*Response:* The extent to which effort may shift as a result of the proposed area closure is not known so it is not possible to quantify the impact of such a shift on snapper-grouper species. However, any such effort shift is not expected to have a significant adverse impact on red snapper rebuilding or on the status of other deepwater snapper-grouper species. The red snapper harvest prohibition is expected to reduce the handling time of red snapper, as fishermen will no longer need to measure fish to determine if they are of legal size. If fishing effort moves closer to shore, then it is expected that the survival of discarded red snapper and other snapper-grouper species would be greater than for fish discarded in deeper water because depth-related discard mortality would be less in shallow water. The model used to develop the closed area alternatives was designed to account for reduced inshore release mortality in the closed area as well as in all areas around the closure.

Effort shifts into water deeper than the closed area may be mitigated by the deepwater snapper-grouper closure that is proposed in Amendment 17B to the FMP. (Amendment 17B and proposed implementing regulations are available for public comment through November 22, 2010, and November 26, 2010, respectively.) This proposed deepwater closure would prohibit harvest of six deepwater snapper-grouper species beyond a depth of 240 ft (73 m), which is also the seaward boundary of the Amendment 17A area closure. These species include snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper. In addition to prohibiting harvest and possession of the previously mentioned species, Amendment 17B also prohibits the possession and harvest of speckled hind and warsaw grouper. If Amendment 17B is approved and implemented, prohibiting the harvest and possession of these species beyond a depth of 240 ft (73 m) greatly diminishes the incentive to fish for deepwater snapper-grouper.

*Comment 11:* One commenter expressed concern regarding a potential influx of imported seafood as a result of the red snapper harvest restrictions.

*Response:* The prohibition on the harvest and possession of red snapper and the closure of certain areas in the South Atlantic to snapper-grouper fishing under Amendment 17A are estimated to result in an annual reduction of approximately 213,000 lb (96,615 kg) of commercially harvested snapper-grouper, of which about 120,000 lb (54,431 kg) are red snapper, based on expected harvest resulting from regulations implemented through Amendment 16 to the FMP. Total imports of snappers and groupers into the U.S. have been increasing and averaged approximately 48,000,000 lb (21,772,434 kg) between 2003 and 2007. Within this aggregate weight of snapper-grouper imports, the amount of red snapper imported into the U.S. cannot be estimated with the current available information. It is recognized that fish dealers, restaurants, and other establishments may substitute imports for snappers and groupers harvested in U.S. waters as a result of the prohibition on the harvest and possession of red snapper and the area closure. However, the reduction in the domestic landings of snapper-grouper is not expected to trigger an influx of imported snappers and groupers, because the amount of such reduction is small relative to the amount of imported snappers and groupers (about 0.44 percent of imports).

*Comment 12:* Thirty-one commenters opposed the red snapper management measures in Amendment 17A based on potential adverse economic impacts. Several of these commenters are concerned there is an inadequate economic analysis of the impacts on the recreational fishing community in the amendment.

*Response:* Amendment 17A and associated final environmental impact statement, regulatory flexibility act analysis, regulatory impact review, and social impact assessment/fishery impact statement thoroughly analyze the potential economic impacts of the Council's proposed red snapper management measures, based on the best scientific information available. The Magnuson-Stevens Act requires the Council and NMFS to end the overfishing of red snapper. SEDAR 15 indicates the stock is being fished at five times the sustainable rate, and that significant reductions in mortality, 76 percent, are needed to end overfishing and rebuild the population. The adverse short-term economic impacts of such reductions are unavoidable. However, SEDAR assessments indicate the stock is producing only a fraction of its potential yield and that the long-term economic benefits of stock rebuilding are expected

to be substantial. A framework amendment is being developed to allow for adjustments to the closed area, as appropriate, based on the results of a new benchmark assessment (SEDAR 24). Additionally, draft Amendment 22 to the FMP will explore new approaches for managing red snapper catch and bycatch as the stock rebuilds that may allow the Council to provide for some level of red snapper harvest over time.

*Comment 13:* Eighty-two commenters stated the data used in determining the magnitude of red snapper overfishing, and general population estimates, are flawed. Several of the same commenters also questioned the adequacy and reliability of recreational landings data currently available to fishery managers.

*Response:* Amendment 17A is based upon the SEDAR 15 assessment, and the assessment was completed in 2008 using data through 2006. SEDAR 15 found the South Atlantic red snapper stock is overfished and undergoing overfishing.

Data used for the assessment consists of records of commercial catches provided by dealer and fishermen reports since the 1940s, headboat fishery catch records from the Southeast Headboat Survey since 1972, and recreational catch records from the Marine Recreational Fisheries Statistics Survey (MRFSS) since 1981. MRFSS conducts telephone surveys of coastal households and for-hire businesses, as well as in-person access-point angler intercept surveys. These surveys are used to collect information on recreational fishery participation, fishing effort, and catch, in addition to demographic, social, and economic characteristics of the participants. NMFS recognizes that MRFSS data are highly uncertain for infrequently encountered species and is working with recreational and for-hire fishermen to explore novel approaches to address this issue through the Marine Recreational Information Program (MRIP). SEDAR 15 also includes U.S. Fish and Wildlife Service recreational fisheries survey data from 1960, 1965, and 1970. Landings and effort information are provided by dealer and fishermen reports and surveys. Information on catch lengths and ages is provided by fishing port sampling programs that support the catch statistics programs. Information on biological characteristics, such as age, growth, and reproduction, is provided by various research studies. All of the data used in the assessment are described in the SEDAR 15 red snapper stock assessment report available on the SEDAR Web site at <http://www.sefsc.noaa.gov/sedar/>. The SEDAR

Web site also provides extensive supporting documentation that describes data collection programs and research findings.

SEDAR is a cooperative process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR is managed by the Caribbean, Gulf of Mexico, and South Atlantic Regional Fishery Management Councils in coordination with NMFS and the Atlantic and Gulf States Marine Fisheries Commissions. SEDAR seeks improvements in the scientific quality of stock assessments and greater relevance of information available to address existing and emerging fishery management issues. SEDAR emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. SEDAR is organized around three workshops. The first is a data workshop where data sets are documented, analyzed, and reviewed and data for conducting assessment analyses are compiled. The second is an assessment workshop where quantitative population analyses are developed and refined and population parameters are estimated. The third is a review workshop where a panel of independent experts reviews the data and assessment and recommends the most appropriate values of critical population and management quantities. All SEDAR workshops are open to the public. Public testimony is accepted in accordance with each fishery management council's standard operating procedures. Workshop times and locations are noticed in advance through the **Federal Register**.

The findings and conclusions of each SEDAR workshop are documented in a series of reports, which are ultimately reviewed and discussed by the appropriate Council and its SSC. At its June 2008 meeting, the Council's SSC determined that the SEDAR 15 is based upon the best available science. In July 2010, NMFS' Southeast Fisheries Science Center (SEFSC) certified the conservation and management measures in Amendment 17A are based upon the best scientific information available.

SEDAR 15 is controversial with fishermen who feel the findings contradict their experience of encountering more and larger red snapper in recent years. Landings and discard data corroborate fisher reports that catches increased between 2007 and 2009. A spike in 2007 discards and

2008–2009 landings is likely due to a strong year class, which occurred in 2006. Even so, the age structure of the red snapper population is severely truncated (there are not enough older fish). Red snapper live to at least 54 years of age, but the SEDAR 15 indicates that most red snapper are less than 10 years old.

The SEFSC evaluated the concerns raised by fishermen regarding SEDAR 15 and subsequent analyses. The SEFSC concluded that altering model assumptions based on fishermen's concerns would impact the magnitude of required harvest reductions but would not change the assessment conclusions regarding the status of red snapper. Overfishing is occurring and must be addressed within the requirements of the Magnuson-Stevens Act.

A new red snapper SEDAR stock assessment (SEDAR 24) was completed in late October 2010, and evaluated more recent catch data than that used in SEDAR 15. The results of SEDAR 24 also support the SEDAR 15 conclusion that red snapper is overfished and experiencing overfishing, although the rate of overfishing may be lower than the rate from SEDAR 15. The Council's SSC reviewed SEDAR 24 and the Council will review SEDAR 24 and the SSC's recommendations at their next meeting during the week of December 5, 2010. The Council is poised to take action at that time to make any needed adjustments to the area closure as appropriate.

*Comment 14:* Two commenters, including the State of Florida, felt actions related to limiting the harvest of red snapper should be postponed until the 2010 benchmark assessment is completed.

*Response:* The Council is scheduled to receive the results of the 2010 SEDAR benchmark stock assessment for red snapper (SEDAR 24) at the December 2010 Council meeting. However, red snapper continue to be overfished and undergoing overfishing and the prohibition on the harvest and possession of red snapper must be effective by December 5, 2010, to avoid a lapse in those prohibitions implemented through the interim rule. Additionally, implementation of Amendment 17A cannot be further delayed based on the Magnuson-Stevens Act requirements to prepare and implement an FMP amendment to end overfishing and implement conservation and management measures to rebuild red snapper. SEDAR 24 findings support the current prohibitions on the harvest and possession of red snapper, and indicate a lapse in these prohibitions

could lead to more severe harvest reductions for the snapper-grouper fishery as a whole with associated adverse socioeconomic impacts. The assessment also indicates the snapper-grouper area closure included in Amendment 17A is larger than necessary to end overfishing and rebuild the stock, and NMFS is considering using the emergency action authority under section 305(c) of the Magnuson-Stevens Act to address the implications of the new assessment, as appropriate, and to provide the Council time to determine whether modifications should be made to the area closure based upon the new assessment. The Council will consider the SEDAR 24 results at their December 2010 meeting, and determine whether or not a modification to the area closure is warranted. If so, adjustments to the area closure will be promulgated through a regulatory amendment.

*Comment 15:* One commenter attributed red snapper overfishing to the shrimp trawl fisheries off the southeast United States and recommended a 2-year ban on shrimp trawling in the South Atlantic.

*Response:* No evidence exists that shrimp trawl fleets in the South Atlantic EEZ capture juvenile red snapper. Confusion about shrimp bycatch likely results from evidence that the fishery for penaeid shrimp (pink, white, and brown shrimp), in the Gulf of Mexico, catches a high level of juvenile red snapper. However, no evidence exists that the penaeid shrimp fishery in the South Atlantic has the same level of red snapper bycatch. In fact, the Southeast Area Monitoring and Assessment Program—South Atlantic Coastal Survey has not documented any red snapper caught during shallow-water trawl studies since 2007, and no more than two red snapper in any year during 1995–2007.

*Comment 16:* Four commenters stated the commercial sector is responsible for the current overfished and overfishing status of red snapper and expressed support for banning commercial red snapper fishing, while allowing recreational red snapper fishing to continue.

*Response:* SEDAR 15 and SEDAR 24 indicate that red snapper is overfished and experiencing overfishing. The commercial sector is responsible for approximately 20 to 25 percent of the total red snapper landings in the South Atlantic based on data collected since 2006; thus, the number of red snapper taken by the recreational sector far exceeds the amount taken by the commercial sector. Therefore, overfishing would continue if

management measures were only applied to the commercial sector. The measures implemented through this final rule must apply to both the commercial and recreational sectors to effectively end the overfishing of red snapper.

*Comment 17:* One commenter stated they do not typically see red snapper when fishing off the east coast of Florida.

*Response:* Amendment 17A and its implementing regulations were developed based upon the SEDAR 15 (2008) assessment, which shows that red snapper are overfished and undergoing overfishing. The stock assessment also indicates red snapper abundance is significantly lower now than it has been in previous decades. Most of the stock is currently concentrated in areas off of northern Florida and southern Georgia. Overfishing of the species has possibly diminished the range of the species and has led to decreased encounter rates in areas where red snapper once may have been plentiful, including the Florida Keys. This final rule is intended to end the overfishing of red snapper and rebuild the stock to sustainable levels.

*Comment 18:* Twelve commenters offered several alternative management methods for red snapper including bag limits, trip limits, reduced size limits, slot sizes, seasonal area closures, spawning season closures, artificial reef establishment, venting tool requirements, circle hooks with wire appendages, state-by-state quotas, and a voluntary buy-out program.

*Response:* Amendment 4 to the FMP (1991), implemented a 20-inch (50.8 cm) total length (TL) minimum size limit and a 2-fish red snapper bag limit within a 10-fish snapper-grouper aggregate bag limit in an effort to reduce harvest of red snapper. Unfortunately the implementation of a size limit and bag limit was not enough to end the overfishing of red snapper at the time, and overfishing continued despite the implementation of a limited access program for the commercial snapper-grouper fishery via Amendment 8 to the FMP (1998).

In developing red snapper management measures in Amendment 17A, the Council considered an option to allow red snapper harvest based on a quota for the commercial sector, a quota for the for-hire sector (utilizing electronic logbooks), and a quota for the private recreational sector (based on a quota tag system administered by the states), with dead discards inshore of 98 ft (73 m) to be subtracted from the overall allowable harvest level before quotas are established. The suggested

AM for this alternative stated that once the catch limits are reached in Georgia, South Carolina, and Florida, bottom fishing would be prohibited beyond 98 ft (73 m). However, based on catch rates of landed and discarded red snapper in 2007 and 2008, the allowable catch for each sector would be estimated to be met in less than one month.

Furthermore, allowing the level of harvest outlined above would require extensive observer coverage, implementation of electronic logbooks, and establishment of a tagging system. Not all states possess the administrative resources needed to implement a tagging program at this time. Discarded red snapper would require close tracking, and harvest and release-mortality rates would need to be applied to the discards to ensure total removals allocated to states and sectors are not exceeded. The SSC has strongly opposed tracking discards as a means of monitoring fishery catch levels and depending on self-reported discards may create a disincentive to report, if the fishery closes as a result of these self-reported data. However, the Council is exploring through draft Amendment 22 to the Snapper-Grouper FMP, alternative strategies for managing red snapper catch and bycatch (including a fish tag program) that may allow the Council to provide for some level of red snapper harvest over time as the stock rebuilds.

Several commenters suggested reducing the minimum size limit from 20 inches (50.8 cm) TL to 16 inches (40.6 cm) TL, establishing a slot limit or eliminating the size limit altogether. These minimum size limit modifications were considered by the Council but were removed from detailed analysis and moved to the considered but rejected portion of the amendment because they would not end overfishing. Reduction or elimination of a minimum size limit could increase the magnitude of total removals because a greater number of fishermen would be able to fill the 2-fish bag limit with fish that formerly were discarded and survived the trauma of capture.

Reductions in the bag limits were also considered by the Council and NMFS. Reduction in the bag limit to 1 fish per person (resulting in a 5-percent reduction in harvest with a 40-percent release mortality rate) or a vessel limit of 4 fish per vessel per day (resulting in a 3-percent reduction for private recreational vessels and a 34-percent reduction for headboats) would not be sufficient to end overfishing based on the results of SEDAR 15.

Another option discussed by the Council was a seasonal-area closure for

all snapper-grouper species with a total prohibition on harvest and possession of red snapper. A seasonal area closure for all snapper-grouper species may be effective in reducing bycatch mortality of red snapper for the duration of the closure; however, bycatch mortality would be expected to resume during the open season. Based on the results from SEDAR 15, a very large seasonal snapper-grouper area closure would be required to end red snapper overfishing, and thus would incur greater negative socioeconomic impacts than the current area closure in Amendment 17A. Moreover, the longer the open season, the larger the closed area would need to be to account for increased bycatch mortality of red snapper. Because of these factors, the Council did not consider seasonal area closures a feasible option for ending overfishing in this case. This does not, however, preclude the future use of seasonal-area closures as a management measure.

Suggestions concerning the establishment of more artificial reefs have been made several times throughout the amendment's development process. Some studies suggest that artificial reefs increase populations of red snapper while others suggest artificial reefs attract fish in general. As artificial reefs are usually well marked, the stock could be negatively impacted by making large concentrations of red snapper more accessible to fishermen. Regardless, the reduction needed to end overfishing and rebuild red snapper would not be achieved by creating more artificial reefs as the only management measure.

Requiring the use of venting tools was previously considered in Amendment 16 to the FMP. This requirement was disapproved based on public comments and new information opposing the use of venting tools, along with scientific studies that suggest the use of venting tools may actually increase mortality of some species depending on capture depth. Furthermore, the requirement for the possession and use of venting tools was determined to be overly broad and not in accordance with the administrative record developed for Amendment 16. Required use of venting tools in the snapper-grouper fishery may be considered again in the future if guidance is provided on the tools that should be used, the appropriate techniques for venting, and the species that benefit most from venting. NOAA is funding a collaborative workshop to be hosted by the Atlantic States Marine Fisheries Commission in spring 2011 to examine how best to reduce barotrauma in recreational fisheries.

One commenter recommended the use of circle hooks with a wire appendage be required for the snapper-grouper fishery. Appendaged circle hooks were discussed in the biological analysis for the circle hook action in Amendment 17A. The analysis cites one study that compared circle hooks and J-hooks with and without wire appendages and their effects on reducing the catch of small and gut-hooked snapper by recreational fishers in the Hauraki Gulf of New Zealand. However, the Council and NMFS did not choose to pursue a requirement for appendaged hooks until additional information on their use and effectiveness becomes available. A circle hook workshop will be held May 4–6, 2011, in Miami, Florida, and more information on this workshop may be found at: <http://www.circlehookssymposium.org/>. NMFS' approval of the requirement to use non-stainless steel circle hooks north of 28° N. latitude does not preclude the Council or NMFS from considering the use of appendaged circle hooks in the future.

The Council discussed the establishment of a buy-out program for commercial snapper-grouper fishermen in Georgia. A buy-out program for the commercial sector would require a great deal of planning, time, funds, and acceptance from fishery participants. Because of these limiting factors and the need to act to end overfishing promptly, a buy-out program was not pursued by the Council or NMFS during the Amendment 17A development process. The Council considered alternatives that would allocate the red snapper ACL by state and sector. The Council moved these alternatives to the considered but rejected section of the amendment because the Council determined that both a harvest prohibition and an area closure for snapper-grouper species was needed to end red snapper overfishing. The Council may consider alternatives for allocating red snapper harvest among states and sectors when the stock rebuilds to a biomass level that would support some level of harvest.

*Comment 19:* One fishing association submitted a comment, endorsed by 12 commenters, stating the comment period on the proposed rule intentionally ended 2 days before the SEDAR 24 assessment results became public. This comment also stated NMFS' scientific position changed when the decision was made to conduct a full benchmark assessment instead of an update to the SEDAR 15 (2008) assessment, implying an admission that SEDAR 15 (2008) was not based upon the best scientific information available.

The same commenter stated that SEDAR 15 did not use a "continuity run."

*Response:* The Magnuson-Stevens Act required the Council to develop a plan to end overfishing within one year, if notified of a stock's overfished status prior to July 12, 2009. Therefore, waiting to implement Amendment 17A until after the new stock assessment (SEDAR 24) is completed would further delay this required action. NMFS is aware of the coincidental timelines associated with the completion of SEDAR 24 and the implementation of Amendment 17A. The Council and NMFS are prepared to act expeditiously to modify management measures if the Council concludes that the results of SEDAR 24 indicate such an adjustment is appropriate.

SEDAR 15 (2008) concluded that red snapper is overfished and undergoing overfishing, requiring the Council to prepare a plan amendment to end overfishing and rebuild the stock. During the amendment's development, fishermen expressed concern that SEDAR 15 did not capture the spike in discards and landings that occurred during 2007–2009 because the assessment considered data only through 2006. In order to include these landings and apply additional statistical methods to the analysis, the SEDAR steering committee requested SEDAR replace the scheduled red snapper assessment update with a new benchmark assessment (SEDAR 24). SEDAR 15 (2008) was subjected to an external review by the Center for Independent Experts (CIE) and was also reviewed by the Council's SSC, both of which approved the assessment report. Furthermore, in a memorandum dated July 22, 2010, the SEFSC certified that Amendment 17A is based upon the best scientific information available.

Continuity runs of SEDAR 15 with the red snapper assessment conducted in 1997 were not performed because such runs would have been based upon prior research that used several assumptions, such as a 15-year life span for red snapper, which are now known to be inaccurate.

The results of the new SEDAR 24 benchmark assessment support the SEDAR 15 conclusion that red snapper is overfished and experiencing overfishing, although the rate of overfishing appears to be lower than estimated in the SEDAR 15 assessment. Although the SEDAR 24 assessment shows some signs of stock improvement, overfishing is still occurring and must be addressed within the requirements of the Magnuson-Stevens Act. The SEDAR 24 findings support the current red snapper harvest

prohibitions and indicate a lapse in these prohibitions could lead to more severe harvest reductions for the snapper-grouper fishery as a whole, with associated adverse socioeconomic impacts. NMFS and the Council are prepared to act expeditiously to modify management measures if the results of SEDAR 24 indicate such an adjustment is appropriate.

*Comment 20:* One commenter stated that closing an area will open the same area to fishing by foreign fleets.

*Response:* Closing an area to snapper-grouper fishing under Amendment 17A will not open up that area to fishing by foreign fleets. The Magnuson-Stevens Act authorizes the Federal Government to regulate fishing in the exclusive economic zone (EEZ) (3 to 200 nautical miles offshore), and it prohibits foreign fishing in the EEZ unless specifically conducted pursuant to an international fishery agreement and permit.

*Comment 21:* Two commenters stated the fishing mortality at maximum sustainable yield ( $F_{MSY}$ ) proxy approved by NMFS is inadequate and does not follow the SSC's  $F_{MSY}$  proxy recommendation.

*Response:* Stock assessments have not been able to reliably estimate the MSY of South Atlantic red snapper. In such cases, the Magnuson-Stevens Act National Standard 1 Guidelines direct regional fishery management councils to adopt other measures of reproductive capacity as reasonable MSY proxies. In 1998, through Amendment 11 to the Snapper-Grouper FMP, the Council defined the MSY of red snapper to equal the yield associated with fishing at  $F_{MSY}$  or  $F_{30\%SPR}$ .

At its December 2008 meeting, the Council's SSC discussed the positive and negative effects of maintaining the current proxy for  $F_{MSY}$  ( $F_{30\%SPR}$ ) versus establishing a new proxy for  $F_{MSY}$  at  $F_{40\%SPR}$ . Some SSC members supported the CIE's recommendation, based on SEDAR 15, to use  $F_{40\%SPR}$  and cited literature and examples that showed that  $F_{40\%SPR}$  is a more appropriate proxy for  $F_{MSY}$ . Other SSC members stated  $F_{30\%SPR}$  should be maintained because it was approved by the Council for red snapper and other species in Amendment 11 to the FMP, and its corresponding steepness value (the magnitude of recruitment) is approximately 0.90, which was close to the estimated value of 0.95 in the base model.

The Council was very concerned about the implications of establishing a proxy that has not been previously used for red snapper. Specifying  $F_{40\%SPR}$  as a new proxy could set a precedent that is not appropriate for all species in the

snapper-grouper fishery management unit. After thoroughly considering the implications associated with the more conservative alternative  $F_{MSY}$  proxy of  $F_{40\%SPR}$ , as well as input from their SSC and NMFS, the Council elected to take no action to change the current definition of the  $F_{MSY}$  proxy. Amendment 17A specifies the numerical value for MSY associated with this definition as 2,431,000 lb (1,102,683 kg), whole weight, based on the most recent, completed, red snapper stock assessment at the time of final Council action (SEDAR 15 2008).

The more conservative  $F_{MSY}$  proxy of  $F_{40\%SPR}$  recommended by the SSC would have resulted in a lower MSY value equal to 2,304,000 lb (1,102,683 kg), whole weight, and would have required greater harvest reductions to end overfishing and rebuild the stock on schedule. Choosing that proxy would have resulted in increased adverse economic impacts from ending overfishing on fishing communities. Therefore, the Council recommended that the SEFSC conduct a comprehensive review of how  $F_{MSY}$  proxies should be applied across all southeastern fisheries, and that the decision to apply a specific  $F_{MSY}$  proxy be made at the regional level rather than on a species-by-species basis.

*Comment 22:* Three commenters state Amendment 17A fails to specify an acceptable biological catch (ABC) or ABC control rule for red snapper.

*Response:* The SSC provided an overfishing limit (OFL) and ABC recommendations in terms of pounds of fish at its June 2008 meeting, but the SSC did not have an ABC control rule to assist them with estimating ABC and indicated that they considered the values to be "interim" until more robust methods for estimating these parameters could be made available. At its December 2008 SSC meeting, the SSC considered the guidance given in the proposed Magnuson-Stevens Act National Standard 1 Guidelines and rescinded all estimates of ABC from its June 2008 meeting (except for an ABC of zero for speckled hind and warsaw grouper). The SSC also recommended at its December 2008 meeting that the ABC levels for snowy grouper, black sea bass, and red snapper be set consistent with the rebuilding plans for those species until they can be further amended on better scientific information. The SSC met in March and June of 2009 to determine ABC control rules for data rich species, and met in April and August of 2010 to identify the protocol for determining the ABC for data poor species. The SSC recommended that current ABC levels for red snapper be

set consistent with the rebuilding plan until they can be further amended.

*Comment 23:* Two commenters stated that by choosing to rely on an OFL based on the  $F_{MSY}$  proxy of  $F_{30\%SPR}$ , which is equivalent to 146,939 lb (66,650 kg), and then setting the ABC at 97 percent of the Council's OFL, or 144,000 lb (65,317 kg), the Council set the ABC for red snapper well above the SSC-recommended OFL of 104,124 lb (47,230 kg). Furthermore, the commenter states the Council's ABC of 144,000 lb (65,317 kg) is also well above the 101,000 lb (45,813 kg) catch level that is based on the rebuilding plan under the SSC's recommended  $F_{MSY}$  proxy.

*Response:* Section 1.4.2 of Amendment 17A discusses the SSC's recommendation of ABC and OFL. Initially, the SSC recommended an interim OFL and ABC for red snapper equal to the yield at 75 percent  $F_{MSY}$ . At its December 2008 meeting, the SSC withdrew its OFL and ABC recommendations, and instead recommended the ABC level be set consistent with the rebuilding plan in Amendment 17A, which specifies an  $F_{OY}$  equal to 98 percent  $F_{MSY}$  (98 percent  $F_{30\%SPR}$ ) and rebuilds the stock in 35 years. Therefore, ABC is consistent with the rebuilding plan outlined in Amendment 17A.

*Comment 24:* One commenter stated that Amendment 17A violates the requirement for the Council to set ACLs that do not exceed the ABC recommendation of the SSC.

*Response:* The Magnuson-Stevens Act requires the Council to develop ACLs that may not exceed the fishing level recommendation of its SSC. The National Standard 1 Guidelines state that the SSC recommendation most relevant to ACLs is ABC, as both are levels of annual catch. The SSC's ABC recommendation for red snapper is that the ABC should be consistent with the rebuilding plan. Therefore, the ABC is specified as an  $F_{OY}$  equal to 98 percent  $F_{MSY}$  (98 percent  $F_{30\%SPR}$ ) and rebuilds in 35 years. This allows a total red snapper mortality (in the form of dead discards) of 144,000 lb (65,317 kg) whole weight in year one of rebuilding. Total mortality is calculated from rebuilding projections of spawning stock biomass, recruitment, allowable removals from the population, and probability of stock recovery, under different fishing mortality rates developed by the SEFSC. This rebuilding plan is consistent with the current  $F_{MSY}$  proxy ( $F_{30\%SPR}$ ), which requires a 76 percent reduction in harvest of red snapper. The Council's preferred alternative in Amendment

17A establishes an ACL of 0 lb (0 kg) based on landed catch.

The Council considered including both landed catch and discards in the specification of the red snapper ACL; however, the SSC concluded that existing data collection and reporting systems are not adequate to support monitoring discarded red snapper in the commercial and recreational fisheries and expressed concern that doing so may create an incentive for fishermen to under-report red snapper discards.

*Comment 25:* Two commenters stated the AMs specified in Amendment 17A are based on the ACL, which includes landings only (all red snapper landings would be prohibited under this final rule), and therefore are not adequate because they do not correspond to total mortality. Additionally, the amendment does not include AMs that will be triggered annually if the total mortality exceeds the ABC.

*Response:* Through this final rule, NMFS establishes an ACL of zero for red snapper, which is applied to directed harvest. Therefore, a year-round closure is created for commercial and recreational harvest of red snapper throughout the entire South Atlantic EEZ. Additionally, the results of SEDAR 15 required the Council to reduce the bycatch mortality of red snapper in order to end overfishing. The Council thus imposed a 4,827 square mile (7,763 square km) closed area from Cape Canaveral, Florida, to southern Georgia to all snapper-grouper fishing (except when using black sea bass pots or spearfishing gear) to achieve the fishing mortality reduction required by SEDAR 15.

The Council considered including both landed catch and discards in the specification of the red snapper ACL; however, the SSC concluded that existing data collection and reporting systems are not adequate to support monitoring discarded red snapper in the commercial and recreational fisheries and expressed concern that doing so may create an incentive for fishermen to under-report red snapper discards.

Prohibiting all directed harvest of red snapper is the most stringent AM that could be implemented for the species. The preferred red snapper AM alternative includes a provision for tracking catch per unit effort (CPUE) via fishery-dependent and fishery-independent monitoring programs, and periodically evaluating the CPUE data to determine if adjustments to the ACL and management measures are appropriate. If the data indicate an adjustment is warranted, action could be taken expeditiously through a framework amendment. The Council did consider

establishing annual catch targets (ACTs) as part of the accountability mechanism for red snapper. However, the commercial and recreational harvest of red snapper is prohibited, therefore, it was determined that ACTs are not necessary at this time. It is anticipated that red snapper harvest will be allowed in the future, at which time the Council may consider establishing ACTs.

*Comment 26:* One commenter stated Amendment 17A violates the Magnuson-Stevens Act because it does not clearly specify an OFL for red snapper.

*Response:* According to the Magnuson-Stevens Act National Standard 1 Guidelines, OFL is an annual amount of catch that corresponds to the estimate of maximum fishing mortality threshold (MFMT) applied to a stock or complex's abundance. Amendment 11 to the FMP defines MFMT as the yield at  $F_{MSY}$  where  $F_{30\%SPR}$  is the default  $F_{MSY}$  proxy. Amendment 17A retains the status quo proxy for  $F_{MSY}$  at  $F_{30\%SPR}$ , which when applied to the red snapper stock would be the equivalent to the OFL. The numerical value of this parameter will change annually as stock biomass increases in response to the rebuilding plan, and is estimated as 2,431,000 lb (1,102,683 kg), whole weight, when the stock is at equilibrium based on the SEDAR 15 assessment.

*Comment 27:* Two commenters stated Amendment 17A management measures are based on unsubstantiated discard mortality assumptions, and unrealistic compliance rates.

*Response:* The discard mortality rates used in Amendment 17A are provided by the SEDAR 15 (2008) assessment. The stock assessment evaluated findings from numerous studies to estimate release mortality of red snapper. SEDAR 15 (2008) panel participants considered a previous assessment of the red snapper population along the Atlantic coast that used point estimates of 10 percent and 25 percent for release mortality based on observations by NMFS personnel. These estimates are low when compared to data in the 2009 Gulf of Mexico Red Snapper Assessment Update to SEDAR 7 (2004). Panel members also considered recent observer data collected from the headboat sector on the Atlantic coast and commercial sectors on the Atlantic coast and in the Gulf of Mexico. After examining the results from the many different release mortality studies, SEDAR 15 (2008) recommended the release mortality be set at 40 percent (30 to 50 percent selectivity range) for the recreational sector and 90 percent (80 to 100 percent selectivity range) for the

commercial sector. Discard mortality was evaluated through sensitivity runs and was not a significant factor in the fishing mortality or abundance estimates.

Varying degrees of compliance were discussed by the Council and NMFS, and were included in the model estimates of harvest reductions needed to end overfishing. The model used compliance assumptions ranging from 100 percent to 80 percent. Data on compliance rates as they relate to closed areas in the snapper-grouper fishery are limited. The fishery does not require vessel monitoring systems, and therefore does not have a highly accurate method to predict compliance for the subject closure. The Council determined it was reasonable to assume a compliance rate of 90 percent or less at this time, and adjust rebuilding measures as appropriate in response to new information. Therefore, the model scenarios incorporating less than 90 percent compliance were used to inform their selection of the preferred closed area alternative. NMFS agrees with this determination and concluded the conservation and management measures proposed in Amendment 17A are based on the best scientific information available.

*Comment 28:* One commenter stated the SEFSC disagreed with the Council's decision to base its selected catch limits necessary to end overfishing on a "very high recruitment" scenario.

*Response:* The Council and SEFSC considered projections with very high recruitment to be a reasonable approach as the 2008 and 2009 red snapper landings in the U.S. South Atlantic were much higher than have been observed in recent years, and high landings followed a spike in discards, which occurred in 2007. As the majority of fish being landed are near the legal limit of 20 inches (50.8 cm) TL and age information from red snapper collected in 2009 indicated approximately 80 percent of the fish were age 3 and 4, there was evidence that the high landings are being driven by a particularly strong year-class entering the fishery. At its September 2009 meeting, the Council expressed concern that rebuilding projections in Amendment 17A did not consider recent high recruitment since the SEDAR 15 assessment only included landings data through 2006. As a result, the Council stated the projections could underestimate the magnitude of expected discards, and the yield at target fishing mortality could be higher. In response, the Council requested new projections, which incorporate the high recruitment that appears to have occurred in 2006.

To examine the effects of such a pulse of recruitment on projections, the SEFSC produced projections where the 2006 year-class was inflated to one of three levels, corresponding to 50 percent, 100 percent, and 150 percent of the maximum recruitment event observed in the SEDAR 15 assessment over the years 1974–2006. The three levels were labeled as “high”, “very high”, and “extremely high.”

At the September 2009 Council meeting, the SEFSC advised the Council the use of “very high” recruitment estimates were most appropriate for red snapper in the South Atlantic. While the SSC expressed concern in its Consensus Statements and Report from the December 2009 Meeting that adoption of the “very high” recruitment estimate was overly optimistic, they acknowledged that assumptions regarding recent recruitment pulses would be tested in SEDAR 24. That assessment, which was completed in late October 2010, confirms that notably strong year classes occurred in 2006 and 2007.

*Comment 29:* Three commenters stated that Amendment 17A fails to take into account management uncertainty when establishing management measures to end overfishing.

*Response:* The Council and NMFS considered management uncertainty during the deliberative process of choosing management measures intended to end overfishing of red snapper and rebuild the stock within the specified timeframe. The Council and NMFS utilized a specialized model to estimate the percentage reductions gained in total red snapper mortality under various scenarios. Each scenario took into account the effects of management uncertainty that could result from impacts of recently implemented regulations, estimated compliance rates, and variations in offshore and inshore release mortality rates. These assumptions are discussed in detail in Appendix E of Amendment 17A.

*Comment 30:* Two commenters stated that Amendment 17A actions prioritize the minimization of socioeconomic harm over conservation.

*Response:* Amendment 17A was developed by the Council and NMFS pursuant to Magnuson-Stevens Act requirements to end overfishing of red snapper and rebuild the overfished stock within the specified rebuilding schedule. NMFS must also minimize, to the extent practicable, the unavoidable negative socioeconomic impacts of achieving these conservation objectives. The Council chose, and NMFS approved, the management measures

that best minimized these socioeconomic impacts without compromising conservation objectives. Because red snapper is part of a multispecies fishery, the SEDAR 15 assessment indicated that bycatch mortality is high, and that an area closure for all snapper-grouper fishing was necessary to end overfishing. The size of the area closure was the subject of extensive deliberation. The Council determined, and NMFS agrees, that the preferred area closure, based on SEDAR 15 assessment results, is the best balance between ending overfishing and minimizing economic harm.

Data uncertainty surrounding SEDAR 15 made the Council’s task of designating appropriate rebuilding goals and management measures for red snapper very difficult. Subsequently, the Council has been criticized for choosing reference points and management measures that are either not conservative enough, or too conservative. Amendment 17A has been cited as being overly optimistic in its assumptions and capacity to rebuild the stock. However, the recently completed SEDAR assessment (SEDAR 24) affirms that red snapper are overfished and are undergoing overfishing. The results of SEDAR 24 will be presented to the Council at their December 2010 meeting. At that time, they may choose to adjust the management measures, which may be done through a regulatory amendment according to the Snapper-Grouper FMP Framework Procedures.

*Comment 31:* One commenter stated that Amendment 17A fails to include bycatch in the ACL.

*Response:* Establishing an ACL of zero, based on landed catch, would not require monitoring dead discards in order to monitor the ACL. The SSC has opposed on several occasions including dead discards as part of the ACL since discard data are self-reported and there is greater uncertainty with discard data than with estimates of landings. The alternative ACL specification was also zero, but it included landings and dead discards. This option would require NMFS to monitor discarded red snapper in the commercial and recreational sectors for the purposes of tracking the ACL; though discard data will be recorded and monitored via the fishery-independent monitoring program intended to track rebuilding progress. At its March 2009 meeting, the SSC indicated their recommendation of acceptable biological catch of zero for speckled hind and warsaw grouper was based on landed catch only due to concern about monitoring discards. The SSC expressed concerns when discussing ACLs based on dead discards

for speckled hind and warsaw grouper at its March 2009 meeting. The SSC was not only concerned about the accuracy of discard data from the recreational and commercial sectors but also the possibility that some members of the fishing community might under-report discarded fish if they believed further restrictions might be imposed if levels of dead discards became elevated. Based on this recommendation from the SSC, the Council and NMFS determined an ACL equal to zero, based on landed catch only, would be the most appropriate ACL value for red snapper in the South Atlantic. Estimates of dead discards are incorporated in a model to determine reductions in mortality needed to end red snapper overfishing. The model was used by Council to reduce bycatch and end overfishing of red snapper through the establishment of a closed area where the harvest of all snapper-grouper species would be prohibited with all gear types except black sea bass pots and spearfishing gear.

*Comment 32:* Two commenters stated that several of the options chosen by the Council as preferred alternatives were not included in the DEIS. As a result, the alternatives did not receive adequate review and analysis, and were not subject to appropriate public notice, review and comment, as required by law.

*Response:* One alternative contained in the FEIS was not identified as a separate alternative in the DEIS, but it was included in the range of alternatives considered and analyzed in the DEIS. This red snapper management measure, Alternative 3E, was identified by the Council as its preferred snapper-grouper area closure alternative at its June 2010 meeting after reviewing public comments on the DEIS, as well as new information on the reduction in total mortality needed to end overfishing as defined by the status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$ . As this reduction was slightly less than that required by the formerly preferred  $F_{40\%SPR}$  proxy, the Council included a new, preferred area closure alternative that encompassed a smaller area reflective of the reduced harvest reductions needed under the status quo  $F_{MSY}$  proxy. The environmental impacts of Alternative 3E fell within the scope of those evaluated in the DEIS for the closure alternatives considered, and thus did not necessitate the publication of a supplemental DEIS.

*Comment 33:* Two commenters stated that NMFS chose to move forward with approval of the rebuilding plan and management measures in Amendment 17A despite a statement from the SSC that the proposed management

measures may not be sufficient to end overfishing of red snapper. One commenter stated the FEIS does not address the SSC's concerns with whether or not Amendment 17A would end overfishing.

*Response:* In its Consensus Statement and Report for the December 2009 Council meeting, the SSC stated that none of the management options in draft Amendment 17A appear to prevent overfishing because the analyses and alternatives are based on overly optimistic assumptions regarding the steepness of the stock-recruit curve, a "very high recruitment" pulse in 2006, as well as expected rates of compliance and effort shifting. However, SSC representatives speaking to these issues during the Council's December 2009 Snapper-Grouper Committee meeting acknowledged the SSC's conclusion assumed that the rate of overfishing was defined using a more conservative  $F_{MSY}$  proxy ( $F_{40\%SPR}$ ) than the status quo proxy of  $F_{30\%SPR}$ , that steepness was defined based on their recommendation for short-term projections but it has relatively little impact on the effectiveness of management measures in ending overfishing, and that assumptions regarding recent recruitment pulses were not overly risky because they would be tested in the new benchmark assessment SEDAR 24. SEDAR 24, which was completed in late October 2010, confirms that notably strong year classes occurred in 2006 and 2007.

While rates of compliance and effort shifting remain difficult to predict, the Council determined it was reasonable to assume a compliance rate of 90 percent or less at this time, and adjust rebuilding measures as appropriate in response to new information. Therefore, the model scenarios incorporating less than 90 percent compliance were used to inform the Council's selection of the preferred closed area alternative. The Council also determined any effort shifting would not be expected to have a significant adverse impact on the red snapper rebuilding plan because the management measures proposed in Amendment 17B, if approved, would greatly diminish the incentive to target snapper-grouper species in deep water and discard mortality would be reduced if effort shifted to inshore waters. NMFS agrees with these assumptions and certified that the conservation and management measures in Amendment 17A are based on the best available scientific information.

The new SEDAR assessment (SEDAR 24) also supports these assumptions, indicating the rate of overfishing is likely lower than that estimated by the

base run in SEDAR 15 and that the red snapper stock is in better shape than portrayed by SEDAR 15. The Council will review the results of SEDAR 24 at their December 2010 meeting and may propose additional action at that time, as appropriate.

*Comment 34:* One commenter stated the FEIS fails to disclose and analyze the fundamental flaws in the scenarios relied upon to determine that the management measures will reduce fishing mortality below the OFL, especially with regard to bycatch mortality estimates and projected compliance rates.

*Response:* The biological analysis for management actions in Amendment 17A and its associated FEIS, specifically Appendix E of the document, provides details regarding the analytical model used to develop the area closure alternatives. Appendix E also provides information on the limitations associated with the model's assumptions, which were used in determining reductions in total mortality provided by the proposed area closures. The report accompanying the model compares projected removal rates under the following scenarios with or without: (1) Elimination of directed and/or targeted trips due to regulations; (2) changes in overall release mortality; (3) distinct inshore release mortality; and (4) varying compliance rates. Projected reductions in total removals were computed from baseline 2005–2007 data compiled from commercial logbook, MRFSS, and headboat logbook data for the U.S. South Atlantic. In various scenarios, baseline removals were reduced as a function of trip elimination, spatial and bathymetric closures, and changes in release mortality. As with most projections, certain assumptions must be made to produce meaningful results. The assumptions made in the model analysis used to determine what level of harvest reduction could be achieved under the various area closure alternatives, are based upon the best available information from SEDAR 15, and recommendations by the Council's SSC. Any assumptions used to operate the model, which predicted overall harvest reductions possible under various red snapper management measure alternatives, were disclosed and subjected to public, SSC, and SEFSC review.

*Comment 35:* One commenter stated that the FEIS fails to consider: The impacts of not selecting an explicit OFL that is derived from the SSC-recommended MSY proxy; the impacts of setting the ABC above the OFL that is derived from the SSC-recommended

$F_{MSY}$  proxy; the impacts of basing the ABC on the rebuilding plan as opposed to basing it on an ABC control rule that incorporates scientific uncertainty contained within the overfishing level; and the impacts on bycatch and stopping overfishing with using an ACL that is based on landings only.

*Response:* Amendment 17A and its associated FEIS include analyses of the potential impacts of all alternatives on the biological, economic, social, and administrative environments, including the "No Action" alternatives as required by the National Environmental Policy Act. Analyses include the impacts of adopting a new definition for the  $F_{MSY}$  proxy versus retaining the status quo  $F_{MSY}$  proxy. The FEIS for Amendment 17A satisfies all NEPA requirements.

Section 1.4.2 of Amendment 17A discusses the SSC's recommendation of ABC and OFL. At its December 2008 meeting, the SSC recommended the ABC level be set consistent with the rebuilding plan in Amendment 17A. Therefore, the ABC is specified to equal  $F_{OY}$ , which is defined as 98 percent  $F_{MSY}$  (98 percent  $F_{30\%SPR}$ ), during the rebuilding schedule. This allows a total red snapper mortality of 144,000 lb (65,317 kg) whole weight in year one of rebuilding based on the status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$ , which requires a 76 percent reduction in red snapper harvest.

According to the Magnuson-Stevens Act National Standard 1 Guidelines, OFL is an annual amount of catch that corresponds to the estimate of MFMT applied to a stock or complex's abundance. Amendment 11 to the FMP defines MFMT as the yield at  $F_{MSY}$  where  $F_{30\%SPR}$  is the default  $F_{MSY}$  proxy. Amendment 17A retains the status quo proxy for  $F_{MSY}$  at  $F_{30\%SPR}$ , which when applied to the red snapper stock would be the equivalent to OFL. The numerical value of this parameter will change annually as stock biomass increases in response to the rebuilding plan, and is estimated as 2,431,000 lbs (ww) when the stock is at equilibrium based on the SEDAR 15 assessment. Therefore, ABC is less than OFL, since OFL is based on the status quo proxy for  $F_{MSY}$  and ABC is specified to equal  $F_{OY}$ , which is defined as 98 percent of the status quo proxy for  $F_{MSY}$ .

The Council considered including both landed catch and discards in the specification of the red snapper ACL; however, the SSC concluded that existing data collection and reporting systems are not adequate to support monitoring discarded red snapper in the commercial and recreational fisheries and expressed concern that doing so

may create an incentive for fishermen to under-report red snapper discards.

### Classification

The Regional Administrator, Southeast Region, NMFS, determined that Amendment 17A is necessary for the conservation and management of the snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on August 20, 2010 (75 FR 51458). A copy of the ROD is available from NMFS (*see*

### ADDRESSES).

NMFS prepared a FRFA, as required by 604 of the Regulatory Flexibility Act, for this final rule. The FRFA incorporates by reference the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the analysis is available from NMFS (*see* **ADDRESSES**). The FRFA follows.

No comments specific to the IRFA were received. However, several comments were submitted on the economic effects of the proposed rule. Most comments stated the proposed rule would have devastating economic effects on the fishing industry. Some comments noted that the proposed rule would create undue hardships on for-hire crew, support industries, and associated communities. Other comments stated that the economic analysis underestimated the adverse economic effects of the proposed rule on the for-hire sector in particular and the recreational sector in general.

The economic analysis conducted for the proposed rule estimated the expected quantitative effects of each alternative to the extent possible. Qualitative discussions of expected effects were provided where data or analytical techniques were not available. The analysis focused on the expected change in economic value, where economic value was measured by net operating revenues for commercial and for-hire vessels and consumer surplus for recreational anglers. An expenditure analysis was also conducted to provide some insights into the distributional effects of the proposed rule. This analysis examined the direct and indirect effects (sales/output, income/value-added, and full-time employment) of revenue reductions on the commercial sector and of target trip

reductions on the recreational sector due to the proposed rule. The economic analysis concluded that, with the exception of the no action alternatives, practically all alternatives would result in short-run adverse economic effects on fishers, support industries, and associated communities. The adverse economic effects would be borne mostly by commercial and for-hire operations in northeast Florida and Georgia. Some alternatives to the proposed rule would be expected to result in lower adverse economic effects but would not achieve the Council's objective for that particular action. Other alternatives to the proposed rule would achieve the Council's objectives but were projected to result in larger adverse economic effects.

NMFS agrees with the Council's choice of preferred alternatives as those which would be expected to best achieve the Council's objectives while minimizing to the extent practicable the adverse effects on fishers, support industries, and associated communities.

No changes in the final rule were made in response to public comments.

The final rule, which consists of several actions, would introduce changes to the management of the South Atlantic snapper-grouper fishery. This rule would prohibit all commercial and recreational harvest and possession of red snapper year-round in the South Atlantic EEZ. Prohibition of the harvest and possession of red snapper applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat or commercial permit for South Atlantic snapper-grouper has been issued, without regard to where such species are harvested, *i.e.*, in State or Federal waters. Furthermore, this rule would prohibit commercial and recreational harvest and possession of all snapper-grouper species year-round in an area that includes commercial logbook grids 2880, 2980, and 3080 between 98 ft (16 fathoms; 30 m) and 240 ft (40 fathoms; 73 m), except when snapper-grouper (other than red snapper) are harvested with (a) black sea bass pots that have a valid identification tag attached, or (b) spearfishing gear. The prohibition on possession does not apply to a person aboard a vessel that is in transit with other snapper-grouper species on board and with fishing gear appropriately stowed. Finally, this rule would require the use of non-stainless steel circle hooks when fishing for snapper-grouper with snapper-grouper hook-and-line gear and natural baits north of 28° N. latitude.

The Magnuson-Stevens Act provides the statutory basis for the final rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. The final rule would not alter existing reporting, record keeping, or other compliance requirements, except when the vessel is in transit across the closed area, during which, fishing gear must be appropriately stowed, or when the vessel is selected for the fishery-independent monitoring program to track the progress of red snapper.

This final rule is expected to directly affect commercial harvesting and for-hire fishing operations. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

In 2003–2007, an average of 944 vessels per year was permitted to operate in the commercial snapper-grouper sector. Of these vessels, 749 held transferable permits and 195 held non-transferable permits. On average, 890 vessels landed 6.43 million lb (2.92 million kg) of snapper-grouper and 1.95 million lb (0.88 million kg) of other species on snapper-grouper trips. Total dockside revenues from snapper-grouper species stood at \$13.81 million (2007 dollars) and from other species, at \$2.30 million (2007 dollars). Considering revenues from both snapper-grouper and other species, the average revenues per vessel were \$18,101. An average of 27 vessels per year harvested more than 50,000 lb (22,680 kg) of snapper-grouper species per year, generating at least, at an average price of \$2.15 (2007 dollars) per pound, dockside revenues of \$107,500. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

Although a vessel that possesses a commercial snapper-grouper permit can harvest various snapper-grouper species, not all permitted vessels landed all of the snapper-grouper species most affected by this amendment, *i.e.* red snapper, gag, vermilion snapper, black sea bass, black grouper, and red grouper. The following average number of vessels landed the subject species in 2003–

2007: 292 vessels landed gag, 253 vessels landed vermilion snapper, 220 vessels landed red snapper, 237 vessels landed black sea bass, 323 vessels landed black grouper, and 402 vessels landed red grouper. Combining revenues from snapper-grouper and other species on the same trip, the average revenue (2007 dollars) per vessel for vessels landing the subject species were \$20,551 for gag, \$28,454 for vermilion snapper, \$22,168 for red snapper, \$19,034 for black sea bass, \$7,186 for black grouper, and \$17,164 for red grouper.

Based on revenue information, all commercial vessels directly affected by the final rule are considered small entities.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. In 2003–2007, an average of 1,635 vessels was permitted to operate in the snapper-grouper for-hire sector, of which 82 are estimated to have operated as headboats. Within the total number of vessels, 227 also possessed a commercial snapper-grouper permit and are included in the summary information provided on the commercial sector. The charterboat annual average gross revenue is estimated to range from approximately \$62,000–\$84,000 for Florida vessels, \$73,000–\$89,000 for North Carolina vessels, \$68,000–\$83,000 for Georgia vessels, and \$32,000–\$39,000 for South Carolina vessels. For headboats, the corresponding estimates are \$170,000–\$362,000 for Florida vessels, and \$149,000–\$317,000 for vessels in the other States.

Based on these average revenue figures, all for-hire operations directly affected by the final rule are considered small entities.

Some fleet activity may exist in both the commercial and for-hire snapper-grouper sectors but its extent is unknown, and all vessels are treated as independent entities in this analysis.

All entities that are expected to be directly affected by the final rule are considered small entities.

The final rule is expected to reduce short-run harvests and fishing opportunities of commercial and for-hire vessels that, in turn, would reduce their short-run revenues and profits. In the following discussion, net operating revenue is considered equivalent to profit.

Prohibiting all commercial and recreational harvest and possession of red snapper year-round in the South Atlantic EEZ and prohibiting all commercial and recreational harvest

and possession of other species (except when caught with spearfishing gear or black sea bass pots that have a valid identification tag issued by the RA attached) in the snapper-grouper fishery year-round in the area that includes commercial logbook grids 2880, 2980, and 3080 between 98 ft (16 fathoms; 30 m) and 240 ft (40 fathoms; 73 m) is expected to reduce net operating revenues of commercial vessels operating in the South Atlantic by an average of approximately \$430,000 (4.8 percent), assuming the no action alternatives in Amendment 17B to the FMP, or \$931,000 (10.3 percent) when combined with the preferred alternatives in Amendment 17B to the FMP. This measure is also expected to reduce the net operating revenues of for-hire vessels operating in the South Atlantic by approximately \$5.04 million. Most of the effects would be borne by commercial and for-hire vessels operating in northeast Florida and Georgia, and would comprise a significant portion of these vessels' net operating revenues. Moreover, most of the effects would fall on commercial vessels using vertical lines and on headboats. However, it is highly probable that the effects on headboats are overestimated due to overestimation of affected target trips by headboats.

Exempting from the closed area prohibition the harvests of snapper-grouper species, except red snapper, caught with spearfishing gear or black sea bass pots that have valid identification tags would mitigate the effects of the area closures on commercial vessels. These effects are already incorporated in the estimated effects of the fishing prohibition on red snapper and fishing prohibition on snapper-grouper in the closed area.

Requiring the use of non-stainless steel circle hooks when fishing for snapper-grouper species with snapper-grouper hook-and-line gear north of 28° N. latitude is expected to increase the fishing costs of some commercial and for-hire vessels. Depending on the physical structure of a fish's mouth and the way that the fish takes bait, the circle hook requirement may reduce the harvest of some desired species. The potential cost increase and harvest reduction cannot be estimated, although they are deemed to be relatively small considering that circle hooks are already used on some vessels.

The estimated short-run reductions in the net operating revenues of the directly affected small entities, particularly for-hire vessels, may be considered substantial. Small entities operating off of northeast Florida and Georgia are expected to bear most of the

short-run adverse economic effects, with these effects comprising a significant portion of their net operating revenues.

For the various red snapper management measures, there were 15 alternatives, and three sub-alternatives considered. Four of the alternatives and one of the sub-alternatives including: (1) The red snapper prohibition; (2) the snapper-grouper area closure; (3) the red snapper ACL; and (4) the red snapper AM, comprise the final action.

The first alternative for each of the elements of the final action was the no action alternative, which would not conform to the Magnuson-Stevens Act requirements to end the overfished and overfishing conditions of red snapper. The second alternative to the final action would prohibit all commercial and recreational harvest and possession of red snapper year-round in the South Atlantic EEZ. This alternative has been determined to be insufficient to rebuild the red snapper stock within the specified timeframe due to discard mortalities when fishing for co-occurring snapper-grouper species. The third alternative to the final action would close four logbook grids and would close all water depths in the four subject areas. This alternative would result in larger short-run adverse economic effects than the final action. The fourth alternative to the final action would close four logbook grids and would close more water depths in the shallower parts of the four subject areas. This alternative would result in larger short-run adverse economic effects than the final action. The fifth alternative to the final action is similar to the final action, except that it would close four, instead of three, logbook grids. This alternative would result in slightly larger short-run adverse economic effects than the final action. The sixth alternative to the final action would close four logbook grids and would close more water depths in the deeper parts of the four subject areas. This alternative would result in larger short-run adverse economic effects than the final action. The seventh alternative to the final action differs from the final action by closing four additional areas and all water depths in the subject seven areas. This alternative would result in substantially larger short-run adverse economic effects than the final action. The eighth alternative to the final action differs from the final action by closing four additional areas and more water depths in the shallower parts of the subject seven areas. This alternative would result in substantially larger short-run adverse economic effects than the final action. The ninth alternative to the final action differs

from the final action by closing four additional areas. This alternative would result in substantially larger short-run adverse economic effects than the final action. The tenth alternative to the final action differs from the final action by closing four additional areas and more water depths in the deeper parts of the subject seven areas. This alternative would result in substantially larger short-run adverse economic effects than the final action. The eleventh alternative to the final action would, in combination with any of the alternatives that would prohibit harvest and possession of red snapper and close four or seven areas to snapper-grouper fishing, allow harvest and possession of snapper-grouper species (except red snapper) with bottom longline gear in the closed areas deeper than 50 fathoms (91 m). Relative to the final action, this alternative would have smaller adverse effects on commercial vessels and no effects on for-hire vessels. Three sub-alternatives, including the final action, were considered for vessels transiting through the closed areas. The first sub-alternative would be less restrictive than the final action by not requiring that fishing gear be appropriately stowed when vessels transit through the closed areas. This alternative would slightly mitigate the adverse economic effects of the closed areas, but it could compromise the effectiveness of enforcing regulations in the closed areas. The second sub-alternative to the final action would be less restrictive than the final action for vessels with wreckfish on board. This alternative would particularly avoid the potential unintended adverse effects on vessels fishing for wreckfish, but it could also compromise the effectiveness of enforcing regulations in the closed areas.

Three alternatives, including the final action, were considered for requiring the use of circle hooks. The first alternative to the final action, the no action alternative, would not require the use of circle hooks, and so would not entail any additional fishing cost. On the other hand, it would not take advantage of the potential afforded by circle hooks in reducing discard and bycatch mortality of red snapper, particularly in the center of the red snapper fishing area. The second alternative to the final action would require the use of circle hooks throughout the South Atlantic EEZ and not just north of 28° N. latitude, as in the final action. This alternative could entail higher fishing costs than the final action. It could also lower vessel revenues when some species cannot be

effectively caught with circle hooks, particularly in the southern areas where red snapper harvest is relatively low.

In addition to the foregoing actions, Amendment 17A also considered various alternatives for modifying the MSY proxy and establishing a rebuilding schedule, a rebuilding strategy, and a monitoring program for red snapper.

The Council elected to take no action to modify the status quo  $F_{MSY}$  proxy for red snapper, which is  $F_{30\%SPR}$ . The final action on rebuilding strategy for red snapper would define a rebuilding strategy that sets the rebuilding goal equal to  $SSB_{MSY}$  and sets the catch rate equal to  $F_{OY}$ , which is 98 percent  $F_{MSY}$  (98% $F_{30\%SPR}$ ), and specify an ACL based on landings, equal to zero in 2010 and beyond 2010 until modified. OY at equilibrium would be 2,425,000 lb (1,099,961 kg) whole weight. The final action on monitoring programs is to establish a fishery-independent monitoring program to track the progress of red snapper. Sampling would include deployment of chevron traps, cameras, and snapper-grouper hook-and-line at randomly selected stations.

The Council considered modifying the status quo  $F_{MSY}$  proxy for red snapper at the advice of their SSC. Specifically, they evaluated the impacts of adopting a more conservative proxy of  $F_{40\%SPR}$ , which would provide more assurance that overfishing would be ended and the stock rebuilt within the specified timeframe. However, after thoroughly considering the implications associated with this more conservative proxy, as well as input from their SSC and NMFS, they elected to take no action to change the status quo definition of MSY. Amendment 17A specifies the numerical value associated with this definition as 2,431,000 lbs (ww) based on the most recent, completed, red snapper stock assessment at the time of final Council action (SEDAR 15 2008). Instead, the Council recommended that the SEFSC conduct a comprehensive review of how  $F_{MSY}$  proxies should be applied across all southeastern fisheries and are considering developing a more generic amendment to evaluate changing the MSY/MSY proxy for red snapper and other species, because it would allow the Council to achieve some level of consistency, where applicable, in defining MSY/MSY proxies across many species. Four alternatives, including the final action, were considered for the red snapper rebuilding schedule. The first alternative to the final action, the no action alternative, would not define a rebuilding schedule for red snapper.

Considering that a previous rebuilding schedule expired in 2006 and the stock is overfished, this alternative would not meet the Magnuson-Stevens Act requirements. The second alternative to the final action would define a rebuilding schedule equal to 15 years, which is the shortest possible period to rebuild in the absence of fishing mortality. Even if retention of red snapper is prohibited, red snapper would still be caught since they have temporal and spatial coincidence with other species fishermen target. Because release mortality is estimated to be very high for red snapper, a 15-year rebuilding time period would require most of the EEZ to be closed to fishing for a majority of the snapper-grouper species to eliminate all incidental mortality of red snapper. The significant and irreversible socioeconomic impacts of such an action, which may or may not be recouped in the long run, make a 15-year schedule impracticable. The third alternative to the final action would define a rebuilding schedule equal to 25 years, which is the midpoint between the shortest possible (15 years) and maximum recommended (35 years) timeframe to rebuild the stock. This alternative would require more stringent regulations in the short run and thus more short-run adverse economic effects than the final action. Economic analyses indicate there is a fairly low level of likelihood that the future benefits of recovering the red snapper stock more quickly would outweigh the short-term costs to the red snapper fleet and the larger snapper-grouper fleet associated with the more restrictive regulations required by shorter rebuilding schedules.

Nine alternatives, including the final action, were considered for the rebuilding strategy, including the ACL and AM. With the exception of the no action alternative, each alternative includes two sub-alternatives for the ACL, and each ACL in turn includes three alternatives for the AM. The three AM alternatives, which all include monitoring programs, are identical for all alternatives and sub-alternatives, so they do not merit additional discussions here.

The rebuilding strategy is closely linked to the proxy for  $F_{MSY}$  since the goal is to rebuild the stock to its reproductive capacity at MSY ( $SSB_{MSY}$ ). The current MSY definition requires a 76 percent reduction in total mortality of red snapper in order to end overfishing and rebuild the stock. Because the Council used a tiered approach in the development of Amendment 17A, maintaining the status quo  $F_{MSY}$  proxy influenced the suite of

rebuilding strategy alternatives from which the Council could choose a preferred. Thus, the range of applicable alternatives was ultimately narrowed to those based on the status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$  (rebuilding strategy Alternatives 6–9). Rebuilding strategy Alternatives 2–5 are based on an  $F_{MSY}$  proxy of  $F_{40\%SPR}$ , and therefore, became technically inconsistent with red snapper management reference points after the Council decided to take no action to modify the  $F_{MSY}$  proxy. The Council chose a rebuilding strategy that sets the rebuilding goal equal to  $SSB_{MSY}$  and sets the catch rate equal to  $F_{OY}$ , which is  $98\%F_{MSY}$  ( $98\%F_{30\%SPR}$ ), with an ACL equal to zero based on landings only. Under this rebuilding strategy, the fishery would have a 53 percent chance of rebuilding to  $SSB_{MSY}$  on schedule.

The first alternative to the final action, the no action alternative, would not specify an ACL and so would not meet the Magnuson-Stevens Act requirements. In addition, it would set the rebuilding catch rate equal to  $F_{OY}$  at a level equivalent to 85 percent  $F_{40\%SPR}$  such that OY at equilibrium equals 2,196,000 lb (996,089 kg) whole weight, which is technically inconsistent with the Council's decision to maintain the status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$ . The second alternative to the final action would define a red snapper rebuilding strategy that sets  $F_{OY}$  at a level equivalent to 85 percent  $F_{40\%SPR}$  such that OY at equilibrium equals 2,199,000 lb (997,450 kg) whole weight, which is technically inconsistent with the Council's decision to maintain the status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$ . The first sub-alternative would base the ACL on landings, with the ACL equal to zero in 2010. This is identical to the final action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 89,000 lb (40,370 kg) whole weight in 2010. This would still require prohibition of red snapper harvest by both the commercial and recreational sectors. In addition, this would require monitoring of dead discards so that total removal would not exceed the ACL. The difficulty of monitoring dead discards, together with the likelihood that self-reported discards would be understated, raises concerns regarding the eventual effectiveness of the rebuilding strategy. The third alternative to the final action would define a red snapper rebuilding strategy that sets  $F_{OY}$  at a level equivalent to 75 percent  $F_{40\%SPR}$  such that OY at equilibrium equals 2,104,000 lb (954,358 kg) whole weight, which is technically inconsistent with the Council's decision to maintain the

status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$ . The second sub-alternative would base the ACL on total removal, with the ACL equal to 79,000 lb (35,834 kg) whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards. The fourth alternative to the final action would define a red snapper rebuilding strategy that sets  $F_{OY}$  at a level equivalent to 65 percent  $F_{40\%SPR}$  such that OY at equilibrium equals 1,984,000 lb (899,927 kg) whole weight, which is technically inconsistent with the Council's decision to maintain the status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$ . The first sub-alternative is identical to the final action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 68,000 lb (30,844 kg) whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards. The fifth alternative to the final action would define a red snapper rebuilding strategy that sets  $F_{OY}$  at a level equivalent to 97 percent  $F_{40\%SPR}$  such that OY at equilibrium equals 2,287,000 lb (1,037,366 kg) whole weight, which is technically inconsistent with the Council's decision to maintain the status quo  $F_{MSY}$  proxy of  $F_{30\%SPR}$ . The first sub-alternative is identical to the final action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 68,000 lb (30,844 kg) whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards. The sixth alternative to the final action would define a red snapper rebuilding strategy that sets  $F_{OY}$  at a level equivalent to 85 percent  $F_{30\%SPR}$  such that OY at equilibrium equals 2,392,000 lb (1,084,993 kg) whole weight. This alternative would imply more restrictive measures than the final action in the short run, resulting in larger short-run adverse economic effects and potentially lower long-run benefits because of a lower OY. The first sub-alternative is identical to the final action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 125,000 lb (56,699 kg) whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards, although the higher ACL than that of previous sub-alternatives would tend to mitigate but not erase such concerns. The seventh alternative to the final action would define a red snapper rebuilding strategy that sets  $F_{OY}$  at a level equivalent to 75 percent  $F_{30\%SPR}$  such that OY at equilibrium equals 2,338,000 lb

(1,060,499 kg) whole weight. This alternative would imply more restrictive measures in the short run, resulting in lower short-run adverse economic effects and potentially higher long-run benefits because of a lower OY. The first sub-alternative is identical to the final action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 111,000 lb (50,349 kg) whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards, although the higher ACL than that of some previous sub-alternatives would tend to mitigate but not erase such concerns. The eighth alternative to the final action would define a red snapper rebuilding strategy that sets  $F_{OY}$  at a level equivalent to 65 percent  $F_{30\%SPR}$  such that OY at equilibrium equals 2,257,000 lb (1,023,758 kg) whole weight. This alternative would imply more restrictive measures than the final action in the short run, resulting in lower short-run adverse economic effects and potentially lower long-run benefits because of a lower OY. The first sub-alternative is identical to the final action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 97,000 lb (43,998 kg) whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards, particularly that the ACL is lower than that of some previous sub-alternatives.

Three alternatives, including the final action, were considered for the red snapper monitoring program. The first alternative, the no action alternative, would not entail any additional cost by utilizing existing data collection programs. However, existing data collection programs may not be adequate to collect vital information on red snapper during the time harvest of the species is prohibited. The second alternative to the final action would establish a red snapper fishery-dependent monitoring program involving for-hire vessels. This alternative offers some potential as does the final action in collecting the needed information on red snapper, especially during the period when harvest of the species is prohibited. Although the near ideal approach is to combine this alternative with the final action, funding for both may not be available on a continuing basis.

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 an 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 this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders and permitted dealers in the South Atlantic snapper-grouper fishery.

Pursuant to 5 U.S.C. 553(d)(3), there is good cause to waive the 30-day delay in effective date for the management measures that implement the prohibitions on harvest and possession of red snapper in the South Atlantic. Red snapper are overfished and undergoing overfishing. An interim rule implementing these measures was promulgated on January 4, 2010 (74 FR 63673, December 4, 2009), extended on June 3, 2010 (75 FR 27658, May 18, 2010), and will expire on December 5, 2010. The persons affected by these management measures have been provided with notice and the opportunity to comment on these measures via the public comment period for the proposed interim rule, Amendment 17A, and the proposed rule for Amendment 17A, and they are aware of the intent of the Council and NMFS to continue the existing prohibitions immediately upon expiration of the interim rule. To prevent a lapse in these prohibitions, amendments to § 622.32, § 622.37, § 622.39, and § 622.45 must become effective on or before December 5, 2010.

A red snapper benchmark assessment (SEDAR 24) was completed in late October 2010, which provides additional information on the effectiveness of these prohibitions. The assessment indicates that red snapper are overfished and undergoing overfishing and that the current harvest prohibition for red snapper is providing substantial protection to the stock. Furthermore, the new assessment indicates a strong year class entered the fishery in 2006, and fishermen are aware that there are more young red snapper available than in previous years. Therefore, should a lapse occur in these prohibitions, it is expected that there would be very high fishing pressure on an unusually strong year class, which needs to be protected to help rebuild the stock. A lapse could also lead to more severe harvest reductions for the snapper-grouper fishery as a whole with associated adverse socioeconomic impacts. For all of these reasons, a waiver of the 30-day delay of effective date for these measures is necessary.

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

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 30, 2010.

**Samuel D. Rauch III,**

*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, 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 § 622.32, paragraph (b)(3)(vi) is added to read as follows:

**§ 622.32 Prohibited and limited-harvest species.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(vi) Red snapper may not be harvested or possessed in or from the South Atlantic EEZ. Such fish caught in the South Atlantic EEZ must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, *i.e.*, in State or Federal waters.

\* \* \* \* \*

■ 3. In § 622.35, paragraph (l) is added to read as follows:

**§ 622.35 Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(l) *Area closure for South Atlantic snapper-grouper.* (1) No person may harvest or possess a South Atlantic snapper-grouper in or from the South Atlantic EEZ in the closed area defined in paragraph (l)(2) of this section, except a person harvesting South Atlantic snapper-grouper (*see* § 622.32(b)(3) for the current prohibitions on the harvest and possession of red snapper and other snapper-grouper species) with spearfishing gear or with a sea bass pot that has a valid identification tag issued by the RA attached, as specified in § 622.6(b)(1)(i)(B). This prohibition on possession does not apply to a person aboard a vessel that is transiting through the closed area with fishing gear

appropriately stowed as specified in paragraph (l)(3) of this section.  
(2) The area closure for South Atlantic snapper-grouper is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A .....	28°00'00"	80°00'00"
B .....	28°00'00"	80°10'57"
C .....	29°31'40"	80°30'34"
D .....	30°02'03"	80°50'45"
E .....	31°00'00"	80°35'19"
F .....	31°00'00"	80°00'00"
G .....	30°52'54"	80°00'00"
H .....	30°27'19"	80°11'41"
I .....	29°54'31"	80°15'51"
J .....	29°24'24"	80°13'32"
K .....	28°27'20"	80°00'00"
A .....	28°00'00"	80°00'00"

(3) For the purpose of paragraph (l)(1) of this section, continuous transiting or transit through means that a fishing vessel crosses the area closure on a constant heading, along a continuous straight line course, while underway, making way, not anchored, and by means of a source of power at all times (not including drifting by means of the prevailing water current or weather conditions). Fishing gear appropriately stowed means—

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl or try net may remain on deck, but trawl doors must be disconnected from such net and must be secured.

(iii) A gillnet, stab net, or trammel net must be left on the drum. Any additional such nets not attached to the drum must be stowed below deck.

(iv) Terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, trolling gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. A rod and reel must be removed from the rod holder and stowed securely on or below deck.

(v) A crustacean trap or golden crab trap cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(vi) Other stowage methods may be authorized by the Regional Administrator in the future. These would be published in the **Federal Register** and become effective at that time.

\* \* \* \* \*

■ 4. In § 622.37, paragraph (e)(1)(v) is revised to read as follows:

**§ 622.37 Size limits.**

\* \* \* \* \*

- (e) \* \* \*
- (1) \* \* \*

(v) Red snapper—20 inches (50.8 cm), TL, however, *see* § 622.32(b)(3)(vii) for the current prohibition on the harvest and possession of red snapper.

\* \* \* \* \*

■ 5. In § 622.39, paragraph (d)(1)(iv) and (d)(1)(viii) are revised and paragraph (d)(1)(ix) is added to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*

(iv) Snappers, combined—10.

However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and red snapper and vermilion snapper. (*See* § 622.32(b)(3)(vii) for the prohibition on harvest and possession of red snapper and § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

\* \* \* \* \*

(viii) South Atlantic snapper-grouper, combined—20. However, excluded from this 20-fish bag limit are tomtate, blue runner, and those specified in paragraphs (d)(1)(i) through (vii), and (ix) of this section.

(ix) No red snapper may be retained.

\* \* \* \* \*

■ 6. In § 622.41, the introductory text in paragraph (n) is revised and paragraph (n)(2) is added to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(n) *Required gear in the South Atlantic snapper-grouper fishery.* For a person on board a vessel to harvest or possess South Atlantic snapper-grouper in or from the South Atlantic EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (n)(1) and (n)(2) of this section.

\* \* \* \* \*

(2) *Non-stainless steel circle hooks.*

Non-stainless steel circle hooks are required to be used when fishing with hook-and-line gear and natural baits north of 28E N. lat.

■ 7. In § 622.45, paragraph (d)(10) is added to read as follows:

**§ 622.45 Restrictions on sale and purchase.**

\* \* \* \* \*

- (d) \* \* \*

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

possessed in the South Atlantic, *i.e.*, State or Federal waters, by a vessel for which a Federal commercial permit for South Atlantic snapper-grouper has been issued.

\* \* \* \* \*

[FR Doc. 2010–30394 Filed 12–3–10; 11:15 am]

BILLING CODE 3510–22–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 101124587–0586–01]

RIN 0648–BA47

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Emergency Rule To Delay Effectiveness of the Snapper-Grouper Area Closure**

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

**ACTION:** Temporary rule; emergency action.

**SUMMARY:** NMFS issues this temporary rule to delay the effective date of the area closure for snapper-grouper specified in Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The area closure will become effective on January 3, 2011, through the final rule that implements Amendment 17A. A Southeast Data Assessment and Review (SEDAR) benchmark stock assessment for red snapper (SEDAR 24) was just completed on October 25, 2010, and was reviewed by the South Atlantic Fishery Management Council’s (Council’s) Scientific and Statistical Committee (SSC) during its meeting from November 9–11, 2010. The new stock assessment still shows red snapper to be overfished and undergoing overfishing, however, the rate of overfishing found in SEDAR 24 is less than the rate of overfishing found in the previous stock assessment (SEDAR 15). The SSC concluded that, based on SEDAR 24, the snapper-grouper area closure approved in Amendment 17A is more conservative than what is needed to end overfishing of red snapper. Temporarily delaying the effective date of the snapper-grouper area closure specified in Amendment 17A will allow the Council time to respond to the new stock assessment information through a regulatory

amendment, which will be discussed at the Council’s December meeting. This emergency action is necessary to mitigate negative socioeconomic impacts associated with the snapper-grouper area closure on South Atlantic snapper-grouper fishermen and to ensure the area closure is based upon the best scientific information available.

**DATES:** This rule is effective January 3, 2010 through June 1, 2011, unless NMFS publishes a superseding document in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by “0648–BA47”, by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>.
- *Fax:* 727–824–5308. *Attn:* Kate Michie.
- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701.

*Instructions:* No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulation.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter ANOAA–NMFS–2010–0243” in the keyword search, then check the box labeled “Select to find documents accepting comments or submissions”, then select “Send a Comment or Submission.” NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supporting documentation for this emergency rule, as well as Amendment 17A and its accompanying analyses, may be obtained from Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone 727–824–5305; e-mail [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS under the