

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622****[Docket No. 090508900–91414–02]****RIN 0648–AX75****Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Red Snapper Closure**

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

**ACTION:** Temporary rule; interim measures.

**SUMMARY:** This final temporary rule implements interim measures to establish a closure of the commercial and recreational fisheries for red snapper in the South Atlantic as requested by the South Atlantic Fishery Management Council (Council). The intended effect is to reduce overfishing of red snapper while long-term management measures are developed in Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 17A) to end overfishing of red snapper.

**DATES:** Effective January 4, 2010 through June 2, 2010.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained from Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, telephone: 727–551–5753, fax: 727–824–5308, e-mail: [karla.gore@noaa.gov](mailto:karla.gore@noaa.gov).

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

On July 6, 2009, NMFS published the proposed temporary rule and requested public comment (74 FR 31906). The rationale for these interim measures is provided in the preamble to the proposed temporary rule and is not repeated here.

**Comments and Responses**

A total of 1,151 comments were received on the proposed interim rule from the public, state and county agencies, and non-governmental organizations. Of these comments 1,102 expressed general opposition to the proposed interim measures (1 comment included a petition with over 24,000 signatures), and 27 comments expressed general support (1 comment included a petition with 808 signatures). Other comments provided specific concerns related to the interim rule and are addressed below. Twenty-two comments were received that were unrelated to the scope of this action and are therefore not addressed. The following is a summary of the comments received and NMFS' responses.

**Economic Comments**

*Comment 1:* Two hundred sixty nine comments were received expressing concern that the management measures proposed in the interim rule would cause economic hardship on the commercial, recreational and for-hire sectors, and would have negative consequences on the tourism industry and affected communities. One hundred forty five comments were received stating that the proposed interim rule would eliminate important recreational opportunities in the southeast and would cause hardship to individuals who enjoy recreational fishing opportunities for relaxation, fun, and family time.

*Response:* NMFS recognizes the prohibition on the harvest, possession, and sale of red snapper will have immediate, short-term, negative socioeconomic effects on the fisheries and communities of the South Atlantic region. However, the Council was notified by NMFS on July 8, 2008, that red snapper in the South Atlantic region are undergoing overfishing and are overfished according to the current definition of the minimum stock size threshold. The Council must take action to end overfishing within 1 year of receiving notification that a stock is overfished or undergoing overfishing. In March 2009, the Council requested NMFS implement a prohibition on the harvest and possession of red snapper through interim measures, while the Council completes Amendment 17A. NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to analyze the economic impacts of the proposed rule on small entities, including commercial fishermen, charter vessels, and headboats. A summary of the IRFA was included with the proposed rule. A Final Regulatory Flexibility Analysis

(FRFA) accompanies this final rule and considers the comments received on this action. A Regulatory Impact Review has also been prepared that provides analyses of the social and economic impacts of each alternative to the nation and the fishery as a whole. This analysis was also included in the Environmental Assessment (EA) prepared for this action.

The economic analysis indicates the interim rule would have the most negative short-term effects on communities which target red snapper exclusively. The measures proposed in the interim rule, as well as previous and subsequent management measures, are necessary to address overfishing of snapper-grouper species. Without these measures, long-term management of the fishery may become more restrictive to the fishermen and more burdensome on the agency.

The interim rule implements a prohibition on the harvest, possession and sale of red snapper for 180 days (with the possibility of extending the prohibition for an additional 186 days). During this time, fishing for other snapper-grouper species, in accordance with current fishery regulations, would still be allowed.

*Comment 2:* Fifteen comments were received stating that an economic analysis was needed to determine the level of economic impacts the proposed interim measures would have on the snapper-grouper fishery. One hundred eighty four comments were received that stated the economic analysis that was included in the Environmental Assessment was inadequate.

*Response:* NMFS believes that an adequate economic analysis has been performed assessing the impacts of the proposed interim measures. An economic analysis on the impacts of the proposed interim rule was included in the EA. NMFS prepared an IRFA to analyze the economic impacts of the proposed rule on small entities, including commercial fishermen, charter vessels and headboats. A summary of the IRFA was included with the proposed rule. A FRFA accompanies this final rule and considers the comments received on this action. A Regulatory Impact Review has also been prepared that provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. This analysis was included in the EA prepared for this action.

*Comment 3:* Nineteen comments were received that stated that the proposed interim rule will severely impact the charter (for-hire) fishing sector and will cause the for-hire clients to lose a source of recreational opportunity.

*Response:* The economic impacts of this interim rule are expected to be greatest in private, charter, and headboat sectors in Florida. On average, red snapper is the third most important species in terms of the number of fish caught on private and charter trips, and the fifteenth most important species in terms of the number of pounds of fish harvested on headboat trips. Thus, most of the historic trips that had previously targeted red snapper would be expected to continue to be taken but would target other species. The negative impacts associated with this interim rule as well as the impacts from previous and future management measures, are necessary to address overfishing of snapper-grouper species. A complete economic analysis of the proposed action can be found in the EA prepared for this action. A FRFA accompanies this final rule and considers the comments received on this action. Without these interim measures, long-term management of the fishery may become more restrictive to fishermen and more burdensome on the agency. Additionally, the action proposed by the interim rule is temporary and will be replaced by long-term management measures analyzed in Amendment 17A, that are intended to end overfishing of red snapper.

*Comment 4:* Four comments were received on the cumulative impacts of the recently implemented Amendment 16; the red snapper interim rule; Amendment 17B, which will set annual catch limits and accountability measures for snapper-grouper species experiencing overfishing; and Amendment 17A, which will establish long-term management measures for red snapper. The comments indicated the combination of these amendments and management measures will have severe economic and social impacts for the commercial, headboat, charter, and recreational fisheries and their communities.

*Response:* The cumulative impacts of the interim rule were described and analyzed in the cumulative effects analysis (CEA) of the EA. The CEA takes into consideration past, current and reasonable foreseeable management actions. Amendments 17A and 17B are being developed by the Council, and it is difficult to determine when they will be implemented, if approved by the Secretary of Commerce. At this time, it is not possible to determine the economic and social impacts from these draft amendments. However, Amendments 17A and 17B will include a cumulative effects analysis, as did those recently implemented (i.e. Amendment 16, Amendment 15B). Furthermore, the management measures

in Amendments 17A and 17B will consider the effects of management measures being implemented through other amendments to the FMP.

*Comment 5:* Seventeen comments were received that stated the proposed interim measures would result in looking to foreign markets for our fresh seafood supply rather than purchasing seafood locally.

*Response:* According to commercial logbook trip reports from 2003–2007, red snapper was the primary source of trip revenue on an average of 163 trips per year, and a lesser source of trip revenue on 1,222 trips per year. Most of the trips in which red snapper was not the primary source of trip revenue are expected to remain profitable even when the harvest of red snapper is prohibited. With a 6-month closure, a 1.41-percent reduction in net operating revenue would be expected. Therefore, the proposed interim measures would not be expected to cause an increased dependence on foreign markets to supplement fresh seafood supply.

#### Data Comments

*Comment 6:* One hundred seventy six comments were received stating that the data used to make the overfishing determination are flawed. Specific comments regarding the nature of the “flawed” data suggested the data used in the assessment were old; release mortality was estimated based on one study involving 31 fish from one trip conducted in the Gulf of Mexico; release mortality estimates used in the assessment are based on bad data; recreational data from the Marine Recreational Fisheries Statistics Survey (MRFSS) are unreliable; and the science and statistical models that were used to generate management actions failed peer reviews of the National Academy of Science. Many individuals suggested the interim rule should not be approved and NMFS should wait until better data become available before making any management decisions.

*Response:* A new stock assessment was completed for red snapper through the Southeast Data, Assessment and Review (SEDAR) process in 2008 using data through 2006. The assessment (SEDAR 15) found that the South Atlantic red snapper stock is overfished and currently undergoing overfishing. Data used for the assessment consisted 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 MRFSS since 1981. Also included are U.S. Fish and Wildlife Service

recreational fisheries surveys 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 Fishery Management Council process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and US 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 datasets 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 Council's Standard Operating Procedures. Workshop times and locations are noticed in advance through the **Federal Register**.

The data and models used in the red snapper stock assessment were not subject to peer reviews by the National Academy of Science. The findings and conclusions of each SEDAR workshop

are documented in a series of reports, which were ultimately reviewed and discussed by the Council and their Science and Statistical Committee (SSC). The stock assessment found red snapper is experiencing overfishing and is overfished. At its June 2008 meeting, the SSC determined the results of the red snapper assessment are based upon the best available science. Additionally, the Southeast Fisheries Science Center certified the red snapper environmental assessment and proposed management measures are based upon the best available science.

SEDAR 15 evaluated findings from numerous studies to estimate release mortality of red snapper. One of the studies reviewed at the data workshop provided discard information for many snapper-grouper species on multiple trips during a 6-month period in the South Atlantic, which included 73 red snapper; 31 of which were released. After examining the results from the many different release mortality studies, the expert scientific opinion at the SEDAR 15 red snapper data workshop recommended the release mortality should be set at 40 percent (a range of 30 to 50 percent to account for uncertainty) for the recreational sector, and 90 percent (a range of 80 to 100 percent to account for uncertainty) for the commercial sector. Discard mortality was evaluated through sensitivity runs and did not result in any significant changes in the fishing mortality or abundance estimates.

*Comment 7:* One hundred eighty four comments were received that indicated the red snapper fishing in the South Atlantic during the last few years is "better than ever before" and management measures appear to be working. Since the stock appears to be doing so well, commenters stated the data used to make the overfishing determination are flawed.

*Response:* Management measures may be partially responsible for the increase in red snapper landings since the size and bag limits were implemented for red snapper in 1992. However, this increase is quite small compared to large reductions in landings that occurred prior to 1992. Many fishermen have testified during public hearings and scoping meetings that they are catching more red snapper in recent years, especially those fishing off the coast of Georgia and northeast Florida. Observations by fishermen are confirmed by landings data showing a spike in the regulatory discards in 2007 and a doubling of the landed catch in 2008, which suggests a strong year class appears to have entered the fishery.

Red snapper are vulnerable to overfishing because they live for more than 50 years. They grow quickly during the first 10 years of life reaching 20 inches (50.8 cm) total length by age three. Therefore, a very strong year class in 2005 or 2006 could result in a large number of red snapper greater than 20 inches (50.8 cm) total length in 2009. Furthermore, some red snapper greater than 20 lb (9.07 kg) would not be unexpected since the stock assessment indicated there were strong year classes in 1998 and 1999 and red snapper approach their maximum size by age 10. Older fish are generally represented by larger size classes; however, due to the rapid growth of red snapper, and because red snapper approach their maximum size by age 10, length is not always a good indicator of age. For example, a 5-year-old fish can range in length from 13 inches (33.02 cm) total length to 32 inches (81.28 cm) total length; while the age of a 32-inches (81.28-cm) total length red snapper can range from 5 to more than 50 years.

Despite good recruitment, the age structure of the population remains truncated. Red snapper live to at least 54 years of age, but the assessment indicates only a small percentage of the population was estimated to be age 10 or older in recent years. Furthermore, samples provided by fishermen in 2009 also indicates most of the red snapper they were catching were young fish. Therefore, there is a need to protect this strong year class and future year classes to help the stock rebuild more quickly.

Red snapper are being caught before they become old enough to reach their peak reproductive and biomass levels. Although the 20-inch (50.8-cm) size limit (currently in place) allows some fish to spawn before they become vulnerable to harvest, these younger, mostly first-time spawners are less productive and weigh much less than the older and heavier fish.

*Comment 8:* One comment stated the stock assessment wrongly assumes that the red snapper population was "virgin" or in an "unfished condition" beginning in 1945. Records indicate that the red snapper stock has been commercially fished and shipped to large cities as early as 1879.

*Response:* While the stock assessment uses data from 1945 onward, it does not disregard the fact that the red snapper fishery likely operated prior to 1945. Scientists at the SEDAR 15 data workshop for the red snapper stock assessment were in agreement that the red snapper stock was operating at a level of "light exploitation" by 1945. The assessment assumed fishing for red snapper was taking place in 1945 and

provides landings going back as far as 1927. The assessment assumed that in 1945, the population was at 75 percent of a virgin or unfished population.

*Comment 9:* One comment was received stating that NMFS failed to accurately characterize the proper locations of the spawning aggregations. Methods to measure spawning aggregations on a routine basis need to be developed such as commercial and recreational fishing boats as platforms for acoustic surveys and sub-sampling acoustic targets.

*Response:* The Southeast Fisheries Science Center (SEFSC) is developing a fishery independent monitoring plan designed for all snapper-grouper species including red snapper. The plan will consider a broad range of methods to track changes in the snapper-grouper stocks and characterize aspects of life history and behavior, including documenting locations of spawning aggregations, and hopefully a better understanding of the spatial dynamics of many snapper-grouper species. There are grant opportunities for fishermen to conduct research such as those proposed. At the Federal level in the South Atlantic, there are opportunities for funding through the Cooperative Research Program (CRP), Marine Fisheries Initiative (MARFIN), and Saltonstall-Kennedy (S-K), which traditionally utilize varying levels of industry collaboration with scientific investigators. CRP has the most industry involvement by design. For further information regarding these projects visit <http://sero.nmfs.noaa.gov/grants/grants.htm>.

*Comment 10:* Three comments stated the SEDAR 15 stock assessment results seem to indicate large red snapper "age 10 and older are practically non-existent in the population." However, in the past several months fishermen have landed and analyzed the otoliths of red snapper that are older than 10-years. NMFS estimated a total of only 5,000 large red snappers from North Carolina to the Florida Keys. It would not be possible to find red snapper older than age 10 if the stock assessment information from NMFS is accurate.

*Response:* The SEDAR 15 assessment predicted a small proportion of the landed red snapper are greater than age 10, but it does not indicate fish greater than age 10 are non-existent. There is variability in the age estimates from the stock assessment. However, both the assessment and the recent samples provided by fishermen indicate the red snapper population is dominated by individuals under the age of 10. Given that the population is capable of reaching age 50 or greater, this is a sign

of sustained and persistent overfishing. The assessment predicts, and samples provided by fishermen indicate, there are currently some 9- and 10-year-old red snapper; however, both the assessment and recent samples provided by fishermen indicated there are some 10- to 20-year-old fish but there are few 20-, 30-, and 40-year-old fish. Encountering increasing numbers of fish age 10 to 12 in 2009 is not unexpected because the 1997–1999 year classes estimated in the stock assessment were the last strong year classes prior to the recent 2005–2006 strong year class. In a healthy red snapper population, a greater proportion of red snapper would be expected to be older than 10 years than what has been estimated by the assessment or illustrated in recent samples collected by fishermen. The assessment supports that the size limit helped the population improve, but it is still a long way from being recovered.

*Comment 11:* Three commenters stated that the dockside sampling in the important Mayport, FL area has been severely deficient. Further, age sampling was biased towards smaller fish since most of the samples were obtained from recreational fishermen. The commenters suggested the deficiency calls into question the validity of the entire data set used in SEDAR 15 assessment that produced the finding of a truncated fish population.

*Response:* Otolith-based age data used in the SEDAR 15 red snapper stock assessment were provided by NMFS and the South Carolina Department of Natural Resources (SCDNR). NMFS data were collected from the U.S. South Atlantic commercial (n=1,208) and recreational fisheries (n=5,099) during 1977–2006. Approximately 80 percent of the otoliths processed by NMFS were from north Florida including the area of Mayport, FL. SCDNR data were collected from 1980–2006 and included samples from the U.S. South Atlantic commercial fishery (n = 612) as well as the SCDNR's Marine Resources Monitoring Assessment and Prediction (MARMAP) fishery-independent survey (n = 405). SCDNR obtained samples from red snapper caught throughout the South Atlantic (FL to NC) with approximately 25 percent of the commercial samples from north Florida. The proportion of fishery-dependent samples obtained from the commercial (24 percent) and recreational (76 percent) sectors is similar to the percentage of red snapper harvested in the commercial (25 percent) and recreational (75 percent) sectors during 2004–2008. The combined samples yielded a total of 7,324 red snapper age estimates. Red snapper are currently

being sampled from north Florida by the SEFSC.

*Comment 12:* One comment was received stating that a document provided at the data workshop for the Gulf of Mexico red snapper stock assessment indicated that red snapper are capable of moving large distances. This demonstrates an intermixing potential of red snapper from the two different Council regions. Genetic differences between the Gulf of Mexico and the United States east coast regions were not considered in the South Atlantic red snapper assessment.

*Response:* Genetic differences between red snapper harvested in the Gulf of Mexico and South Atlantic were discussed at the SEDAR 15 red snapper data workshop and are addressed in the SEDAR 15 stock assessment. Information provided in the stock assessment indicates there is no published evidence to date for separate Gulf of Mexico and Atlantic coast genetic populations. The assessment cites a study which concludes that red snapper constitute a single genetic population from Yucatan Peninsula, to the northern Gulf of Mexico, to the east coast of Florida. However, tagging studies conducted in the Gulf of Mexico provide no evidence of red snapper movement between the Gulf of Mexico and the Atlantic coast and supports management of red snapper in two regions as separate stocks.

*Comment 13:* Five commenters stated that the red snapper stock assessment should be redone and address the issues raised by Dr. Frank Hester including availability of older/larger red snapper to fishing gear (selectivity). These points concern: lack of a dome-shaped selectivity function for the recreational sector; additional estimates of natural mortality; lack of fecundity data available for the assessment; use of Virtual Population Analysis (VPA) instead of a forward projection model to determine stock status; and use of data from the Fish and Wildlife Survey (FWS).

*Response:* The SEDAR 15 stock assessment assumed a flat-topped selectivity for the recreational sector where red snapper become more available to fishing gear in the first few years as they grow and then remain equally available to fishing gear for the remainder of their life. Dr. Hester indicated the assessment should consider that older/larger red snapper might not be as easily caught by recreational fishing gear as younger/smaller fish (i.e. dome-shaped selectivity). In response to Dr. Hester's comment, the SEFSC conducted three sensitivity runs for the SEDAR 15 red

snapper stock assessment that included variations of dome-shaped selectivity. The first sensitivity run, assumed no red snapper older than age 10 were caught by fishing gear throughout the time period addressed by the assessment (1945 to 2006). This is not a realistic sensitivity run because fishermen have caught red snapper greater than age 10. In the second application, the shape from the first sensitivity run was applied to both headboat and general recreational fishing in the early time period (1945–1983), and in later periods (1984–1991 and 1992–2006), and dome-shaped selectivities were estimated (separately for each period) where the ability to catch red snapper gradually decreased as fish got older. The third application was similar to the second, but differed by applying the estimated selectivity of the middle time period to the early time period. Under all three sensitivity runs, red snapper was overfished and experiencing overfishing; however, the magnitude of harvest reduction differed among the runs. The SEDAR 15 review workshop considered flat-topped selectivity, where all older/larger fish could be caught by fishing gear, as most likely for the commercial sector because commercial fishermen have an economic incentive to catch large fish, and the commercial sector fishes in depths and areas where the oldest and largest red snapper exist. Commercial fishermen also fish in waters deeper than where red snapper occur, suggesting that the complete depth range of red snapper is covered by this sector. Anecdotal information from reports from fishermen off the coast of northeast Florida suggests that larger red snapper tend to move inshore during June to September into depths as shallow as 60 to 90 ft (18.3 to 27.4 m), which further supports a flat-topped selectivity because larger red snapper would be available to recreational fishermen who fish close to shore. Comparison of the age structure in the commercial and recreational sectors reveals almost identical selectivity patterns, suggesting dome-shaped selectivity might not be appropriate for the recreational sector because it appears that older/larger red snapper are as available to the recreational sector as for the commercial sector, for whom flat-topped selectivity seems likely.

Natural mortality of red snapper was estimated using several methods and is documented in the SEDAR 15 report. Natural mortality of red snapper was estimated to be 0.078 using the regression model reported by Hoenig (1983). Natural mortality was also

estimated using a variety of models based on von Bertalanffy growth or reproductive parameters. The SEDAR 15 data workshop recommended the Lorenzen age-specific model for estimates of natural mortality for Ages 1+.

The stock assessment used available life history information relying on mature biomass as a measure for reproductive potential. Fecundity data are seldom available for snapper-grouper stocks and, therefore, have been infrequently used in stock assessments.

SEDAR seldom uses VPA because VPA models require a complete catch-age input and apply an assumption that the catch is measured without error. Most stocks managed by the Council have only a short or intermittent time series of age observations adequate for constructing catch at age, and it is widely accepted that key catch sectors have considerable error in their catch estimates. The forward projection model as used in SEDAR 15 for red snapper is state of the art and has been extensively reviewed by independent peer review panels.

An examination of the red snapper age and length composition indicated that the population was already impacted by fishing by the time the biological sampling began in the 1970s. The most likely explanation for this is the large catches occurring prior to the 1970s, which is supported by the fact that the highest recorded commercial catches of red snapper occurred during the 1950s and 1960s. Both commercial and recreational red snapper fisheries were operating prior to the 1970s; however, information on the recreational catch levels for this time period is uncertain. The only estimate of recreational catches during this period comes from the FWS data. At the SEDAR 15 assessment workshop, the panel recognized that recreational fishing occurred prior to the 1970s and that including the FWS data improved model performance in terms of fit and residual patterns. As a result, the SEDAR assessment workshop decided to include the FWS data in the analysis. However, appreciating the uncertainty associated with the historical recreational catch of red snapper, sensitivity runs of the stock assessment model were also conducted and analyzed by the SEDAR 15 assessment workshop participants. These sensitivity runs included assumptions of: (1) very low recreational catches, and (2) half of the values from the FWS survey. The inclusion or exclusion of the FWS data did not impact the SEDAR assessment workshop's conclusions on the stock's status.

*Comment 14:* Two comments stated that a huge source of mortality is "regulatory discards" caused by the Council increasing the minimum size from 12-inches (30.5 cm) total length to 20 inches (50.8 cm) total length in 1992. The main cause of the post-release mortality is due to hooking injuries for red snapper below minimum sizes according to the 2004 Burns et al. study.

*Response:* NMFS recognizes that the discard mortality of red snapper is high. The Council is developing alternative long-term management measures in Amendment 17A that consider release mortality of red snapper and minimizing injuries due to hooking.

*Comment 15:* Three commenters stated that the SEDAR process should be more open and inclusive, including making working documents available on the website, encouraging better stakeholder participation through invitation or announcement, using more modeling choices from the "NMFS toolbox" for comparative purposes, and utilizing a truly independent review from a group like the National Research Council. Additionally, the SEFSC head scientist should attend every SEDAR workshop to help improve the work effort.

*Response:* SEDAR is a cooperative Fishery Management Council process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and US 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 datasets 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 and final 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 Council's Standard Operating Procedures. Workshop times and locations are noticed in advance through the **Federal Register**.

*Comment 16:* One comment was received stating that the MARMAP offshore sampling program is deficient in that it is conducted in a random manner. The red snapper sampling program failed to sample at artificial reef locations, at marine protected areas or any marine closed area. To only sample the natural bottom area produces a distorted, truncated assessment.

*Response:* The SEDAR 15 red snapper data workshop considered several indices of population abundance from fishery-dependent and fishery-independent sources for use in the forward projection stock assessment model. The SEDAR 15 stock assessment for red snapper did not use an abundance index from the MARMAP offshore fishery-independent sampling program. The fishery-independent MARMAP program has been sampling snapper-grouper species in offshore waters of the South Atlantic since 1972. However, red snapper has been sampled in low numbers by MARMAP sampling gear. Therefore, the data workshop recommended MARMAP gear types not be used to develop an index of abundance for red snapper off the southeastern U.S. Gear types and sampling methodology used by MARMAP are not specifically designed to sample red snapper populations. Instead, they are intended to monitor abundance of those snapper-grouper species available to the gear types. The MARMAP program employs a random-stratified sampling design that includes artificial reef and marine protected areas. If samples are not collected randomly from a population then the sampling design would be deficient, population estimates would be biased, and the program would not be scientifically sound. The SEFSC is developing a fishery-independent monitoring program specifically designed to sample snapper-grouper species including red snapper.

*Comment 17:* One commenter stated that weak and strong spawning stocks are a fact of life that management does not recognize. Identifying the spawning stocks, estimating their biomass and age structure, and documenting their fidelity in time and space are keys to fitting the management to the fishery in the future.

*Response:* Management for species such as red snapper is usually based on the results of stock assessments. Stock assessments take into account year class variability, and there are data suggesting a recent strong year class of red snapper. By implementing management measures to protect this strong year class, rebuilding of the red snapper stock would likely be enhanced.

#### Other Comments

*Comment 18:* Five comments were received that stated that NMFS should make an effort to explain the current regulations and future proposed regulations to the affected fishery participants.

*Response:* NMFS communicates with constituents regarding proposed new fishing regulations using the Council process, which includes public Council meetings and public comment periods. NMFS also communicates with constituents about the current regulations via regular mail, email, **Federal Register** notices, and websites.

*Comment 19:* Seventy comments were received stating that the commercial fisheries are responsible for the overfishing of red snapper, and management measures should be focused on the commercial fisheries rather than the recreational fisheries. Some fishermen reasoned that recreational fishermen do not contribute to overfishing of red snapper due to recreational bag limits which allow only two fish per person and therefore do less damage to the stock than the commercial fishermen.

*Response:* The stock assessment indicates red snapper is overfished and experiencing overfishing. While the recreational bag limits exist to restrict the number of red snapper taken by recreational fishermen, the number of red snapper taken by the recreational sector in 2008 was far more than the amount taken by the commercial fleet. Commercial catch is responsible for about 20 to 25 percent of the total red snapper landings. Therefore, overfishing would continue if management measures were only applied to the commercial sector. The measures proposed in the interim rule would apply to the commercial and recreational sectors to address overfishing of red snapper while long-term measures are being developed in Amendment 17A to the FMP.

*Comment 20:* Two hundred fifty eight comments were received stating that the rock shrimp fishery is responsible for the overfishing of red snapper, and management measures should be focused on the commercial fisheries rather than the recreational fisheries.

*Response:* No evidence exists that the rock shrimp trawl fleet captures juvenile red snapper. During 2001–2006, NMFS initiated observer coverage of the rock shrimp fishery in the U.S. southeastern Atlantic (east coast). The primary objective of this effort was to estimate catch rates for target and non-target species. Results of this study show rock shrimp comprised 16 percent of the total catch, followed by dusky flounder (13 percent), inshore lizardfish (11 percent), iridescent swimming crab (7 percent), longspine swimming crab (6 percent), spot (5 percent), blotched swimming crab and brown shrimp (3 percent each), and horned searobin and brown rock shrimp (2 percent each). Other finfish species were rock sea bass, bluespotted searobin, red goatfish, and lefteye flounder. Most of these species, with the exception of spot, are not targeted in commercial or recreational fisheries. A summary of bycatch issues for the rock shrimp fishery and a report on the above study can be found in Amendment 7 to the FMP for the Shrimp Fishery of the South Atlantic Region.

Confusion about rock 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 catch. In fact, the Southeast Area Monitoring and Assessment Program-South Atlantic Coastal Survey has not caught any red snapper during shallow water trawl studies since 2007, and no more than two red snapper in any year during 1995–2007.

*Comment 21:* Seventy comments were received stating that commercial longline fishermen were responsible for red snapper overfishing. The commenters indicated that commercial longline should be eliminated.

*Response:* Landings of red snapper taken with bottom longline is extremely small. Use of bottom longline for fishermen who possess Federal commercial snapper-grouper permits is restricted to depths greater than 50 fathoms or 300 ft (91.44 m) where red snapper infrequently occur. Furthermore, harvest by bottom longline fishermen who possess Federal commercial snapper-grouper permits is restricted to deep water snapper-grouper species with a small allowable bycatch limit for other snapper-grouper species.

Bottom longline gear is also used in the shark fishery. Analysis of observed bottom longline sets from 1994 to 2006 suggested the impact on the snapper-grouper fishery with this gear type

appeared to minimal. During the 13 year period, there were observed catches of tilefish and grouper species with shark bottom longline; however, there were no observed catches of red snapper with this gear.

Pelagic longline is used in deeper water where red snapper do not occur and usually does not impact the bottom. Therefore, it is unlikely that snapper-grouper bottom longline, shark bottom longline, or pelagic longline has much impact on the status of red snapper.

*Comment 22:* Eighty-three comments received were in opposition to a complete closure of red snapper but would consider alternate management measures.

*Response:* An option was considered to close red snapper for four months. However, NMFS determined that a prohibition on the harvest, possession and sale of red snapper for 180 days (with the possibility of extending the prohibition for an additional 186 days) would reduce red snapper overfishing better than a four-month closure. The action proposed by the interim rule is temporary and will be replaced by long-term management measures intended to end overfishing of red snapper, which are currently under development in Amendment 17A to the FMP.

*Comment 23:* Three comments were received stating that spear-fishermen should be allowed to continue fishing for red snapper.

*Response:* Under interim measures, NMFS must implement measures to reduce overfishing. In this case, a prohibition on the harvest, possession and sale of red snapper will result in the greatest benefit to the red snapper population. However, even this reduction will not be enough to end overfishing of red snapper. The intent of the interim rule is to reduce fishing pressure on red snapper to the greatest extent possible while long-term measures to end overfishing of the stock are being developed in Amendment 17A to the FMP.

*Comment 24:* Eight comments were received stating the desire to “Keep Ocean Fishing.”

*Response:* The interim rule would implement a prohibition on the harvest, possession and sale of red snapper for 180 days (with the possibility of extending the prohibition for an additional 186 days). During this time fishing for other species (i.e. snapper-grouper, mackerel, etc.), in accordance with current regulations, would still be allowed.

*Comment 25:* Six comments were received expressing support for the creation of new artificial reefs to create more habitat for red snapper.

*Response:* Some studies suggest artificial reefs increase populations of red snapper while others suggest artificial reefs attract fish. 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 the population of red snapper would not be achieved by only creating more artificial reefs.

*Comment 26:* Ten comments were received stating that the red snapper interim rule would not be needed if there was better enforcement of current regulations.

*Response:* Red snapper is undergoing overfishing and requires a substantial reduction in total removals to end overfishing. Even with 100-percent compliance with the current regulations, fishing pressure on red snapper could not be reduced to the level needed to end overfishing. New management measures are needed to address overfishing.

*Comment 27:* One comment was received that stated the measures proposed in the interim rule would not be enough to help the red snapper population and more comprehensive measures would be needed.

*Response:* The Council is currently developing Amendment 17A to the FMP, which will include long-term management measures sufficient to end overfishing of red snapper in the South Atlantic. Amendment 17A will analyze a suite of management measures, including some that are more restrictive than those being implemented by the interim rule.

*Comment 28:* Forty two comments were received stating that the proposed interim measures are political in nature and are being encouraged by big business (fish farms, foreign fisheries) or non-governmental organizations.

*Response:* The interim rule was requested by the Council to reduce overfishing of red snapper while long-term management measures to prevent overfishing and rebuild the overfished stock are being developed in Amendment 17A. This interim rule is necessary to comply with the mandates of the Magnuson-Stevens Act to prevent overfishing and rebuild overfished stocks. Some non-governmental organizations did support implementation of the rule as being necessary to prevent overfishing. No comments on the interim rule were received from businesses such as fish farms, and no comments were received from representatives of foreign fisheries.

*Comment 29:* Seventeen comments stated foreign fishing would target red

snapper in domestic waters if fishing for red snapper is prohibited.

*Response:* The Magnuson-Stevens Act empowers the Federal government to regulate fishing in the exclusive economic zone (3 to 200 nautical miles offshore). After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone unless foreign fishing meets certain criteria specified in the Magnuson-Stevens Act.

*Comment 30:* Two comments pointed to the unchecked lionfish population as a possible cause for the red snapper population decline.

*Response:* The SEFSC is conducting studies on the lionfish population and the effects that it may have on other species. At this time there is no conclusive evidence that the lionfish population has an impact on the red snapper population.

*Comment 31:* Five comments were received that oppose the recreational regulations and point to the unchecked populations of goliath grouper as they prey on red snapper and other snapper-grouper species.

*Response:* The goliath grouper populations are thought to be increasing and likely prey on snapper-grouper species. However, there is no evidence that goliath grouper populations are having a negative impact on populations of red snapper.

*Comment 32:* Ten comments were received requesting NMFS to abandon the interim rule and take more time to develop and analyze long-term management measures in Amendment 17A.

*Response:* The Council was notified by NMFS on July 8, 2008, that red snapper in the South Atlantic region are undergoing overfishing and are overfished according to the current definition of the minimum stock size threshold. The Council must take action to end overfishing within one year of receiving notification that a stock is overfished or undergoing overfishing. In March 2009, the Council requested that NMFS implement a prohibition on the harvest and possession of red snapper through interim measures. Amendment 17A is currently under development and will include long-term management measures to end overfishing of red snapper in the South Atlantic. However, Amendment 17A is not expected to be completed until 2010, and there is currently a strong year class of red snapper in the South Atlantic that appears to be experiencing heavy fishing pressure. Protection of the large year class would help to rebuild the stock more quickly.

*Comment 33:* One comment was received stating an amendment to the

Magnuson-Stevens Act should be made to "untie the hands of fishery managers."

*Response:* NMFS is mandated to manage the Federal fisheries through requirements specified by the Magnuson-Stevens Act. Any changes to the Magnuson-Stevens Act would need to be made by Congress.

### Classification

The Administrator, Southeast Region, NMFS, (RA) determined that the interim measures this final temporary rule will implement are necessary for the conservation and management of the South Atlantic red snapper fishery. The RA has also determined that this final temporary rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final temporary rule has been determined to be not significant for purposes of E.O. 12866.

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

The purpose of this interim rule is to reduce red snapper overfishing while long-term management measures are developed and implemented. The Magnuson-Stevens Act provides the statutory basis for this interim rule.

No public comments were received that raised specific issues on the IRFA. However, 454 comments were received on the general economic analysis conducted for the EA of the proposed interim rule. Some of these comments address issues that are germane to the Regulatory Flexibility Act (RFA), while others do not. However, while the RFA pertains to specific economic questions, there is a logical connection between all economic issues and the nuances of which comments are and which are not germane to the RFA are not always obvious to the public. In recognition of these considerations, all of the economic comments are addressed here.

Four hundred and forty-one of the comments expressed concern over the magnitude of the likely economic effects of the interim rule; 12 comments asserted that no economic impact study of the expected effects of the proposed action had been conducted; one comment stated the analysis was inadequate because it concentrated on

changes in net operating revenues and ignored the “collective impact to the support infrastructure”; two comments stated that the analysis was inadequate because it was based on “two charter boats out of the Gulf”; and one comment stated the estimate of lost income for headboats was inadequate because it was based on 2003–2007 data, a time period during which “included unusually bad weather and a recession.” Also, although not enumerated, several of the 454 comments on the general economic analysis stated that the interim rule would completely prevent them from fishing.

The RFA requires an assessment of the expected direct impacts of regulatory action on small entities. As explained in the IRFA and provided below in this classification summary, the small entities that are expected to be directly affected by this interim rule include only commercial and for-hire fishing vessels. While different types of shore-side businesses are also expected to be affected, these would be indirect effects of the interim rule and, as such, do not fall under the requirements of the RFA. However, the expected indirect effects of the interim rule on affected entities were discussed in the EA. The EA also contained estimates of the expected change in consumer surplus to recreational anglers. While these would be direct effects, anglers are not small entities as defined by the RFA and, as a result, these effects were not included in the IRFA, nor are they further addressed in this summary.

Details of the expected economic effects of this interim rule on small entities are provided below. In summary, commercial vessels that traditionally harvest red snapper are expected to have their net operating revenues (NOR), trip revenues minus non-labor trip costs, reduced by an average of \$450 per vessel as a result of the implementation of the interim rule for 6 months, or a total of \$1,300 if the interim rule is in effect for a full year. Comparable figures for headboats are \$58,700 and \$132,000, respectively, and \$800 and \$1,400 for charter vessels. On average, the expected reduction in NOR is expected to represent a small portion of total NOR for commercial and charter vessels because red snapper comprised, on average from 2003–2007, only approximately 3.7 percent of total ex-vessel revenues by commercial vessels with recorded landings of red snapper harvest, and available data indicate that red snapper is targeted by less than one half of one percent of charter anglers. Some individual commercial or charter vessels are expected, however, to be more

dependent on red snapper, and experience greater than average losses.

Target information for fishermen on headboats is not available and, as discussed below, the estimates of expected reductions in NOR for this sector equate to what would occur if all headboat angler trips (defined as angler days) for vessels in Georgia and northeast Florida are cancelled. In reality, total cancellation of all trips is not expected because most fishermen do not target specific species, other species would continue to be available, and research has indicated a general willingness to fish for other species when anglers are faced with zero bag limits for individual species. Nevertheless, actual trip cancellation cannot be reasonably projected, and the estimates of potential losses reflect 100 percent of the average NOR for the respective vessels during the relevant period of closure. As such, they represent a worst-case scenario. While not explicitly stated, business failure of affected vessels would be expected if substantial trip cancellation occurs.

An appropriate model to quantify indirect shore-side effects was not available at the time the proposed interim rule was prepared, nor is one currently available. As a result, these effects were only discussed in a qualitative manner, with the conclusion that shore-side effects would be dependent on actual rates of trip cancellation, but may be exacerbated by other economic effects that stem from other recent fishery regulations and the larger economic recession that has been in effect. The absence of quantitative estimates, however, did not preclude or affect the ability to rank the alternatives. In summary, NMFS does not expect the adverse economic effects on the commercial fishery and associated businesses to be cumulatively substantial due to the relatively minor status of the fishery. With regards to the recreational sector, NMFS agrees that, while the net adverse effects of the interim rule will depend on the amount of actual trip cancellations by for-hire (charter and headboat) and private anglers, which target and harvest data does not suggest will be substantial, the possibility of large, localized reductions in effort, expenditures, and associated economic activity exists. However, given the condition of the resource, other alternatives that would achieve the necessary biological goals while imposing lower economic costs were not available.

As demonstrated by the information presented above, an economic analysis of the expected effects of the proposed interim rule was conducted, and NMFS

disagrees with statements that no economic impact analysis was conducted. Although the Magnuson-Stevens Act uses the term “economic impacts,” NMFS guidelines interpret this language as “economic effects” and does not require a specific type of analysis. The analysis conducted for the proposed interim rule examined the expected change in net economic benefits, consistent with a benefit-cost analysis framework (which is the recommended technique in formal economic analysis of Federal regulations), as measured by NOR for fishing businesses and consumer surplus for anglers, rather than the effects of changes in expenditure flows through shore-side businesses and communities. Examination of the effects of changes in these expenditure flows is commonly referred to as “economic impact analysis.” However, while measures of these effects are informative, they represent the potential distributional effects of changes in expenditures (changes in potential jobs supported, taxes generated, total sales, etc.) and not changes in net economic benefits. These models also do not capture business profitability or allow the determination of actual business success or failure. Finally, a model to estimate the effects of changes in these expenditure flows was not available. An examination of the effects of the interim rule, and all fisheries rules, on changes in the NOR of shore-side businesses is informative to the management process, similar to the analysis of effects on fishing vessels. However, cost and revenue data for even the most directly affected businesses, such as fish dealers and bait and tackle shops, is unavailable.

The discussion in the previous two paragraphs also addresses the comment that the analysis was inadequate because it concentrated on NOR. The assessment requirements are that relevant economic effects be evaluated either quantitatively or qualitatively, to the extent possible using available information, sufficient to inform the process and support the identification of the alternative that achieves the regulatory objective at the lowest economic cost. NMFS believes that those requirements have been met by the current analysis.

With regards to the comment that the base years used in the analysis of the headboat sector was inappropriate, while the average annual amount of headboat effort from 2003–2007 in the areas examined, approximately 51,000 angler days, is less than the average for 1998–2002, approximately 55,000 angler days, headboat effort, while variable

from year to year, has exhibited a declining trend (the 1993–1997 average was approximately 60,000 angler days, while that of 1988–1992 was approximately 97,000 angler days). Further, the general and continuing economic downturn does not support expectations that increased headboat effort would be probable. As a result, compelling evidence does not exist to justify the use of a higher estimate of base economic activity (angler effort), and even use of the 2003–2007 average annual headboat effort estimates may result in the over-estimation of likely effects.

Claims that the analysis was based on “two charter boats out of the Gulf” are unfounded. As discussed in the EA, the methodology employed in the assessment followed the methodology employed in the evaluation of the expected economic effects of the closure of the recreational red snapper fishery in the Gulf of Mexico in 2008. That assessment built upon previous work conducted in support of Amendment 27 to the Reef Fish Fishery Management Plan of the Gulf of Mexico and which utilized information from a number of sources, the most relevant of which were two research studies that collectively covered the for-hire industry from Texas through North Carolina; cost and returns data collected as an add-on to the Marine Recreational Fisheries Statistics Survey For-hire Survey, which was collected from for-hire vessels in Louisiana through Florida (both coasts); and a survey and model that examined changes in angler target behavior and benefits under alternative management scenarios. Thus, the information utilized was drawn from several sources, was certified by the SEFSC as the best scientific information available and was appropriate for application to the interim rule.

Finally, comments that the interim rule would prevent recreational anglers from fishing exaggerate the scope of the rule. Under this interim rule, or any rule that establishes a zero bag limit, only the ability to fish for and retain red snapper is affected. No restriction on continued fishing for other species would be imposed. Fishing for other species, and the enjoyment it brings, could continue. Children could continue to experience the joys of learning how to fish, be taught the environmental ethics of catch and release, and other species could be retained for consumption. All that would be lost under the interim rule would be the benefits associated with the targeting, retention, and consumption of red snapper. While

some portion of an angler's enjoyment is understandably associated with the retention and consumption of certain species, much of the enjoyment, and possibly most for many anglers, is expected to be associated with the act of simply fishing and catching fish, with sufficient satisfaction remaining when fish must be released to justify continued fishing. Thus, all customary trips could continue (in number, with appropriate change in target behavior) under the closure. Only those trips for which red snapper target and consumptive needs dominate the benefit stream would be expected to be cancelled. These trips are expected to be few compared to the total number of trips in the affected area, resulting in fewer reductions in expenditures, revenues, and economic activity in associated shore-side businesses. These considerations apply for recreational trips of all types, regardless of whether they are private, charter, or headboat trips. As a result, claims that the interim rule will prevent recreational anglers from fishing, resulting in substantial reductions in economic activity and widespread business failure appear exaggerated.

Because of the responses provided here and to other issues raised by public comment on other aspects of the proposed interim rule, as detailed in the Comments and Responses section of the preamble, no changes were made in the final interim rule as a result of such comments.

This interim rule is expected to directly impact commercial fishing and for-hire operators. The Small Business Administration has established size criteria for all major industry sectors in the U.S. 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 a for-hire business, the other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2003–2007, an average of 220 vessels per year were permitted to operate in the commercial snapper-grouper fishery and recorded landings of red snapper, ranging from a high of 236 vessels in 2003 to a low of 206 vessels in 2006. Total dockside revenues from all species on all recorded trips by these vessels averaged \$9.78 million (2007 dollars) per year over this period, resulting in a per-vessel average of approximately \$44,500. The highest

average revenue per vessel during this period occurred in 2007 at approximately \$54,600. Based on these average revenue figures, it is determined, for the purpose of this assessment, that all commercial vessels that will be affected by this interim rule are small entities.

The harvest of red snapper in the EEZ by for-hire vessels requires a snapper-grouper charter vessel/headboat permit. From 2003–2007, an average of 1,635 vessels per year were permitted to operate in the snapper-grouper for-hire fishery, of which 82 vessels are estimated to have operated as headboats. The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The annual average gross revenue for charter vessels is estimated to range from approximately \$80,000–\$109,000 (2007 dollars) for Florida vessels, \$94,000–\$115,000 for North Carolina vessels, \$88,000–\$107,000 for Georgia vessels, and \$41,000–\$50,000 for South Carolina vessels. For headboats, the appropriate estimates are \$220,000–\$468,000 for Florida vessels, and \$193,000–\$410,000 for vessels in the other states. Based on these average revenue figures, it is determined, for the purpose of this assessment, that all for-hire businesses that will be affected by this interim rule are small entities. The number of for-hire vessels that are expected to be affected by this interim rule is discussed below.

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

This interim rule does not establish any new reporting, record-keeping, or other compliance requirements.

This interim rule is expected to result in a short-term reduction in NOR to the commercial snapper grouper sector by approximately \$142,000 (2007 dollars). This reduction in NOR would be expected to increase to a cumulative total of \$289,000 if the prohibition is extended an additional 186 days, resulting in a prohibition for one full year. An average of 220 commercial vessels per year have recorded landings of red snapper. This interim rule is expected to result in an average reduction in NOR of approximately \$645 per vessel under a 180-day prohibition, and approximately \$1,300 per vessel if the prohibition is extended an additional 186 days. Although NOR are not directly comparable to dock-side revenues, the average annual dock-side

revenues from all species harvested by vessels with recorded red snapper harvests is estimated to be approximately \$44,500.

For the headboat sector, this interim rule is expected to result in a short-term reduction in NOR by a maximum of approximately \$1.49 million (2008 dollars). This reduction in NOR would be expected to increase to a cumulative maximum total of \$3.96 million if the prohibition is extended an additional 186 days. Although 82 vessels are estimated to operate in the snapper-grouper fishery, red snapper target activity is believed to be concentrated in Georgia and northeast Florida (Mayport, FL, south through Cape Canaveral, FL) where 16 headboats operate. Approximately 70 percent of all red snapper harvested (pounds) by the headboat sector from 2003–2007 were harvested by anglers fishing from this area. The expected maximum reduction in NOR is based on the assumption that all angler trips on these 16 vessels during the respective period target red snapper and equals the change in NOR if all these trips are lost. This is considered a worst-case scenario. An unknown number of these trips will likely not target red snapper (many anglers fish to catch whatever species is available) and red snapper has historically comprised only 3 percent of the total number of fish harvested and 11 percent of the total number of pounds of fish harvested by vessels in this area. As a result, it is unlikely that all or necessarily a large portion of these trips will be canceled. Available data, however, do not support the identification of more precise estimates of the number of red snapper target trips that will be expected to be canceled, and the projected estimates of the expected change in NOR should be considered extreme upper bounds.

Because of the uncertainty associated with the number of affected vessels and the number of trips that may be canceled, the effective average reduction in NOR per headboat vessel is difficult to project. Under the worst-case scenario, the cancellation of all angler trips on Georgia and northeast Florida vessels (16) will result in a 100-percent loss of NOR for these vessels during this period of time (180 days), or approximately 44 percent of annual total NOR (\$1.76 million/\$3.96 million). However, if the upper bound of effects (\$1.76 million) is assumed to encompass trip cancellation on vessels outside this area, it is unknown how many additional vessels should be included in the analysis. The South Carolina headboat fleet, which contains 14 vessels, accounts for the next highest

red snapper harvests after the Georgia and northeast Florida fleets. If the maximum expected reduction in NOR is spread over all 30 vessels in these areas, the expected reduction in NOR will be less than 100 percent of the total annual NOR, and the average expected reduction in NOR per vessel will be approximately \$49,700. This will increase to a total of approximately \$132,000 under an extension of the prohibition for an additional 186 days. Although NOR are not directly comparable to gross revenues from for-hire fees, the average annual gross revenues from for-hire fees is estimated to be approximately \$220,000–\$468,000 for Florida headboats and \$193,000–\$410,000 for headboats in the other states.

For the charter sector, this interim rule is expected to result in a short-term reduction in NOR of approximately \$156,000 (2008 dollars) and increase to a cumulative total of approximately \$427,000 if the prohibition is extended an additional 186 days. It is noted that, although target data are available for the charter sector, trip cancellation data are not available, and the analysis assumes, similar to the analysis of the headboat sector, that all charter vessel red snapper target effort will be cancelled. As in the headboat sector, the cancellation of all trips that would have targeted red snapper in the charter sector is unlikely to occur and, as a result, the estimates of the expected change in NOR in the charter sector likely overestimate the actual reduction that will occur.

Vessel-level data are unavailable for the charter sector. As a result, it is not known how many vessels will be affected by this interim rule. An estimated 1,553 charter vessels are permitted to operate in the snapper-grouper fishery, which allows these vessels to harvest red snapper (1,635 total vessels with snapper-grouper charter vessel/headboat permits, of which 82 are estimated to operate as headboats). If the proportion of charter vessels that are expected to be affected by this interim rule is assumed to equal the proportion of headboats constituting the core red snapper vessels (16 vessels out of 82 headboats, or 19.5 percent), then approximately 303 charter vessels (19.5 percent of 1,553 vessels) would be expected to be affected. This would result in an average reduction in NOR of approximately \$515 per vessel, which would increase to a total of approximately \$1,400 under an extension of the prohibition for an additional 186 days. The annual average gross revenue per charter vessel from charter fees is estimated to range from

approximately \$80,000–\$109,000 (2007 dollars) for Florida vessels, \$94,000–\$115,000 for North Carolina vessels, \$88,000–\$107,000 for Georgia vessels, and \$41,000–\$50,000 for South Carolina vessels.

Although all the effects described above are short-term in nature, due to the limited duration of this interim rule, continued long-term unquantified adverse economic effects could occur at the individual vessel and fishery level if the short-term effects result in business failure.

Three alternatives, including the status quo, were considered for this interim rule. This interim rule will prohibit the harvest (retention) and sale of red snapper in the South Atlantic commercial and recreational fisheries for 180 days, with extension potential for another 186 days. The first alternative to this interim rule, the status quo, would not prohibit the harvest and sale of red snapper, would not reduce overfishing of red snapper while long-term management measures are developed and implemented, and would not achieve NMFS's objective.

The second alternative to this interim rule would only establish a 4-month seasonal closure. A 4-month seasonal closure could not be extended and would not be expected to allow sufficient time for the development and implementation of long-term management measures to protect red snapper. As a result, this alternative would not achieve NMFS's objective.

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

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

Dated: November 30, 2009

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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 § 622.35, paragraph (l) is added to read as follows:

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

\* \* \* \* \*

(l) *Closure of the commercial and recreational fisheries for red snapper.* The commercial and recreational

fisheries for red snapper in the South Atlantic EEZ are closed. During the closure, all fishing for red snapper is prohibited, and possession or sale of red snapper, harvested during the closure, in or from the South Atlantic EEZ is

prohibited. For a person aboard a vessel for which a valid Federal commercial vessel permit or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply regardless of

whether the red snapper were harvested or possessed in state or Federal waters.

[FR Doc. E9-28989 Filed 12-3-09; 8:45 am]

**BILLING CODE 3510-22-S**