

December 31. When recreational fishing for “Other Flatfish,” petrale sole, and starry flounder is open, it is permitted both outside and within the recreational RCAs described in paragraph (c)(3)(i) of this section.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 231127-0277]

RIN 0648-BM03

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 51

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 51 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council. For snowy grouper, this final rule revises the sector annual catch limits (ACLs), commercial seasonal quotas, recreational fishing season, and recreational accountability measures. In addition, Amendment 51 revises the overfishing limit for snowy grouper, the acceptable biological catch, annual optimum yield (OY), and sector allocations of the total ACL. The purpose of this final rule and Amendment 51 is to end overfishing of snowy grouper, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse economic impacts on fishing communities.

**DATES:** This final rule is effective January 2, 2024.

**ADDRESSES:** An electronic copy of Amendment 51, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/node/151366>.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVactor, telephone: 727-824-5305, or email: [rick.devactor@noaa.gov](mailto:rick.devactor@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper fishery includes snowy grouper and is managed

under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

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

On May 22, 2023, NMFS published a notice of availability for Amendment 51 and requested public comment (88 FR 32717). On May 30, 2023, NMFS published a proposed rule for Amendment 51 and requested public comment (88 FR 34460). NMFS approved Amendment 51 on August 17, 2023. The proposed rule and Amendment 51 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 51 and implemented by this final rule is described below.

All weights described in this final rule are in gutted weight.

In 2004, a stock assessment for snowy grouper was completed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 4), and NMFS determined that the stock was subject to overfishing and was overfished. As a result of that stock status, the final rule for Amendment 13C to the FMP implemented management measures to end overfishing (71 FR 55096, September 21, 2006), and Amendment 15A to the FMP established a rebuilding plan for the snowy grouper stock (73 FR 14942, March 20, 2008). The rebuilding plan year started in 2006 with a target time of 34 years to rebuild the snowy grouper stock.

The snowy grouper stock was assessed again in 2013 through SEDAR 36 and was determined to not be undergoing overfishing. Although the stock was overfished, it was rebuilding.

In response to the assessment and a subsequent acceptable biological catch (ABC) recommendation by the Council's Scientific and Statistical Committee (SSC), management actions were implemented through the final rule for Regulatory Amendment 20 to the FMP (80 FR 43033, July 21, 2015). Regulatory Amendment 20 and its implementing final rule increased the ACL by setting it equal to the ABC and OY, increased the commercial trip limit to 200 lb (91 kg), and modified the recreational fishing season from the calendar year to May through August.

The most recent SEDAR stock assessment for South Atlantic snowy grouper (SEDAR 36 Update) was completed in 2021 and included data through 2018. The assessment used revised estimates for recreational catch from the Marine Recreational Information Program (MRIP) based on the Fishing Effort Survey (FES). In 2018, the MRIP fully transitioned its estimation of recreational effort to the mail-based FES. Previous estimates of recreational catch for snowy grouper were made using MRIP's Coastal Household Telephone Survey (CHTS) phone call-based methodology. As explained in Amendment 51, total recreational fishing effort estimates generated from the MRIP-FES are different than those from the MRIP-CHTS and other earlier survey methods. This difference in estimates is because the MRIP-FES is designed to measure fishing activity more accurately, not because there was a sudden change in fishing effort. The MRIP-FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and more robust compared to the MRIP-CHTS method. The SSC reviewed the SEDAR 36 Update and found that the assessment was conducted using the best scientific information available, and was adequate for determining stock status and supporting fishing level recommendations. The findings of the assessment indicated that the South Atlantic snowy grouper stock remains overfished and is undergoing overfishing.

Following a notification from NMFS to a fishery management council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the fishery management council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. In a letter dated June 10, 2021, NMFS notified the Council that the snowy grouper stock is overfished and undergoing overfishing but continues to rebuild, and the Council subsequently

developed Amendment 51 in response to the results of SEDAR 36 Update.

In addition to the proposed revisions to the sector ACLs and seasonal commercial quotas, the Council determined that further modifications to snowy grouper management measures are needed to help constrain recreational harvest to the revised fishing levels in Amendment 51. This final rule reduces the length of the recreational fishing season and also adjusts the recreational accountability measures (AMs) to ensure they are effective at keeping recreational landings from exceeding the revised recreational ACL and correct for any ACL overages if they occur. The Council decided not to revise the current commercial trip limit or AMs, finding that those measures sufficiently ensured that the commercial harvest of snowy grouper is constrained to its ACL.

The Council determined that the actions in Amendment 51 would end overfishing of South Atlantic snowy grouper, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

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

This final rule revises the total ACL and sector ACLs, seasonal commercial quotas, recreational fishing season, and the recreational AMs for snowy grouper in the South Atlantic exclusive economic zone (EEZ).

#### *Total ACLs*

As implemented through the final rule for Regulatory Amendment 20, the current total ACL and annual OY for snowy grouper are equal to the current ABC of 185,464 lb (84,125 kg). Amendment 51 revised the ABC, and set the ABC, ACL, and annual OY equal to each other.

This final rule revises the total ACL and annual OY equal to the recommended ABC of 119,654 lb (54,274 kg) for 2023; 121,272 lb (55,008 kg) for 2024; 122,889 lb (55,741 kg) for 2025; and 122,889 lb (55,741 kg), for 2026 and subsequent fishing years.

Amendment 51 sets the total ACL for snowy grouper for 2023, 2024, 2025, and in 2026, with the 2026 ACL in place for the subsequent fishing years. However, the ACL value for 2025 is identical to the ACL value for 2026. While NMFS is listing the ACL value for 2025 and 2026 in the **SUPPLEMENTARY INFORMATION** section of this final rule, in the regulations section of this final rule NMFS states the total and sector ACLs for snowy grouper in 2025 and

subsequent fishing years without repeating the same ACL value for 2026.

#### *Sector Allocations and ACLs*

Amendment 51 revises the commercial and recreational allocations of the total ACL for snowy grouper. The current sector ACLs for snowy grouper are based on the commercial and recreational allocations of the total ACL at 83 percent and 17 percent, respectively, that were revised in Regulatory Amendment 20. These allocations were determined using average commercial and recreational landings from 1986 through 2005, which included estimates of recreational catch from the MRIP-CHTS method.

In Amendment 51, the Council recommended allocations using the average commercial and recreational landings from 1986 through 2005, but included the estimates of recreational catch during those years using the MRIP-FES method from the SEDAR 36 Update. The Council recommended new commercial and recreational allocations of 87.55 percent and 12.45 percent, respectively, which results in a shift of allocation of 4.55 percent from the recreational sector to the commercial sector. The Council reasoned that using average landings from 1986 through 2005 was more appropriate because it would exclude the more recent years that had depth and area closures that may have affected the allocation calculations and would achieve the most appropriate balance between the needs of both sectors. The Council acknowledged that because the snowy grouper portion of the snapper-grouper fishery operates primarily in deeper water and is therefore more difficult to access for recreational fishermen, when compared to snapper-grouper species in shallower water and closer to shore, the allocations between sectors have historically and consistently been much greater for the commercial sector. NMFS considers this allocation to be fair and equitable to fishery participants in both the commercial and recreational sectors, and would be carried out in such a manner that no particular individual, corporation, or other entity would acquire an excessive share. NMFS has determined that this allocation is also reasonably calculated to promote conservation and is a wise use of the resource, since it will remain within the boundaries of a total ACL that is based upon an ABC recommendation from the Council's SSC and incorporates the best scientific information available. NMFS acknowledges that the commercial sector would benefit from additional

allocation, but considers the economic shifts to be relatively minor.

The commercial ACLs will be 104,757 lb (47,517 kg) for 2023; 106,174 lb (48,160 kg) for 2024; 107,589 lb (48,802 kg) for 2025; and 107,589 lb (48,802 kg) for 2026 and subsequent years.

The recreational ACLs will be 1,668 fish for 2023; 1,691 fish for 2024; 1,713 fish for 2025; and 1,713 fish for 2026 and subsequent years.

The commercial quota for snowy grouper is equivalent to the commercial ACL. Regulatory Amendment 27 to the FMP established two commercial fishing seasons for snowy grouper and divided the commercial quota between the seasons (85 FR 4588, January 27, 2020). Season 1 is from January through June with 70 percent of the commercial quota, and Season 2 is from July through December with 30 percent of the quota. Any commercial quota remaining from Season 1 is added to the commercial quota in Season 2, but any commercial quota remaining from Season 2 is not carried forward into the next fishing year. Amendment 51 and this final rule do not alter the current commercial fishing seasons or seasonal allocations of the commercial ACL.

Under Amendment 51, the commercial quotas in 2023 for Season 1 will be 73,330 lb (33,262 kg) and for Season 2 will be 31,427 lb (14,255 kg); in 2024, Season 1 will be 74,322 lb (33,712 kg) and Season 2 will be 31,852 lb (14,448 kg); in 2025, Season 1 will be 75,312 lb (34,161 kg) and Season 2 will be 32,277 lb (14,641 kg); and for 2026 and subsequent years, Season 1 will be 75,312 lb (34,161 kg) and Season 2 will be 32,277 lb (14,641 kg).

#### *Recreational Fishing Season*

Recreational harvest of snowy grouper is currently allowed from May 1 through August 31 each year. This final rule revises the recreational fishing season for snowy grouper where harvest will be allowed only from May 1 through June 30. The recreational sector will be closed annually from January 1 through April 30, and from July 1 through December 31. During the seasonal closures, the recreational bag and possession limits for snowy grouper will be zero. Shortening the time recreational fishing is allowed will help to reduce the risk that recreational harvest will exceed its reduced sector ACL, while still allowing for retention of snowy grouper when recreational fishermen target co-occurring species, such as blueline tilefish, in some areas.

#### *Recreational AMs*

The current recreational AMs were implemented through the final rule for

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

This final rule revises the recreational AMs for snowy grouper. Given the revised 2-month fishing season, the current in-season closure and stock status-based post-season AM is removed. The revised recreational AM is a post-season AM that would be triggered in the following fishing year if the recreational ACL was exceeded in the previous year. If recreational landings exceed the recreational ACL, NMFS would reduce the length of the recreational fishing season in the following year by the amount necessary to prevent the recreational ACL from being exceeded. However, the length of the recreational season would not be reduced if NMFS determines, using the best scientific information available, that a reduction is not necessary.

This revised recreational AM will avoid an in-season closure of the recreational sector and extend maximum fishing opportunities to the sector during the 2-month recreational season. This final rule removes the current potential duplicate AM application of a reduction in the recreational season length and a payback of the recreational ACL overage if the total ACL was exceeded. In addition, under the revised recreational AM, the AM trigger is not tied to the total ACL, but only to the recreational ACL. This modification ensures that an ACL overage in the recreational sector does not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the AM being implemented would apply to the recreational fishing season in the year following a recreational ACL overage.

#### **Management Measures in Amendment 51 That Would Not Be Codified by This Final Rule**

In addition to the measures within this final rule, Amendment 51 revises the overfishing limit (OFL) for snowy

grouper and sets the ACL equal to the ABC. The amendment also revises the annual OY and the sector allocations.

#### *OFL, ABC, and Annual OY*

The current ABC for snowy grouper was approved in Regulatory Amendment 20, based upon the previous stock assessment (SEDAR 36) and recommendations from the Council's SSC.

Based on the SEDAR 36 Update, the Council's SSC recommended new OFL and ABC levels, with the ABC reduced from the OFL; the Council accepted the recommendations. The assessment and associated OFL and ABC levels for snowy grouper incorporated the revised estimates for recreational catch and effort from the MRIP-FES. The SSC and NMFS determined that the new OFL and ABC recommendations within Amendment 51 also represent the best scientific information available. The Council chose to express OY for snowy grouper on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

#### **Comments and Reponses**

NMFS received comments from seven entities during the public comment periods for the notice of availability of Amendment 51 and the proposed rule. Six comment letters were in opposition to one or more actions within Amendment 51 or the proposed rule. One comment was outside the scope of this action and suggested that all marine life will soon be extinct if species continue to receive fishing pressure. NMFS did not respond to this comment. Comments specific to the actions in Amendment 51 and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective response. NMFS has not made any changes from the proposed rule to this final rule based on public comment.

*Comment 1:* The stock assessments are traditionally incorrect by underestimating the stock. The proposed reduction in the allowable snowy grouper catch limit and season are grossly restrictive. Based on observation in the Florida Keys area alone the population is thriving. The abundance of snowy grouper make catching other deep water species very difficult. The bottom line is that the assessment population data are flawed.

*Response:* NMFS disagrees that the stock assessment data for snowy grouper are flawed. The most recent SEDAR stock assessment for South Atlantic

snowy grouper (SEDAR 36 Update) was completed in 2021 and included data through 2018. The findings of the assessment indicated that the South Atlantic snowy grouper stock remains overfished and is undergoing overfishing. Although NMFS recognizes that the abundance of snowy grouper varies across locations in the South Atlantic, snowy grouper is managed as a single stock in the South Atlantic, and the stock assessment, which used region-wide data, concluded that the overall stock is undergoing overfishing and is overfished. The Council's SSC and NMFS reviewed the stock assessment and determined that the SEDAR 36 Update is based on the best scientific information available. Following a notification from NMFS to a fishery management council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the fishery management council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. The Council and NMFS have determined that the actions in Amendment 51 would end overfishing of South Atlantic snowy grouper, continue to rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

*Comment 2:* NMFS' conversion of snowy grouper from pounds to numbers of fish to set the recreational sector ACL also assumes a low average weight of 8.93 lb (4.1 kg) per fish in gutted weight that is not supported by the record. Other evidence in the records shows an average weight closer to or above 10 lb (4.5 kg). Pictures posted by anglers on social media sites routinely show snowy grouper of 15 to 40 lb (6.8 to 18.1 kg). At such low levels of harvest, a 10 percent variation makes a big difference. If the average gutted weight was actually 10 lb (4.5 kg), then the recreational sector ACL should be 1,490 fish, not 1,668 fish.

*Response:* NMFS disagrees that a different average weight should be used for snowy grouper. To support using a higher weight, the commenter supplied pictures of recreationally caught snowy grouper posted on social media, and referenced higher average weights stated in Regulatory Amendment 20 to the FMP and a two-page document that sets forth different options to estimate the average weight for snowy grouper. The average weight used for snowy grouper in Amendment 51 is based on information in the SEDAR 36 Update, which was subject to a rigorous and independent scientific review. The total ACL is in pounds of fish, and

recreational landings are reported in numbers of fish. To determine the recreational ACL, the pounds were converted to numbers of fish using an average weight of a snowy grouper. As explained in Amendment 51, an average weight of snowy grouper was determined from data used in the SEDAR 36 Update to be 8.93 lb, which was the average landed weight of snowy grouper from 2016 through 2018 as reported by recreational fishermen. NMFS acknowledges that different average weights for recreationally caught snowy grouper can vary using different methods or from other sources. However, NMFS determined that the SEDAR 36 Update, which used more recent data than what was used in support of Regulatory Amendment 20, and the 8.93-lb (4.1-kg) average weight for a snowy grouper in the recreational sector to be based on the best scientific information available.

*Comment 3:* The ACL for the recreational sector applies only to landings of snowy grouper and there is no limit on dead discards, dead discards are not tracked during the fishing season against a fixed limit, and there are no consequences if the recreational sector discards more fish than NMFS projects.

*Response:* Dead discards of snowy grouper were accounted for in establishing the recreational ACL for snowy grouper. Dead discards are fish that fishermen catch and then discard for various reasons, and that are dead or subsequently die soon after they are released. According to the SEDAR 36 Update, 95.4 percent of total removals of snowy grouper are landings and 4.6 percent are dead discards. The ABCs in Amendment 51 were derived from the SEDAR 36 Update, which accounted for dead discards and other sources of fish mortality. Since an ACL is directly calculated from an ABC, the recreational ACL for snowy grouper in Amendment 51 that was derived from the ABC did account for dead discards.

NMFS acknowledges that neither the recreational ACL nor the commercial ACL establish a limit on the amount of dead discards during a fishing season, and discards are not specifically tracked against a fixed limit during a fishing season for either the recreational sector or the commercial sector (see also the response to *Comment 10* regarding bycatch of snowy grouper). Section 303(a)(15) of the Magnuson-Stevens Act requires the FMP to include ACLs and AMs, and the National Standard 1 Guidelines define catch as including both landed fish and dead discards (50 CFR 600.310(f)(1)(i)). However, the National Standard 1 Guidelines also state that the ABC, on which the ACLs

are based, may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC (50 CFR 600.310(f)(3)(i)). As explained in Amendment 51, the ABC was calculated to account for dead discards. Thus, the recreational ACL for snowy grouper meets the requirements of the Magnuson-Stevens Act.

*Comment 4:* There is no way of tracking to determine if the recreational ACL has been met and no possible way for NMFS to ensure that an ACL of 1,668 fish will be reached. There are no mandatory reporting requirements for private recreational anglers, even though NMFS estimates that private anglers account for roughly 30 to 75 percent of all snowy grouper landings in recent years. Management uncertainty is extremely high in the recreational sector.

*Response:* NMFS disagrees that Amendment 51 supports the characterization that private anglers account for roughly 30 to 75 percent of all snowy grouper landings. The recreational sector is comprised of private fishermen and for-hire fishermen (charter vessels and headboats). Amendment 51 at Table 4.1.2.1 (page 61) shows the commercial, recreational, and total landings for South Atlantic snowy grouper for each fishing year from 2015 to 2019, with the 5-year average landings of 142,812 lb (64,778 kg) for the commercial sector and 39,807 lb (18,056 kg) for the recreational sector. In addition, prior to Amendment 51, the recreational sector was allocated 17 percent of the total ACL, and Table 3.2.2 in Amendment 51 (page 30) indicates that in 4 of the 5 years from 2015 to 2019, the recreational sector did not harvest all of its ACL.

NMFS disagrees that it cannot determine whether the snowy grouper recreational ACL was reached. Recreational landings information for the private and charter fishermen are collected through the MRIP-FES program. MRIP-FES consists of an intercept survey conducted at public marine fishing access points and a mail-based survey which estimates recreational shore and private boat fishing effort. Federally permitted vessels selected to participate in the Southeast Region Headboat Survey are required to submit a trip report for each trip. NMFS uses the best data available from the MRIP-FES and headboat survey to track recreational landings and compare them to the recreational ACL.

Using the best scientific information available, NMFS will determine whether the recreational ACL was met or exceeded, and whether the length of the next season needs to be reduced to prevent recreational landings from exceeding the recreational ACL, in accordance with the new recreational AM. NMFS, the SSC, and the Council have determined that Amendment 51 is consistent with the Magnuson-Stevens Act and its National Standards, and that the landings estimates from the MRIP-FES and headboat survey represent the best scientific information available. This determination is supported by an April 14, 2023, memorandum from the NMFS Southeast Fisheries Science Center as well as the recommendations from the Council's SSC.

*Comment 5:* Amendment 51 removes existing recreational AMs, replaces it with a defective AM, and fails to establish AMs to ensure the recreational ACL is not exceeded. Further, the proposed recreational AM does nothing to correct and mitigate overages if they occur, and does not consider a payback of the overage.

*Response:* NMFS acknowledges that the recreational AMs are revised but disagrees that the new AM is defective as set forth in the comment. The current recreational AMs are being modified in this rule in response to the reduction in both the recreational ACL and season length for snowy grouper in Amendment 51. As explained in the response to *Comment 4*, NMFS uses data from the MRIP-FES and headboat survey to track recreational landings and compare them to the recreational ACL. Retaining an in-season closure based on current recreational landings data is not practical for a recreational ACL of 1,668 fish (in 2023) and season length of 2 months, given the time delay between when recreational landings for species occur and when the information becomes available to management for in-season actions such as closures.

The final rule modifies the post-season recreational AM so that the reduction in fishing season length following an overage of the recreational ACL is not dependent on an exceedance of the total ACL and an overfished stock status. The new AM for the recreational sector will now be triggered when only the recreational ACL is exceeded, thereby ensuring that a recreational ACL overage does not also affect the ACL for the commercial sector. If recreational landings exceed the recreational ACL, and after an analysis and determination by NMFS that a reduction of the recreational ACL in the following year is necessary, NMFS will reduce the length of the recreational fishing season

for the year following an ACL coverage by the amount necessary to prevent the recreational ACL from being exceeded again.

In addition, this final rule removes the potential duplicate AM application of a reduction in the recreational season length and a reduction of the recreational ACL matching the amount of the ACL coverage if the total ACL was exceeded. The Council considered this a potential “double penalty” for the recreational sector and did not consider both actions necessary following an overage of the total ACL.

Similar actions are being taken to modify recreational AMs in Amendments 50, 52, and 53 to the FMP, especially for species where the recreational ACL is relatively low and the recreational season length is short.

*Comment 6:* Reducing an already short season for snowy grouper would adversely affect recreational fishermen during the closed months while weather is generally favorable for bottom fishing. Snowy grouper provide a trophy to target, fine table fare, and a small reward to maintain angler interest.

*Response:* The current recreational fishing season is from May through August, and reducing the recreational fishing season from 4 to 2 months is needed to end overfishing, continue to rebuild the stock, and offer long-term social benefits. The Council considered multiple factors in recommending the preferred alternative for reducing the length of the snowy grouper recreational season, including the season length projections, economic concerns, and the potential changes in bycatch. The Council determined and NMFS agrees that it is important to provide recreational fishermen and for-hire fishing businesses with the longest season possible to harvest the recreational ACL, while preventing overages of the recreational ACL. Shortening the time that recreational fishing is allowed for snowy grouper in the South Atlantic contributes to ensuring that recreational catches do not exceed the recreational ACLs specified in this final rule. The 2-month season allows for retention of snowy grouper when recreational fishermen target co-occurring species, such as blueline tilefish, in some areas. In addition, disruptive weather events, such as hurricanes, occur with greater frequency during July and August than during May and June. Given the need to shorten the recreational season to end overfishing, having the revised recreational fishing season for snowy grouper earlier rather than later in the summer should allow for greater access to harvest snowy grouper. Finally, the new recreational

season may provide additional biological benefits to spawning snowy grouper, as the season will now exclude July and August, which is part of the snowy grouper peak spawning season of May through August.

*Comment 7:* The 2-month recreational fishing season NMFS is proposing is also too long when compared to the recreational ACL as Amendment 51 shows that the recreational ACL would likely be met before the end of the season. For snowy grouper to be rebuilt, recreational seasons need to be shortened and accountability increased. It is irrational to propose keeping the season open an additional 17 days past when the analysis in Amendment 51 shows that the recreational ACL would be met (June 13).

*Response:* Amendment 51 contains two projections that estimate when the recreational ACL will be reached if the new recreational ACL and a 2-month fishing season are implemented. Using a 3-year average (2017 through 2019) of landings, the recreational ACL is not expected to be reached before the end of the fishing season. Using a 5-year average (2015 through 2019) of landings, landings are projected to reach the recreational ACL on June 13th. After reviewing the projection information and effects analysis, the Council chose a 2-month season for the reasons outlined in the response to *Comment 6*. If recreational landings exceed the recreational ACL, NMFS could shorten the following recreational season to avoid another exceedance of the ACL. NMFS has determined that the ACLs, AMs, and management measures for the recreational sector specified in Amendment 51 and this final rule will end overfishing, continue to rebuild the stock, and prevent and mitigate overages if they are to occur.

*Comment 8:* Amendment 51 conflicts with National Standard 8 as it will result in further declines in participation of the commercial fishing community (as shown by the reduced number of commercial permits) and not provide for sustained participation, will impose further hardship on the commercial sector by reducing the total ACL while failing to account for the sectors' respective contribution to the underlying problem, and will impose (not minimize) negative economic impacts on those communities. The commercial industry has suffered through 100-lb (45-kg) trip limits, while the recreational sector has been allowed to operate without changes.

*Response:* NMFS disagrees that Amendment 51 is inconsistent with the Magnuson-Stevens Act National Standard 8, which requires that

conservation and management measures take into account the importance of fishery resources to fishing communities to provide for the sustained participation of those communities, and to the extent practicable, minimize adverse economic impacts on those communities. NMFS acknowledges that snowy grouper is predominantly harvested by the commercial sector, that the sector is supported by the associated fishing communities, and that commercial vessel permits issued for the snapper-grouper fishery have decreased over time. Following the results of the SEDAR 4 assessment for snowy grouper (2006), which indicated the stock was both overfished and experiencing overfishing, additional restrictions were implemented for both the commercial and recreational sectors to help end overfishing and rebuild the stock; those restrictions now include low commercial trip limits (currently 200 lb or 91 kg, last revised and increased in 2015) and low recreational bag limits (currently one snowy grouper per vessel, last revised and decreased in 2006). Section 1.7 in Amendment 51 provides further information on the history of management for the commercial and recreational harvest of snowy grouper. NMFS utilized the best scientific information available to describe affected fishing communities in Amendment 51 and evaluate the economic effects on the commercial sector, in general. Fishing communities that are associated with commercial and recreational fishing and can be identified as having some relationship with snowy grouper harvest are identified and discussed in section 3.4 of Amendment 51.

The snowy grouper stock in the South Atlantic is overfished and is subject to overfishing. Magnuson-Stevens Act National Standard 1 requires that conservation and management measures prevent overfishing, and National Standard 8 is also clear that those conservation and management measures take into account the importance of fishery resources to fishing communities “consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks) . . . .” 16 U.S.C. 1851(a)(8). Further, according to the National Standard 8 Guidelines at 50 CFR 600.345(b)(1), “[W]here two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of [fishing] communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.”

The actions in Amendment 51 that directly affect the commercial sector and thus commercial fishing communities are revisions to the ABC, total ACL, and annual OY for snowy grouper, and revisions to the sector allocations and sector ACLs. The reductions in the ABC, ACL, and annual OY for snowy grouper are required by the need to end overfishing and rebuild the stock. The no-action alternatives in Amendment 51 would not have met these objectives. Of the other alternatives considered, the measures implemented in this final rule are expected to generate the least adverse economic effects on the commercial sector and thus on commercial fishing communities. Further, the commercial allocation is actually increased in Amendment 51. The analysis shows that this choice of allocation is expected to generate the least adverse economic effects on the commercial sector and thus on commercial fishing communities. Therefore, NMFS has determined that the measures in this final rule are expected to minimize adverse effects on commercial fishing communities, consistent with National Standard 8.

*Comment 9:* Amendment 51 harms consumers of snowy grouper. While commercial fishers may be able to adapt, the consumer has preferences for their favorite fish. Having to instead choose imported fish is not desired and the Council and NMFS need to ensure domestic access through commercial fishermen.

*Response:* NMFS acknowledges that some U.S. consumers may prefer locally-harvested South Atlantic groupers, and that a reduced supply of snowy grouper could result in a reduction in economic benefits for those consumers. Unfortunately, NMFS does not have estimates of price flexibility (how prices respond to changes in supply) or demand elasticity (how quantity demanded responds to changes in price) that are specific to South Atlantic snowy grouper or other comparable South Atlantic groupers, and therefore NMFS cannot project changes in prices or estimate changes in consumer surplus (economic benefits) associated with the new commercial ACL implemented by this final rule. There are, however, a number of consumer substitutes for South Atlantic snowy grouper, including other South Atlantic snapper-grouper species, snappers and groupers harvested from the Gulf of Mexico, and imports. The availability of these substitutes will likely minimize any effects on consumers that result from a change in the supply of South Atlantic snowy

grouper. As previously discussed, although the commercial ACL is reduced, this final rule will increase the allocation for the commercial sector. Relative to the alternatives considered, this would generate the least adverse economic effects on the commercial sector and thus on seafood consumers.

*Comment 10:* Amendment 51 does not comply with National Standard 9 because the amendment fails to account for dead discards and will increase bycatch of snowy grouper by setting a recreational season shorter than the blue line tilefish season. The snowy grouper recreational season needs to be adjusted to align with blue line tilefish as these species regularly co-occur. Amendment 51 does nothing to minimize bycatch and will instead increase bycatch. The amendment fails to consider whether measures to minimize bycatch or bycatch mortality are possible such as multi-hook rigs when the daily bag limit is one snowy grouper per vessel.

*Response:* NMFS disagrees that Amendment 51 violates Magnuson-Stevens Act National Standard 9, and NMFS explained in the response to Comment 3 how Amendment 51 accounted for dead discards. National Standard 9 requires that conservation and management measures, “to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” 16 U.S.C. 1851(a)(9). NMFS has determined that Amendment 51 minimizes bycatch and bycatch mortality to the extent practicable. This determination is supported by a Bycatch Practicability Analysis for the actions in Amendment 51 (Appendix G to Amendment 51) that evaluated the practicability of taking additional action to minimize bycatch and bycatch mortality using the 10 factors provided in the National Standard 9 Guidelines at 50 CFR 600.350(d)(3)(i).

NMFS acknowledges that commercial and recreational discards of snowy grouper may increase as a result of reduced ACLs and shorter fishing seasons. Many of the 55 managed snapper-grouper species, such as snowy grouper and blue line tilefish, occur together in certain areas. Fishermen will often target a species where retention is allowed, and then must discard a species if the harvest is closed. As the final rule will decrease the commercial ACL and retain the current in-season closure when the ACL is reached or projected to be reached, the commercial season is likely to close earlier in the year after the new commercial ACL in the final rule is implemented (see

Appendix F of Amendment 51 for a projection of the commercial season length). In turn, a longer closed season could increase discards of snowy grouper if fishermen are targeting species that co-occur with snowy grouper.

Similarly, recreational discards may increase with a lower recreational ACL and shorter season if fishermen target species that also occur with snowy grouper when harvest for snowy grouper is closed. However, any adverse effects are expected to be minor because discards comprise a relatively minor component of the over total mortality of snowy grouper. For example, snowy grouper and blue line tilefish occur together in some areas, and for the recreational sector, the current fishing seasons for both species are open from May through August. This final rule will reduce the recreational season for snowy grouper from 4 to 2 months. Amendment 52 to the FMP will reduce the bag limit and change the recreational accountability measures for blue line tilefish but will not change the 4-month season (88 FR 76696, November 7, 2023). NMFS acknowledges that fishermen will need to discard snowy grouper during the snowy grouper closure. Based on public input, snowy grouper discards are not expected to change north of Cape Hatteras, North Carolina, as the typical habitats where snowy grouper and blue line tilefish occur are more segregated.

Despite the possible change in discards, the reduction in ACLs and recreational fishing season are needed to end overfishing, continue to rebuild the stock, and offer long-term social benefits. The National Standard 9 Guidelines advise that conservation and management measures must also be consistent with all of the other national standards and maximization of net benefits to the Nation (50 CFR 600.350(d)(3)(i)). NMFS has determined that the actions in the final rule are required to prevent overfishing while achieving, on a continuing basis, the OY from the fishery (National Standard 1), set an ACL that does not exceed the ABC (National Standard 1), implement conservation and management measures based upon the best scientific information available (National Standard 2), and minimize adverse economic impacts on fishing communities (National Standard 8). See also the responses to *Comments 6* and *7* for a discussion of the multiple factors that were considered when choosing the length of the snowy grouper recreational season, including the season length projections, economic concerns, and the

expected or potential changes in bycatch.

Any change to snowy grouper discards from the actions in the final rule may not have a significant affect to the overall health of the stock. Dead discards comprise a minor component of the overall mortality of snowy grouper, with total removals of snowy grouper estimated to comprise on average 95.4 percent landings and 4.6 percent dead discards (SEDAR 36 Update). NMFS considered the actions and analyses in Amendment 51, and evaluated the practicability of taking additional action to minimize bycatch and bycatch mortality (50 CFR 600.350(d)(3)(i)). In summary, NMFS does not expect the actions in Amendment 51 to significantly contribute to or detract from the current level of bycatch in the snapper grouper fishery, as supported by the Bycatch Practicability Analysis for Amendment 51 (Appendix G).

NMFS has implemented other measures to reduce bycatch and bycatch mortality. For example, in implementing Regulatory Amendment 29 to the FMP on July 15, 2020, to reduce bycatch, NMFS required that a descending device be available and ready for use on all commercial, for-hire, and private recreational vessels while fishing for or possessing snapper-grouper species. To reduce fishing mortality, that final rule also required the use of non-offset non-stainless steel circle hooks when fishing for snapper-grouper species with hook-and-line gear and natural bait north of 28° N latitude. (85 FR 36166, June 15, 2020). The Council has also developed a Best Fishing Practices Outreach Campaign for commercial and recreational fishermen that includes education and outreach and the collection of discard information through their Citizen Science Program. The program involves fishermen and scientists working together to collect information that can be used for stock assessments and management.

*Comment 11:* NMFS' National Standard Guidelines recommend use of an annual catch target (ACT), or buffer below the ACL, to "account for management uncertainty in controlling the catch at or below the ACL." Amendment 51 does not specify an ACT or buffer for the recreational sector despite massive, acknowledged management uncertainty.

*Response:* NMFS acknowledges that the Council did not consider a recreational ACT in Amendment 51. Recreational ACTs have not been used for management purposes under the FMP, and ACTs were recently

eliminated through Amendment 49 to the FMP for all snapper-grouper species because management uncertainty is already accounted for when setting ACLs (88 FR 65819, September 26, 2023).

*Comment 12:* It is unfair to impose a rule that is effective May 1 through June 30 and the proposal was introduced on May 22, 2023. If the amendment is approved, it should be effective further in the future as to allow recreational fisherman time to catch snowy grouper.

*Response:* NMFS published the notice that announced the availability of Amendment 51 for public review and comment in the **Federal Register** on May 22, 2023 (88 FR 32717), and published the proposed rule for public review and comment on May 30, 2023 (88 FR 34460). Prior to these public comment periods, the actions in Amendment 51 were introduced and discussed during multiple public Council meetings that also had public comment periods. Amendment 51 was approved on August 17, 2023, and after this final rule to implement Amendment 51 publishes in the **Federal Register**, there will be a 30-day delay before the management measures in this rule become effective, consistent with the Administrative Procedure Act, as specified in the **DATES** section of this final rule.

#### Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 51, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

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

Public comments relating to socio-economic implications and potential impacts on small businesses are

addressed in the responses to *Comments 6, 8, and 9* in the Comments and Responses section of this final rule. No changes to this final rule were made in response to these public comments. No comments were received from the Office of Advocacy for the Small Business Administration.

This final rule will: (1) revise the snowy grouper total ACL, (2) revise the snowy grouper sector ACLs, (3) modify the snowy grouper recreational season, and (4) revise the recreational AMs for snowy grouper. The changes to the ACLs, as well as the sector allocations, would apply to all federally-permitted commercial vessels, federally-permitted charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest snowy grouper in Federal waters of the South Atlantic. The changes to the recreational season and AMs only apply to federally permitted owners and operators of for-hire vessels and recreational anglers. This final rule will not directly apply to federally-permitted dealers. Any change in the supply of snowy grouper available for purchase by dealers as a result of this final rule, and associated economic effects, would be an indirect effect of this rule and would therefore fall outside the scope of the Regulatory Flexibility Act (RFA).

Although all components of this final rule apply to for-hire vessels, they are not expected to have any direct effects on these entities. For-hire vessels sell fishing services to recreational anglers. The changes to the snowy grouper management measures will not directly alter the services sold by these vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this final rule would be a consequence of a change in anglers' behavior, which would be secondary to any direct effect on anglers and, therefore, an indirect effect of this final rule. Based on the historically-minimal level of charter-mode target effort for snowy grouper in the South Atlantic, NMFS does not expect any change in for-hire trip demand to result from this final rule; however, should it occur, the associated indirect effects would fall outside the scope of the RFA. For-hire captains and crew are allowed to retain snowy grouper under the recreational bag limit; however, they cannot sell these fish. As such, for-hire captains and crew are only affected as recreational anglers. The RFA does not consider recreational anglers to be entities, so they are also outside the scope of this analysis (5 U.S.C. 604). Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C.

601(6) and 601(3)–(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on commercial vessels will be discussed.

As of August 26, 2021, there were 579 valid or renewable South Atlantic snapper-grouper commercial unlimited permits and 112 valid or renewable commercial 225-lb (102-kg) trip-limited snapper-grouper permits. On average from 2015 through 2019, there were 161 federally-permitted commercial vessels with reported landings of snowy grouper in the South Atlantic. For the 161 commercially permitted vessels, the average annual vessel-level gross revenue from all species for 2015 through 2019 was \$82,475 (2021 dollars) and snowy grouper accounted for approximately 6.1 percent of this revenue. For commercial vessels that harvest snowy grouper in the South Atlantic, NMFS estimates that economic profits are \$3,299 (2021 dollars) or approximately 4 percent of annual gross revenue, on average. The maximum annual revenue from all species reported by a single one of the vessels that harvested snowy grouper from 2015 through 2019 was \$638,709 (2021 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this final rule are believed to be small entities based on the NMFS size standard. No other small entities that are directly affected by this final rule have been identified.

This final rule will revise the total ACL for snowy grouper, based on the most recent ABC recommendation from the Council's SSC in response to the SEDAR 36 Update. This catch limit reflects a shift in recreational reporting units from the MRIP-CHTS to the MRIP-FES. The total ACL will be set equal to the ABC or 119,654 lb (54,274 kg) in 2023, 121,272 lb (55,008 kg) in 2024, and 122,889 lb (55,742 kg) in 2025 and subsequent years. Based on the current sector allocation percentages, these changes to the catch limits represent a decrease in the current

commercial ACL for snowy grouper of 54,622 lb (24,776 kg) in 2023, 53,279 lb (24,167 kg) in 2024, and 51,937 lb (23,558 kg) in 2025 and subsequent years. However, as discussed below, this final rule will also modify the percentage of the total ACL that is allocated to the commercial sector and therefore economic effects to small entities are quantified as part of that discussion.

Amendment 51 will increase the commercial sector allocation from 83 percent of the total snowy grouper ACL to 87.55 percent. This, in conjunction with the changes to the total ACLs, results in a commercial ACL for snowy grouper of 104,757 lb (47,517 kg) in 2023 (73,330 lb [33,262 kg] in Season 1 and 31,427 lb [14,255 kg] in Season 2); 106,174 lb (48,160 kg) in 2024 (74,322 lb [33,712 kg] in Season 1 and 31,852 lb [14,448 kg] in Season 2); and 107,589 lb (48,802 kg) in 2025 and in subsequent years (75,312 lb [34,161 kg] in Season 1 and 32,277 lb [14,641 kg] in Season 2). Relative to the status quo commercial ACL of 153,935 lb (69,824 kg), this is a decrease of 49,178 lb (22,307 kg) in 2023; 47,761 lb (21,664 kg) in 2024; and 46,346 lb (21,022 kg) in 2025 and in subsequent years. These decreases in the commercial ACL are expected to result in corresponding decreases in aggregate ex-vessel revenue of \$284,249 (2021 dollars) in 2023, \$276,059 in 2024, and \$267,880 in 2025 and subsequent years, noting that the 2023 ex-vessel revenue estimates are likely overstated given the expected implementation of this final rule later in this fishing year. Divided by the average number of vessels with reported landings of snowy grouper from 2015 through 2019, this translates to an annual loss in ex-vessel revenue that ranges from \$1,664 (2021 dollars) to \$1,766 per vessel, which is approximately 2 percent of average annual per vessel gross revenue. It is noted that snowy grouper makes up a relatively small portion of annual gross revenue for vessels that land the species (6.1 percent), and on trips where snowy grouper are harvested, it comprises less than a quarter of trip revenue, on average (2015 to 2019). Therefore, NMFS assumes snowy grouper is harvested as a secondary, if not incidental, species on trips targeting other species and that this final rule will not materially affect fishing behavior, effort, or operating costs. As a result, the estimated reduction in annual ex-vessel revenue due to less snowy grouper available for harvest is assumed to be a straight loss in annual economic profits of \$1,664 (2021 dollars) to \$1,766 per

vessel (approximately 50 percent to 54 percent of average annual economic profits). Individual fishing businesses, however, may experience varying levels of economic effects, depending on their fishing practices, operating characteristics, and profit maximization strategies.

The following discussion describes the alternatives that were considered but not implemented in this final rule.

Three alternatives were considered for the action to set the ABC, total ACL, and annual OY equal to 119,654 lb (54,274 kg) in 2023, 121,272 lb (55,008 kg) in 2024, and 122,889 lb (55,742 kg) in 2025 and subsequent years. The first alternative to the action, the no action alternative, would maintain the current ABC, ACL, and annual OY of 185,464 lb (84,125 kg). Therefore, it would not be expected to change fishing practices or commercial harvests of snowy grouper, nor would it be expected to have resulting economic effects. This alternative was not selected by the Council because it would not end overfishing and it would be inconsistent with the SSC's latest catch limit recommendations and the transition to MRIP-FES, and therefore, would not be based on the best scientific information available.

The second alternative would set the ACL and annual OY for snowy grouper equal to 95 percent of the most recent ABC recommendation from the SSC. Under the second alternative, both the ACL and annual OY would be set to 113,671 lb (51,560 kg) in 2023, 115,208 lb (52,257 kg) in 2024, and 116,745 lb (52,955 kg) in 2025 and in subsequent years. Relative to the total ACLs set by this final rule and assuming no change to the current sector allocations, this alternative would reduce the commercial ACL and annual OY by an additional 5,983 lb (2,714 kg) in 2023, 6,064 lb (2,751 kg) in 2024, and 6,144 lb (2,787 kg) in 2025 and in subsequent years. These further reductions in the ACL would result in an estimated annual reduction in ex-vessel revenue and economic profits that is \$34,582 (2021 dollars) to \$35,512 (\$215 to \$221 per vessel) greater than what is expected under the total ACLs set by this final rule. The Council did not select the second alternative because they decided it would be less effective at achieving the objectives of the FMP and that the current monitoring mechanisms in the South Atlantic, coupled with the existing management measures, as well as those implemented by this final rule, would be sufficient at preventing overages, thus not requiring a buffer between the ABC and ACL.

The third alternative would set the ACL and annual OY for snowy grouper equal to 90 percent of the most recent ABC recommendation from the SSC. Under the third alternative, both the ACL and annual OY would be set to 107,689 lb (48,847 kg) in 2023, 109,145 lb (49,507 kg) in 2024, and 110,600 lb (50,167 kg) in 2025 and subsequent years. Relative to the total ACLs set by this final rule and assuming no change to the current sector allocations, this alternative would reduce the commercial ACL and annual OY by an additional 11,965 lb (5,427 kg) in 2023, 12,127 lb (5,501 kg) in 2024, and 12,289 lb (5,574 kg) in 2025 and subsequent years. These further reductions in the ACL would result in an estimated annual reduction in ex-vessel revenue and economic profits that is \$69,158 (2021 dollars) to \$71,030 (\$430 to \$441 per vessel) greater than what is expected under the total ACLs set by this final rule. The Council did not select the third alternative because they decided it would be less effective at achieving the objectives of the FMP and that the current ACL monitoring mechanisms in the South Atlantic, coupled with the existing management measures, as well as those implemented by this final rule, would be sufficient at preventing overages, thus not requiring a buffer between the ABC and ACL.

Two alternatives were considered for the action to revise sector allocations and ACLs for snowy grouper. The first alternative to the action, the no action alternative, would retain the current commercial sector and recreational sector allocations as 83 percent and 17 percent, respectively, of the revised total ACL for snowy grouper. Based on the total ACLs set by this final rule of 119,654 lb (54,274 kg) in 2023, 121,272 lb (55,008 kg) in 2024, and 122,889 lb (55,742 kg) in 2025 and subsequent years, this alternative would result in a commercial ACL of 99,313 lb (45,048 kg) in 2023, 100,656 lb (45,657 kg) in 2024, and 101,998 lb (46,266 kg) in 2025 and subsequent years. Compared to the commercial sector allocation set by this final rule of 87.55 percent, this alternative would result in a commercial ACL that is 5,444 lb (2,469 kg) lower in 2023, 5,518 lb (2,503 kg) lower in 2024, and 5,591 lb (2,536 kg) lower in 2025 and subsequent years. This would translate to an additional aggregate annual loss in ex-vessel revenue and economic profits of \$31,466 (2021 dollars) to \$32,316 (\$195 to \$201 per vessel) relative to this final rule. The Council did not select the first alternative because the status quo sector allocation percentages are based on

average landings from 1986 through 2005 in MRIP-CHTS units and therefore do not reflect the intent or results of the original allocation formula when applied to the new ACL based on MRIP-FES units. The terms “MRIP-CHTS units” and “MRIP-FES units” signify landings data that are in different scales and are not directly comparable.

The second alternative would allocate 73.36 percent of the revised total ACL for snowy grouper to the commercial sector and 26.64 percent of it to the recreational sector. Based on the total ACLs set by this final rule, this alternative would result in a commercial ACL of 87,778 lb (39,815 kg) in 2023, 88,965 lb (40,354 kg) in 2024, and 90,151 lb (40,892 kg) in 2025 and subsequent years. Compared to the commercial sector allocation set by this final rule of 87.55 percent, this alternative would result in a commercial ACL that is 16,979 lb (7,702 kg) lower in 2023, 17,209 lb (7,806 kg) lower in 2024, and 17,438 lb (7,910 kg) lower in 2025 and subsequent years. This would translate to an additional aggregate annual loss in ex-vessel revenue and economic profits of \$98,139 (2021 dollars) to \$100,792 (\$610 to \$626 per vessel) relative to this final rule. The Council did not select the second alternative because they decided that the method used to determine the current allocations (average landings from 1986 through 2005) was more appropriate than the allocations formula adopted through the 2012 Comprehensive ACL Amendment to the FMP for unassessed species (77 FR 15916, March 16, 2012). They also decided that the second alternative would be less effective at achieving the objectives of the FMP and satisfying the needs of the commercial sector, in particular.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. Copies of this final rule are available from the Southeast Regional Office, and the guide, *i.e.*, fishery bulletin, will be sent to all known industry contacts in the snapper-grouper fishery and be posted at <https://www.fisheries.noaa.gov/tags/>

*small-entity-compliance-guide?title=&field\_species\_vocab\_target\_id=&field\_region\_vocab\_target\_id%5B1000001121%5D=1000001121&sort\_by=created*. The guide and this final rule will be available upon request.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Commercial, Fisheries, Fishing, Recreational, Snowy grouper, South Atlantic.

Dated: November 27, 2023.

**Samuel D. Rauch, III,**  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.183, revise paragraph (b)(8) to read as follows:

#### § 622.183 Area and seasonal closures.

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

■ 3. In § 622.190, revise paragraphs (a)(1)(i) and (ii) to read as follows:

#### § 622.190 Quotas.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) From January 1 through June 30 each year.

(A) 2023—73,330 lb (33,262 kg).

(B) 2024—74,322 lb (33,712 kg).

(C) 2025 and subsequent fishing years—75,312 lb (34,161 kg).

(ii) From July 1 through December 31 each year.

- (A) 2023—31,427 lb (14,255 kg).
- (B) 2024—31,852 lb (14,448 kg).
- (C) 2025 and subsequent fishing years—32,277 lb (14,641 kg).

\* \* \* \* \*

■ 4. In § 622.193, revise paragraph (b) to read as follows:

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

\* \* \* \* \*

(b) *Snowy grouper*—(1) *Commercial sector*. (i) If commercial landings of snowy grouper, as estimated by the SRD, reach or are projected to reach the commercial ACL that is equal to the commercial quota specified in § 622.190(a)(1), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(ii) If commercial landings of snowy grouper, as estimated by the SRD, exceed the commercial ACL, and the combined commercial and recreational ACL specified in paragraph (b)(3) of this section is exceeded, and snowy grouper are overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL for that following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector*. (i) The recreational ACL for snowy grouper is 1,668 fish for 2023; 1,691 fish for 2024; and 1,713 fish for 2025 and subsequent fishing years.

(ii) If recreational landings for snowy grouper exceed the recreational ACL specified in paragraph (b)(2)(i) of this section, then during the following fishing year NMFS will reduce the

length of the recreational fishing season by the amount necessary to prevent recreational landings from exceeding the recreational ACL in the following fishing year. NMFS will use the best scientific information available to determine if reducing the length of the recreational fishing season is necessary. When the recreational sector for snowy grouper is closed as a result of NMFS reducing the length of the recreational fishing season, the bag and possession limits for snowy grouper harvested in or from the South Atlantic EEZ are zero.

(3) *Total ACL*. The combined commercial and recreational ACL for snowy grouper in gutted weight is 119,654 lb (54,274 kg) for 2023; 121,272 lb (55,008 kg) for 2024; and 122,889 lb (55,741 kg) for 2025 and subsequent fishing years.

\* \* \* \* \*

[FR Doc. 2023–26351 Filed 11–30–23; 8:45 am]

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