

TABLE 1 TO PARAGRAPH (d)(4)(ii)

Population within Partial Economic Area (PEA) where earth station is located	Maximum permitted aggregate population within -77.6 dBm/m <sup>2</sup> /MHz PFD contour of earth stations
Greater than 2,250,000 .....	0.1 percent of population in PEA.
Between 60,000 and 2,250,000 .....	2,250 people.
Fewer than 60,000 .....	3.75 percent of population in PEA.

(iii) The area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to -77.6 dBm/m<sup>2</sup>/MHz does not contain any major event venue, any highway classified by the U.S. Department of Transportation under the categories Interstate, Other Freeways and Expressways, or Other Principal Arterial, or an urban mass transit route, passenger railroad, or cruise ship port; and

(iv) The applicant has successfully completed frequency coordination with the UMFUS licensees within the area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to -77.6 dBm/m<sup>2</sup>/MHz with respect to existing facilities constructed and in operation by the UMFUS licensee. In coordinating with UMFUS licensees, the applicant shall use the applicable processes contained in § 101.103(d) of this chapter.

(e) If an earth station applicant or licensee in the 27.5–28.35 GHz, 37.5–40 GHz, or 47.2–48.2 GHz bands enters into an agreement with an UMFUS licensee, their operations shall be governed by that agreement, except to the extent that the agreement is inconsistent with the Commission's rules or the Communications Act.

(f) Any earth station authorizations issued pursuant to paragraph (a)(4), (c), or (d)(4) of this section shall be conditioned upon operation being in compliance with the criteria contained in the applicable paragraph.

**PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE**

■ 11. The authority citation for part 30 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.

■ 12. Amend § 30.4 by redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d) and adding new paragraphs (a) and (e) to read as follows:

**§ 30.4 Frequencies.**

\* \* \* \* \*

(a) 24.25–24.45 GHz and 24.75–25.25 GHz bands—24.25–24.35 GHz; 24.35–24.45 GHz; 24.75–24.85 GHz; 24.85–

24.95 GHz; 24.95–25.05 GHz; 25.05–25.15 GHz; and 25.15–25.25 GHz.

\* \* \* \* \*

(e) 47.2–48.2 GHz band—47.2–47.4 GHz; 47.4–47.6 GHz; 47.6–47.8 GHz; 47.8–48.0 GHz; and 48.0–48.2 GHz.

■ 13. Amend § 30.6 by revising paragraph (b) to read as follows:

**§ 30.6 Permissible communications.**

\* \* \* \* \*

(b) Fixed-Satellite Service shall be provided in a manner consistent with part 25 of this chapter. The technical and operating rules in this part shall not apply to Fixed-Satellite Service operation.

**§ 30.8 [Remove and Reserve]**

■ 14. Remove and reserve § 30.8.

■ 15. Amend § 30.104 by revising paragraph (a) to read as follows:

**§ 30.104 Construction requirements.**

(a) Upper Microwave Flexible Use Service licensees must make a buildout showing as part of their renewal applications. Licensees relying on mobile or point-to-multipoint service must show that they are providing reliable signal coverage and service to at least 40 percent of the population within the service area of the licensee, and that they are using facilities to provide service in that area either to customers or for internal use. Licensees relying on point-to-point service must demonstrate that they have four links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, a licensee relying on point-to-point service must demonstrate it has at least one link in operation and is providing service for each 67,000 population within the license area. In order to be eligible to be counted under the point-to-point buildout standard, a point-to-point link must operate with a transmit power greater than +43 dBm.

\* \* \* \* \*

**PART 101—FIXED MICROWAVE SERVICES**

■ 16. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 101.115 [Amended]**

■ 17. Section 101.115 is amended in the table in paragraph (b)(2), in the entries “71,000 to 76,000 (co-polar),” “71,000 to 76,000 (cross-polar),” “81,000 to 86,000 (co-polar),” and “81,000 to 86,000 (cross-polar),” by removing footnote designation “15” and adding footnote designation “14” in its place.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 170828813-7999-02]

RIN 0648-BH15

**Snapper-Grouper Fishery of the South Atlantic Region; Temporary Measures to Reduce Overfishing of Golden Tilefish**

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

**ACTION:** Final temporary rule.

**SUMMARY:** This final temporary rule implements interim measures to reduce overfishing of golden tilefish in Federal waters of the South Atlantic. Beginning in 2018, this temporary rule reduces the total annual catch limit (ACL), the commercial and recreational sector ACLs, and the quotas for the hook-and-line and longline components of the commercial sector. This final temporary rule is effective for 180 days, although NMFS may extend the temporary rule's effectiveness for up to an additional 186 days. The purpose of this final temporary rule is to reduce overfishing of golden tilefish while the South Atlantic Fishery Management Council

(Council) develops management measures to end overfishing of golden tilefish on a permanent basis.

**DATES:** This final temporary rule is effective on January 2, 2018, through July 1, 2018.

**ADDRESSES:** Electronic copies of the environmental assessment (EA) supporting these interim measures may be obtained from the Southeast Regional Office website at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/s/2017/golden\\_tilefish\\_interim/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/s/2017/golden_tilefish_interim/index.html). The EA includes a Regulatory Flexibility Act (RFA) analysis.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: [karla.gore@noaa.gov](mailto:karla.gore@noaa.gov).

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

On October 30, 2017, NMFS published a proposed temporary rule in the **Federal Register** and requested public comment (82 FR 50101). The proposed temporary rule and EA outline the rationale for the actions contained in this final temporary rule, and the EA is available from NMFS (see **ADDRESSES** section). A summary of the management measures described in the EA and implemented by this final temporary rule is provided below.

Golden tilefish are harvested by both commercial and recreational fishermen throughout the South Atlantic, although total landings are dominated by the commercial sector using bottom longline gear. Golden tilefish are also harvested commercially using hook-and-line gear, while the recreational sector harvests at a much lower level than either component of the commercial sector.

In April 2016, an update to the 2011 Southeast Data, Assessment, and Review stock assessment (SEDAR 25) was completed for golden tilefish using data through 2014 (SEDAR 25 Update 2016). While SEDAR 25 concluded that golden tilefish was not subject to overfishing and was not overfished, the SEDAR 25 Update 2016 concluded that golden tilefish is undergoing overfishing but is not overfished. NMFS notified the Council of the updated stock status

determination in a letter dated January 4, 2017. As mandated by the Magnuson-Stevens Act, the Council and NMFS must prepare and implement an FMP, FMP amendment, or regulations to end overfishing of golden tilefish.

In May 2016, the Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 25 Update 2016 and indicated that the SEDAR 25 Update 2016 was based on the best scientific information available. During the Council's review of the SEDAR 25 Update 2016, Council members stated their concern over the large differences in biological benchmarks between SEDAR 25 and the SEDAR 25 Update 2016 and the much lower fishing level recommendations in the SEDAR 25 Update 2016. The Council subsequently requested that the SSC review the SEDAR 25 Update 2016 again as a result of their concerns.

In May 2017, the SEDAR Steering Committee considered a Council request for another golden tilefish update assessment, which was intended to address the SEDAR 25 Update 2016 concerns raised by the Council and their SSC during their earlier reviews. While an update assessment could not be included in the SEDAR schedule for 2017, the Southeast Fisheries Science Center (SEFSC) agreed to revise the SEDAR 25 Update 2016 to address these Council concerns.

As requested by the Council, the 2017 revision to the SEDAR 25 Update 2016 used a newly developed model to assess the golden tilefish stock in the South Atlantic. The 2017 revised analysis was reviewed by the SSC at their October 2017 meeting, and the SSC did not recommend basing stocks status and fishing level recommendations on the revised analysis completed in 2017, but rather on the SEDAR 25 Update 2016. The Council is scheduled to discuss the SSC recommendations at their December 2017 meeting, and the recommendations will be used to develop management measures in Amendment 45 to the FMP, which is intended to end overfishing of golden tilefish on a permanent basis.

Because the revised catch level recommendations from the Council's SSC were not available until late October 2017, and the majority of golden tilefish landings typically occur early in the fishing year, there was insufficient time for the Council and NMFS to develop and possibly implement management measures, respectively, to end overfishing of golden tilefish on a permanent basis in time for the start of the 2018 fishing year beginning on January 1.

Therefore, as a result of the limited timeframe to develop revised catch level recommendations, the Council sent a letter to NMFS, dated June 27, 2017, to request that NMFS implement interim measures to immediately reduce overfishing of golden tilefish while management measures are developed through Amendment 45 to end overfishing of golden tilefish on a permanent basis. For 2018, the Council recommended setting the total ACL at the projected yield at 75 percent of the yield produced by the fishing mortality rate at maximum sustainable yield, which would be 323,000 lb (146,510 kg), gutted weight, 361,760 lb (164,092 kg), round weight. The interim measures in this final temporary rule are effective for 180 days after the publication date in the **Federal Register** and may be extended one time for an additional 186 days. If NMFS does not extend the proposed interim measures beyond 180 days, the total and sector ACLs, as well as the quotas for the hook-and-line and longline components of the commercial sector, would revert to their previously implemented values. The final rule for Amendment 18B implemented the previous commercial ACL and commercial component quotas (78 FR 23858, April 23, 2013), and the final rule for Regulatory Amendment 12 implemented the previous recreational ACL (77 FR 61295, October 9, 2012). The Council intends to have Amendment 45 developed and implemented prior to the expiration of these interim measures.

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

During the effectiveness of this final temporary rule, which starts in the 2018 fishing year, the total ACL for golden tilefish is 323,000 lb (146,510 kg), gutted weight, 361,760 lb (164,092 kg), round weight. This final temporary rule also specifies the commercial and recreational sector ACLs and component commercial quotas using the existing sector allocations. For golden tilefish, 97 percent of the total ACL is allocated to the commercial sector, with 25 percent of the commercial ACL available for the hook-and-line component and 75 percent available for the longline component. The recreational sector is allocated three percent of the total ACL. Therefore, during the effectiveness of this final temporary rule, the commercial ACL is 313,310 lb (142,115 kg), gutted weight. The commercial quota for the hook-and-line component is 78,328 lb (35,529 kg), gutted weight, and the commercial quota for the longline component is 234,982 lb (106,586 kg), gutted weight. The

recreational ACL during the effectiveness of this final temporary rule starting in 2018 is 2,187 fish, which is equivalent to 9,690 lb (4,395 kg), gutted weight.

The temporary reductions in the ACLs and quotas being implemented through this final temporary rule could result in earlier in-season closures particularly for the commercial sector. The earlier closures would likely result in short-term adverse socio-economic effects. However, the temporary ACLs and quotas are expected to minimize future adverse socio-economic effects by potentially reducing future reductions in the ACLs and quotas required to end overfishing through Amendment 45. The temporary ACLs and quotas would also provide biological benefits to the golden tilefish stock by reducing the current levels of fishing mortality.

### Comments and Responses

NMFS received 23 comment submissions from individuals, fishing associations, and commercial, private recreational, and charter vessel/headboat (for-hire) recreational fishing entities during the public comment period on the proposed temporary rule. Sixteen of the comments were in general opposition to the actions in the golden tilefish proposed temporary rule, citing adverse socio-economic effects, and uncertainty with the stock assessment. Seven comments supported the need for protection of golden tilefish. Comments that were beyond the scope of the proposed temporary rule and comments that agreed with the proposed actions have not been addressed in this final rule. Comments that specifically relate to the actions contained in the proposed temporary rule, as well as NMFS' respective responses, are summarized below.

*Comment 1:* Golden tilefish are above target fishing levels and the data, model, and science used to make the overfishing determination are flawed. SEDAR 25 Update 2016 should not be accepted as the best scientific information available, the proposed temporary rule should not be implemented, and NMFS should wait until better data become available or a new stock assessment is completed before making any management decisions.

*Response:* NMFS disagrees. The EA and this final temporary rule respond to the latest stock assessment for golden tilefish in the South Atlantic (SEDAR 25 Update 2016), which includes waters off North Carolina through the east coast of Florida. The SEDAR 25 Update 2016 concluded that the stock is undergoing overfishing but is not overfished. NMFS

notified the Council of the updated stock status determination in a letter dated January 4, 2017.

The SEDAR process is a peer-reviewed cooperative effort to assess the status of stocks in the jurisdictions of the South Atlantic, Caribbean, and Gulf of Mexico Fishery Management Councils; as well as NMFS' SEFSC and Southeast Regional Office, and the NMFS Highly Migratory Species Division; and the Atlantic and Gulf States Marine Fisheries Commissions. SEDAR also relies on state agencies and universities throughout the region for research, data collection, and stock assessment expertise. Fishery-dependent and independent data were utilized in the stock assessment. All of the data sources used are further described in the SEDAR 25 Update 2016, which is available on the SEDAR website at <http://sedarweb.org>. The SEDAR website also provides extensive supporting documentation that describes data collection programs and research findings. In May 2016, the Council's SSC reviewed the SEDAR 25 Update 2016 and indicated that the assessment is based on the best scientific information available.

The Council received the results of the assessment update from the SSC in June 2016, and Council members expressed concern over the large differences in biological benchmarks and fishing level recommendations between SEDAR 25 Update 2016 and SEDAR 25, and subsequently requested an updated stock assessment for golden tilefish.

To address the Council's concerns, in May 2017, the SEDAR Steering Committee agreed to revise the SEDAR 25 Update 2016, because a new golden tilefish stock assessment could not be completed in 2017. The SSC reviewed the 2017 revision to the SEDAR 25 Update 2016 at their October 2017 meeting and determined that it was unsuitable for management. Therefore, the best scientific information available for golden tilefish remains the SEDAR 25 Update 2016.

NMFS and the South Atlantic Council expect the recent level of golden tilefish landings to continue in the near future. Because the majority of the golden tilefish landings are taken between January and early spring in most years, there was not sufficient time for the Council and NMFS to develop and possibly implement management measures to end overfishing of golden tilefish on a permanent basis in time for the start of the 2018 fishing year beginning on January 1. Therefore, to reduce overfishing, the Council recommended that NMFS implement

interim measures to set the golden tilefish total ACL for 2018 at 323,000 lb (146,510 kg), gutted weight, while the Council develops Amendment 45 to end overfishing of golden tilefish on a permanent basis. This total ACL is expected to immediately address the need to reduce overfishing of golden tilefish. The SEFSC certified the EA for these interim measures and supported the Council's recommendations as the best scientific information available on October 3, 2017.

The temporary rule will take effect in 2018 for 180 days after the date of publication and may be extended once for a maximum of an additional 186 days while the Council develops management measures to end overfishing of golden tilefish in the South Atlantic on a permanent basis through Amendment 45. The next scheduled SEDAR benchmark stock assessment is scheduled to be completed in 2019.

*Comment 2:* The assessment model used for the SEDAR 25 Update 2016, which employed a robust multinomial likelihood function approach, was criticized by the Council's SSC and resulted in biasing the assessment results; consequently, the SEDAR 25 Update 2016 does not constitute best scientific information available for golden tilefish.

*Response:* NMFS disagrees. Subsequent to SEDAR 25, completed in 2011, the Council raised concerns about the assessment's use of a multinomial likelihood function approach. Partly in response to those concerns, the SEDAR 25 Update 2016 participants determined that the use of a robust multinomial likelihood function approach is more appropriate for the SEDAR 25 Update 2016 than the original multinomial likelihood function approach used in SEDAR 25. However, the Council was concerned with the use of the robust multinomial likelihood function approach in the SEDAR 25 Update 2016, because subsequent SEDAR assessments have raised concerns from the Council with the ability of the original and robust multinomial likelihood functions to estimate composition data, and a recent stock assessment of red grouper used a newly developed Dirichlet multinomial likelihood function approach. Therefore, in June 2016, the Council requested the SEFSC revise the SEDAR 25 Update 2016 using the Dirichlet multinomial likelihood function approach in place of the robust multinomial likelihood function approach.

The Council's SSC reviewed the revision to the SEDAR 25 Update 2016 at their October 2017 meeting. After

consideration, the SSC did not recommend basing stock status and fishing level recommendations using the Dirichlet multinomial likelihood function approach. Instead, the SSC recommended using the base model run of the SEDAR 25 Update 2016, which used the robust multinomial likelihood function approach. The SSC determined that the Dirichlet multinomial likelihood function approach has not been sufficiently tested using composition data obtained from sparse sampling, which is present in the 2017 revision to the SEDAR 25 Update 2016. In addition, the SSC determined that most model runs of the revision to the SEDAR 25 Update 2016 did not converge on a solution suitable for their recommendation as management advice. The criticisms referenced by the comment from the October 2017 SSC meeting were actually criticisms of the Dirichlet multinomial likelihood approach and not the robust multinomial likelihood approach to which the SSC defaulted with their final recommendation. The use of the robust multinomial likelihood function approach has been accepted as a valid stock assessment tool and has been used in other stock assessments, such as SEDAR 36 for snowy grouper and SEDAR 41 for red snapper. Ultimately, the use of the robust multinomial likelihood function approach in the SEDAR 25 Update 2016 was accepted by the SSC as best scientific information available, and has been accepted as such by NMFS.

*Comment 3:* The assessment model changes made in the SEDAR 25 Update 2016 from the SEDAR 25 benchmark assessment were contrary to accepted stock assessment policy, and resulted in inaccurate changes to golden tilefish stock status results from the SEDAR 25 Update 2016.

*Response:* NMFS disagrees. Performing additional analyses, and not merely updating landings data, is not uncommon in update assessments completed via the SEDAR process. In this case, the inclusion of the robust multinomial likelihood function approach in the SEDAR 25 Update 2016 was within the changes allowed as specified in the Terms of Reference for an update assessment. The Terms of Reference provided for the SEDAR 25 Update 2016 specifically indicated that it needed to “document any changes or corrections made to the model and input datasets,” clearly establishing that such potential model changes were envisioned and potentially desired. While the SEDAR guidelines do not provide precise guidance on the proper scope of allowable changes in update

assessments, the changes made in the SEDAR 25 Update 2016 are within the scope of what is allowed under the SEDAR guidelines that specify allowable changes under different assessment types. Further, the changes are consistent with changes made in other update assessments.

As noted in the response to *Comment 2*, the SEDAR 25 Update 2016 used widely accepted and commonly used analytical methods. It has been peer reviewed, extensively discussed by the relevant parties, and NMFS has determined that it constitutes the best scientific information available.

*Comment 4:* The interim measures will cause additional economic hardship on the commercial sector and for-hire components of the recreational sector, as well as the supporting businesses, such as fish houses, dealers, and restaurants. Many business operations will fail as a result of the proposed interim measures.

*Response:* As described in the EA, the proposed temporary rule, and the response to *Comment 1*, the temporary ACL and quota reductions are necessary to immediately reduce overfishing of golden tilefish in the South Atlantic, while the Council develops management measures in Amendment 45 to end overfishing of golden tilefish on a permanent basis. NMFS and the Council recognize the adverse socio-economic impacts that reducing the ACLs and quotas could have on fishing businesses and communities. However, these interim measures may result in less stringent measures that would be considered in Amendment 45 to end overfishing of golden tilefish on a permanent basis.

The economic analysis developed for this temporary rule indicates that the temporary ACL and quota reductions would affect the hook-and-line and longline components of the commercial sector, as well as for-hire operations in the recreational sector. The amount of the ACL and quota reductions is proportional to each sector or component's current allocation of the total ACL. Reductions to the total ACL, the commercial and recreational sector ACLs, and the commercial quotas for the hook-and-line and longline components of the commercial sector implemented by this final temporary rule are expected to result in adverse, short-term economic effects directly on the participants of the golden tilefish commercial and recreational sectors and indirectly on the supporting industries, such as dealers, tackle and bait shops, and fishing communities. In general, the larger the sector or component's percentage of the allocation, the greater

the short-term adverse economic impacts would be. In addition, the more dependent an area or fishing community is on fishing for golden tilefish, the greater would be the adverse impacts on the area's fishing participants and supporting industries.

Insufficient information is available to determine if this final temporary rule will result in businesses exiting the snapper-grouper fishery. The initial regulatory flexibility analysis (IRFA) conducted for the proposed temporary rule notes that longline fishermen would be particularly adversely affected because they derive approximately 74 percent of their total revenues from golden tilefish. However, as described previously, these impacts are expected to be short-term and may result in less restrictive management measures possibly implemented through Amendment 45.

NMFS also expects consumers and recreational anglers to be negatively affected by the final temporary rule. While the effects on consumers cannot be estimated with available information, a good possibility exists that the presence of substitute species would mitigate the negative effects on consumers. The EA provides estimates of the loss in consumer surplus to recreational anglers as a result of the final temporary rule. However, no quantitative estimates of the economic effects on the for-hire component of the recreational sector could be provided due to the complexity of determining whether potentially affected for-hire trips would be totally lost or just redirected to other areas or to other species. In addition, recreational fishermen have varied preferences and may target or harvest a diverse mix of snapper-grouper and other species on a trip. The absence or reduction of the opportunity to fish for golden tilefish may or may not affect their overall desire to take or pay for trips.

As discussed in the EA, NMFS expects the reduced ACLs and quotas in this final temporary rule to result in diminished economic benefits in the short-term, but also to reduce overfishing sooner than if no interim measures were implemented to prevent the golden tilefish stock in the South Atlantic from becoming overfished, thereby resulting in greater economic benefits in the longer term.

*Comment 5:* The socio-economic analysis is inadequate because it did not consider the impacts beyond the commercial and recreational fishermen.

*Response:* NMFS disagrees. NMFS determined that an adequate socio-economic analysis, assessing the impacts of the temporary rule, was

performed and included in the EA. NMFS prepared an IRFA to analyze the economic impacts of the temporary rule on small entities, specifically commercial fishermen. A summary of the IRFA was included in the proposed temporary rule. A final regulatory flexibility analysis (FRFA) accompanies this final temporary rule that also considers the comments received on this action. The EA provides analyses of the economic benefits and costs of each alternative to the nation and the South Atlantic snapper-grouper fishery as a whole. The EA recognizes that the temporary rule will have economic effects on commercial and recreational supporting industries (dealers, wholesalers, retailers, restaurants) beyond the harvest market. The EA provides general information regarding the commercial and recreational sectors' economic impacts in terms of jobs, sales, income, and value added on the entire seafood industry, including the harvest, wholesale and retail markets. Quantifying the effects of each alternative on the commercial and recreational supporting industries is not possible due to lack of sufficient information. For the commercial sector, reactions from dealers, wholesalers, retailers, or restaurants to reduced availability of golden tilefish is uncertain, especially that substitute species exist. For the recreational sector, substitute species also exist and, as described in the response to *Comment 4*, the reduction or absence of the opportunity to fish for golden tilefish may or may not affect their overall desire to take or pay for trips. The EA also notes that fishing communities dependent on the golden tilefish segment of the snapper-grouper fishery would tend to bear a greater share of the short-term adverse impacts. The socio-economic analysis indicates that while the short-term socioeconomic impacts would be negative, ending overfishing through Amendment 45, if implemented, would be expected to result in greater long-term benefits.

#### Future Action

NMFS determined that this final temporary rule is necessary to reduce overfishing of golden tilefish in the South Atlantic. NMFS considered all public comments received on the proposed temporary rule in the determination of whether to proceed with a final temporary rule and whether any revisions to the final temporary rule were appropriate. This final temporary rule is effective for 180 days after the date of publication in the **Federal Register**, as authorized by section 305(c) of the Magnuson-Stevens Act. The final

temporary rule could be extended if NMFS publishes a temporary rule extension in the **Federal Register** for up to an additional 186 days, because the public has had an opportunity to comment on the proposed temporary rule, and the Council is actively preparing an FMP amendment to address overfishing on a permanent basis.

#### Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final temporary rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

In compliance with section 604 of the RFA, NMFS prepared a FRFA for this final temporary rule. The FRFA incorporates the IRFA, a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

A description of this final temporary rule, and its rationale, objectives, and legal basis are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this final temporary rule. 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 temporary rule. Accordingly, this final temporary rule does not implicate the Paperwork Reduction Act.

No comments specific to the IRFA were received from the public or from the Chief Counsel for the Advocacy of the Small Business Administration; therefore, no public comments are addressed in this FRFA. However, there are comments that have economic implications, and they are addressed in the Comments and Responses section.

No changes to the proposed temporary rule were made in response to public comments. NMFS agrees that the Council's recommendation for the temporary action will best achieve their objectives for the final temporary rule while minimizing, to the extent practicable, the adverse effects on fishermen, support industries, and associated communities.

NMFS expects this final temporary rule will directly affect all commercial vessels that harvest South Atlantic golden tilefish under the FMP. The change in the recreational ACL in this

final temporary rule will not directly affect or regulate for-hire businesses. Any impact to the profitability or competitiveness of for-hire fishing businesses will be the result of changes in for-hire angler demand and will therefore be indirect in nature. Under the RFA recreational anglers, who will be directly affected by this final temporary rule, are not considered to be small entities, so they are outside the scope of this analysis and only the effects on commercial vessels were analyzed. 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 (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

As of August 10, 2017, there were 544 vessels with valid or renewable Federal South Atlantic snapper-grouper unlimited permits, 114 valid or renewable 225-lb trip limited permits, and 22 golden tilefish longline endorsements. The golden tilefish longline endorsement system started in 2013. From 2012 through 2016, an average of 23 longline vessels per year landed golden tilefish in the South Atlantic. These vessels, combined, averaged 255 trips per year in the South Atlantic on which golden tilefish were landed, and 182 trips taken in the South Atlantic on which no golden tilefish were harvested or in areas outside the South Atlantic. The average annual total dockside revenue (2016 dollars) for these vessels combined was approximately \$1.56 million from golden tilefish, \$0.10 million from other species co-harvested with golden tilefish (on the same trips in the South Atlantic), and \$0.43 million from trips in the South Atlantic on which no golden tilefish were harvested or in areas outside the South Atlantic. Total average annual revenue from all species harvested by longline vessels harvesting golden tilefish in the South Atlantic was approximately \$2.10 million, or approximately \$92,000 per vessel. Longline vessels generated approximately 74 percent of their total revenues from golden tilefish. For the same period, an average of 82 vessels per year landed golden tilefish using other gear types (mostly hook-and-line) in the South Atlantic. These vessels, combined, averaged 483 trips per year

in the South Atlantic on which golden tilefish were landed, and 2,862 trips taken in the South Atlantic on which no golden tilefish were harvested or in areas outside the South Atlantic. The average annual total dockside revenue (2016 dollars) for these 82 vessels was approximately \$0.36 million from golden tilefish, \$0.66 million from other species co-harvested with golden tilefish (on the same trips in the South Atlantic), and \$4.13 million from trips in the South Atlantic on which no golden tilefish were harvested or in areas outside the South Atlantic. The total average annual revenue from all species harvested by these 82 vessels was approximately \$5.16 million, or approximately \$62,000 per vessel. Approximately seven percent of these vessels' total revenues came from golden tilefish. Based on the foregoing revenue information, all commercial vessels using longlines or other gear types (mostly hook-and-line) affected by the final temporary rule are determined to be small entities.

Because all entities expected to be directly affected by this final temporary rule are determined to be small entities, NMFS determined that this final temporary rule will affect a substantial number of small entities. For the same reason, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Reducing the South Atlantic ACL for golden tilefish will reduce the specific ACLs for the commercial and recreational sectors. These ACL reductions will result in ex-vessel revenue losses of approximately \$229,000 for hook-and-line vessels and \$600,000 for longline vessels over the entire 2018 fishing year. Ex-vessel revenue reductions for the commercial sector will result in profit reductions, although this is more likely for longline vessels as they are more dependent on golden tilefish than hook-and-line vessels.

The following discusses the alternatives that the Council did not select as preferred.

Four alternatives, including the preferred alternative as described above, were considered for reducing the total and sector ACLs for South Atlantic golden tilefish. The first alternative, the no action alternative, would maintain the current economic benefits to all participants in the South Atlantic golden tilefish component of the snapper-grouper fishery. This alternative, however, would not address the need to curtail continued overfishing of the stock, very likely leading into the adoption of more stringent measures in the near future.

The second alternative would reduce the ACLs more than the preferred alternative, and thus would be expected to result in larger revenue (and profit) losses to the commercial sector. The third alternative would establish higher ACLs than the preferred alternative. Although this alternative would result in lower revenue losses to the commercial sector, the ACLs it would establish may not be low enough to address the overfishing status of the stock. To an extent, this alternative would leave open a greater likelihood of implementing more stringent measures when management actions are developed and possibly implemented through Amendment 45 to end overfishing of golden tilefish on a permanent basis.

This final temporary rule responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action constitutes good cause to waive the 30-day delay in this final temporary rule's effectiveness, pursuant to the authority set forth in 5 U.S.C. 553(d)(3), as such procedure for this final temporary rule is impracticable and contrary to the public interest.

A delay in effectiveness is impracticable, because it would contribute to overfishing of golden tilefish, which is contrary to National Standard 1 of the Magnuson-Stevens Act. National Standard 1 requires NMFS to conserve and manage ocean resources to prevent overfishing, while achieving the optimum yield from each fishery. Without this final temporary rule becoming effective early in the 2018 fishing year, which begins on January 1, the commercial and recreational sectors would be able to harvest golden tilefish under higher ACLs and quotas than those implemented by this final temporary rule. These harvests could result in further overfishing of golden tilefish, contrary to NMFS' statutory obligations. By implementing this final temporary rule immediately, the total harvest of golden tilefish would be reduced until the Council and NMFS can prepare and possibly implement management measures under Amendment 45 to end overfishing of golden tilefish on a permanent basis.

In addition, delaying the effectiveness of this final temporary rule for 30 days is contrary to the public interest because of the need to immediately implement this action to protect golden tilefish. The capacity of the fishing fleet allows for rapid harvest of the ACL. Delaying the effectiveness of this final temporary rule would require time and could potentially result in a harvest in excess

of the reduced ACLs implemented by this final temporary rule, increasing the likelihood of future overfishing and more restrictive measures to address it.

Accordingly, the 30-day delay in effectiveness of the measures contained in this final temporary rule is waived.

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

Annual catch limit, Fisheries, Fishing, Golden tilefish, South Atlantic.

Dated: December 21, 2017.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF 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 § 622.190, suspend paragraphs (a)(2)(i) through (iii) and add paragraphs (a)(2)(iv) through (vi) to read as follows:

#### **§ 622.190 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iv) *Hook-and-line and longline components combined*—313,310 lb (142,115 kg).

(v) *Hook-and-line component*—78,328 lb (35,529 kg).

(vi) *Longline component*—234,982 lb (106,586 kg).

\* \* \* \* \*

■ 3. In § 622.193, suspend paragraphs (a)(1)(i), (ii), and (iii) and (a)(2), and add paragraphs (a)(1)(iv), (v), and (vi), and (a)(3) to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(iv) *Hook-and-line component.* If commercial landings for golden tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.190(a)(2)(v), the AA will file a notification with the Office of the Federal Register to close the hook-and-line component of the commercial sector for the remainder of the fishing year. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(v) *Longline component.* If commercial landings for golden tilefish,

as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.190(a)(2)(vi), the AA will file a notification with the Office of the Federal Register to close the longline component of the commercial sector for the remainder of the fishing year. After the commercial ACL for the longline component is reached or projected to be reached, golden tilefish may not be fished for or possessed by a vessel with a golden tilefish longline endorsement. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(vi) If commercial landings of golden tilefish, as estimated by the SRD, exceed the commercial ACL (including both the hook-and-line and longline component quotas) specified in § 622.190(a)(2)(iv), and the combined commercial and recreational ACL of 323,000 lb (146,510 kg), gutted weight, 361,760 lb (164,092 kg), round weight, is exceeded during the same fishing year, and golden tilefish 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.

\* \* \* \* \*

(3) *Recreational sector.* (i) If recreational landings of golden tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 2,187 fish, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits for golden tilefish in or from the South Atlantic EEZ are zero.

(ii) If recreational landings of golden tilefish, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a

persistence in increased landings, and if necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season and the recreational ACL by the amount of the recreational ACL overage, if the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, and if the combined commercial and recreational ACL of 323,000 lb (146,510 kg), gutted weight, 361,760 lb (164,092 kg), round weight, is exceeded during the same fishing year. The AA will use the best scientific information available to determine if reducing the length of the recreational fishing season and recreational ACL is necessary. When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season and ACL, the bag and possession limits for golden tilefish in or from the South Atlantic EEZ are zero.

\* \* \* \* \*

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