Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 10, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–17770 Filed 7–19–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249–2230–01]

RIN 0648–BC03

Snapper-Grouper Fishery Off the Southern Atlantic States; Snapper-Grouper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes this proposed rule to implement a regulatory amendment (Regulatory Amendment 12) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, this rule would modify the golden tilefish annual catch limit (ACL), which would be equal to the optimum yield (OY), as well as revise the recreational accountability measures (AMs) for golden tilefish in the South Atlantic exclusive economic zone (EEZ). The intent of this rule is to modify management measures for golden tilefish in the commercial and recreational sectors in the South Atlantic based on new stock assessment analyses.

DATES: Written comments on this proposed rule must be received on or before August 20, 2012.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2012–0087'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the ''Instructions'' for submitting comments.
- *Mail:* Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2012–0087'' in the search field and click on ''search.'' After you locate the document ''Snapper-Grouper Fishery off the Southern Atlantic States; Snapper-Grouper Management Measures,'' click the ''Submit a Comment'' link in that row. This will display the comment Web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the Web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of documents supporting this proposed rule including an environmental assessment, initial regulatory flexibility analysis (IRFA), regulatory impact review, and fishery impact statement may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.*

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–824–5305, or email: *Karla.Gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented 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 NMFS and the regional fishery management councils to prevent overfishing, to achieve (on a continuing basis) the OY from federally managed fish stocks, and to rebuild stocks that have been determined to be overfished. These mandates ensure management of fishery resources for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. Reauthorization of the Magnuson-Stevens Act in 2007 required implementation of new tools to help end and prevent overfishing to achieve the OY from a fishery. The tools are ACLs and AMs.

An ACL is the level of annual catch of a stock that, if met or exceeded, triggers some corrective action through AMs. The AMs are management controls to prevent exceeding the ACLs and to correct for overages of ACLs if they occur. An AM might be an in-season closure if catch approaches the ACL, or it may require reducing the ACL for the following fishing year because of an overage that occurred during the previous fishing year. ACLs may not exceed the overfishing limit (OFL) and the acceptable biological catch (ABC). The OFL is an estimate of the catch level above which overfishing is occurring and may come from a stock assessment. The ABC is defined as the level of a stock's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty, and is based on the Council's ABC control rule.

Management Measures Contained in This Proposed Rule

This proposed rule, if implemented, would modify the ACL for golden tilefish. In 2011, ACLs and AMs were implemented for golden tilefish through the Amendment 17B to the FMP (75 FR 82280, December 30, 2010). Since then, golden tilefish have been assessed through the Southeast Data, Assessment, and Review (SEDAR) process using data through 2010. The stock assessment for golden tilefish indicated that the South Atlantic population is not overfished nor undergoing overfishing. Results from the recent stock assessment (SEDAR 25 2011) suggest that the current South Atlantic golden tilefish ACL (326,554 lb (148,122 kg), round weight, or 291,566 lb (132,252 kg), gutted weight), can be increased. The current South Atlantic golden tilefish commercial ACL is 316,757 lb (143,679 kg), round weight, or 282,819 lb (128,285 kg), gutted weight; and the recreational ACL is 1,578 fish. If implemented, the commercial and recreational ACLs for golden tilefish in the South Atlantic would be set at the yield associated with 75 percent fishing mortality that will produce the maximum sustainable yield (MSY) while the population is at equilibrium. Therefore, this proposed rule would

increase the current South Atlantic golden tilefish ACL to 625,000 lb (283,495 kg), round weight, or 558,036 lb (253,121 kg), gutted weight. The ACLs would continue to be split using the existing recreational (3 percent) and commercial (97 percent) sector allocation. Therefore, if implemented, this proposed rule would set the South Atlantic golden tilefish commercial ACL equal to 606,250 lb (274,990 kg), round weight, or 541,295 lb (245,527 kg), gutted weight, and the recreational ACL equal to 3,019 fish. The ACLs would be set at this level to ensure there is a buffer between the ACLs and ABC (668,000 lb (303,000 kg), round weight, or 596,429 lb (270,536 kg), gutted weight) to account for management uncertainty. Equilibrium values represent the yield expected, on average, over a long period from a given management strategy. Using the estimated equilibrium values as a catch limit is a risk-averse approach that sacrifices some yield over the short-term to gain stability over the long-term and prevent unrealistic expectations of fishery potential by constituents.

This proposed rule would also modify the AMs for the golden tilefish recreational sector of the snapper-grouper fishery. If recreational landings for golden tilefish meet, or are projected to meet the recreational ACL, NMFS will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. Additionally, if the ACL is exceeded, the current recreational AMs for golden tilefish use a 3-year running average to determine if the length of the following fishing season needs to be reduced to ensure that the ACL is not exceeded in the following year. The 3-year running average could be heavily influenced by a single year's anomalously high or low landings, which may or may not be due to actual increases in harvest or statistical variation. This proposed rule would eliminate the 3-year running average and use landings in a single year instead to reduce the risk of implementing overly conservative AMs when they are not needed.

Management Measures Contained in Regulatory Amendment 12

Additionally, Regulatory Amendment 12 revises OY for golden tilefish and would establish the ACL equal to the OY and equal to the yield at 75 percent of the fishing mortality at MSY when the population is at equilibrium.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, Regulatory Amendment 12, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

The proposed rule would not introduce any changes to current reporting, record-keeping, and other compliance requirements in the golden tilefish segment of the snapper-grouper fishery.

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

A total of 142 vessels using hook-and-line gear and 38 vessels using longline gear landed golden tilefish in any one year during 2005–2010. Vessels using hook-and-line gear landed an annual average of about 27,000 lb (12,247 kg), gutted weight, of golden tilefish and 220,000 lb (99,790 kg), gutted weight, of other snapper-grouper species. Gross revenues of these vessels annually averaged $76,000 (2010 dollars) from golden tilefish and $567,000 (2010 dollars) from other snapper-grouper species. For 2005–2010, vessels using longline gear landed an annual average of about 298,000 lb (135,172 kg), gutted weight, of golden tilefish and 153,000 lb (69,400 kg), gutted weight, of other snapper-grouper species. For this period, their revenues annually averaged $802,000 from golden tilefish and $286,000 from other snapper-grouper species. On average, vessels using hook-and-line gear depended on other snapper-grouper species for a majority of their revenues while vessels using longline gear depended on golden tilefish as their major source of revenues. Obviously, some vessels using hook-and-line gear could be expected to be more dependent on golden tilefish as a major source of revenues. Similarly, some vessels using longline gear could be more dependent on other snapper-grouper species as a major source of revenues. These vessels, using hook-and-line or longline gear, are assumed to comprise the universe of commercial vessels directly affected by actions in this regulatory amendment, including the ACL alternatives. It is possible that, with the proposed ACL increase, other commercial vessels may enter or re-enter the golden tilefish portion of the snapper-grouper fishery, but it is not reasonably possible to determine how many vessels would do so.

Based on revenue information, all commercial vessels affected by the proposed action can be considered small entities.

From 2005–2010, an annual average of 1,985 vessels had valid permits to operate in the snapper-grouper for-hire sector, of which 85 are estimated to have operated as headboats. The for-hire fleet consists of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (2010 dollars) is estimated to range from approximately $62,000–$84,000 for Florida vessels, $73,000–$89,000 for North Carolina vessels, $68,000–$83,000 for Georgia vessels, and $32,000–$39,000 for South Carolina vessels. For headboats, the corresponding revenue estimates are $170,000–$362,000 for Florida vessels, and $149,000–$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the proposed action can be considered small entities.

Some fleet activity, *i.e.,* multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors to an unknown extent, and all vessels are considered as independent entities in this analysis.

NMFS expects the proposed rule to directly affect all federally permitted commercial vessels harvesting golden tilefish and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that the proposed action would affect a substantial number of small entities.

Because NMFS determines that all entities expected to be affected by the actions in this proposed rule are small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

Given that the current commercial AM is maintained, the proposed ACL increase would result in revenue increases to the commercial vessels. It is also expected that such revenue increases would lead to profit increases, although the magnitude of profit increases cannot be estimated based on available information.

The recreational sector has exceeded its ACL in recent years. In 2011, this sector exceeded its ACL by more than 500 percent. The proposed ACL increase would not be enough to compensate for the expected overages in the recreational sector. Hence, with the proposed in-season and post-season AM for the recreational sector, the for-hire entities may be expected to experience profit reductions even with the proposed ACL increase. The magnitude of such profit reduction cannot be estimated based on available information.

Because the commercial sector harvests much more golden tilefish than the recreational sector, receiving 97 percent of the combined ACL, it is likely that the profit increases to the commercial sector would cumulatively outweigh the profit decreases to the for-hire sector. NMFS expects that the proposed ACL increase would yield positive net profit to small entities that participate in the golden tilefish segment of the snapper-grouper fishery.

Five alternatives, including the preferred alternative, were considered for revising the ACL and OY for golden tilefish. The first alternative, the no action alternative, would maintain the existing ACL, which is equal to OY and OY equal to 75 percent of the fishing mortality at MSY. This is not a viable alternative because, based on updated biomass information, it would result in an ACL that is greater than the ABC recommended by the Council's SSC. The second alternative would set the ACL equal to OY and OY equal to ABC. Due to its larger ACL, this alternative would result in larger short-term revenue and profit increases to commercial vessels than the preferred alternative. For the same reason, it would also result in better fishing opportunities and possibly higher profits to for-hire vessels than the preferred alternative. However, this alternative poses some risks, largely absent in the preferred alternative, of pushing the stock to an overfished level—fishery managers can overshoot the equilibrium biomass target, which could result in the population biomass dropping below both target and limit levels. In addition, this alternative provides for declining ACLs over time, which would tend to invite controversy especially when the stock is abundant and not overfished. On the other hand, the preferred alternative would provide for stable harvest levels over time that, although lower than those of the second alternative, would still be substantially higher than current levels. The third alternative would set the ACL equal to the OY and the OY equal to 90 percent of the ABC. The fourth alternative would set the ACL equal to the OY and the OY equal to 80 percent of the ABC. These two other alternatives would provide for lower ACLs than the preferred alternative, and thus lower economic benefits as well.

Four alternatives, including the preferred alternative, were considered for revising the recreational AMs for golden tilefish. The first alternative, the no action alternative, is a post-season AM and employs a 3-year averaging method for determining ACL overages. Without an in-season AM, this alternative would not be as effective as the preferred alternative in preventing overages in the recreational sector. In addition, given the relatively large recreational harvests in recent years, the 3-year averaging method for determining ACL overages could potentially trigger the application of the AM even if no overages occurred in the current year. This would result in short-term reductions in profits and might also delay the benefits that would accrue from increasing the sector's ACL. The second alternative would specify a recreational sector AM trigger and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector AM trigger, thus possibly limiting adverse effects on the profits of small entities. However, it would not provide for a measurable index in addressing the overages in the recreational sector. The third alternative would specify a recreational sector in-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector in-season AM. This sub-alternative would likely result in higher profits to small entities than the preferred sub-alternative. However, it would not address the overages in the recreational sector that would eventually result in more restrictive regulations and larger reductions in the profits of small entities. The fourth alternative would specify a recreational sector post-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would specify a recreational sector post-season AM in terms of paybacks for the prior year's overages if golden tilefish were overfished. This sub-alternative would likely result in larger profit reductions to small entities than the preferred sub-alternative. Moreover, this sub-alternative would be unnecessary because golden tilefish is not overfished.

In this regulatory amendment, the Council considered four alternatives for a commercial sector ACT for which the no action alternative is the preferred alternative. The other alternatives would set a commercial ACT equal to 90 percent, 75 percent, or 50 percent of ACL. If the Council had decided to use the ACT to close the commercial harvest and prohibit the sale of golden tilefish, these other alternatives would likely result in larger profit reductions to small entities than the preferred alternative.

List of Subjects in 50 CFR Part 622

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

Dated: July 17, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, Performing the Functions and Duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

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

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

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

2. In § 622.42, paragraph (e)(2) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(2) *Golden tilefish*—541,295 lb (245,527 kg).

* * * * *

3. In § 622.49, the heading for § 622.49 is revised, and paragraphs (b)(1)(i) and (ii) are revised to read as follows:

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

* * * * *

(b) * * *

(1) * * *

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.42(e)(2), 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.

(ii) *Recreational sector.* If recreational landings for golden tilefish, as estimated by the SRD, meet or are projected to meet the recreational ACL of 3,019 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. If recreational landings for 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 following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year.

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