DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 080226312–91249–03]

RIN 0648–AW12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15B; Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 15B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule, for South Atlantic snapper-grouper, requires a private recreational vessel that fishes in the exclusive economic zone (EEZ), if selected by NMFS, to maintain and submit fishing records; requires a vessel that fishes in the EEZ, if selected by NMFS, to carry an observer and install an electronic logbook (ELB) and/or video monitoring equipment provided by NMFS; prohibits the sale of snapper-grouper harvested or possessed in the EEZ under the bag limits and prohibits the sale of snapper-grouper harvested or possessed under the bag limits by vessels with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper regardless of where the snapper-grouper were harvested; requires an owner and operator of a vessel for which a commercial or charter vessel/headboat permit has been issued and that has on board any hook-and-line gear to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of such species that are incidentally caught; and expands the allowable transfer of a commercial vessel permit under the limited access program and extends the allowable period for renewal of such a permit. Amendment 15B also revises the stock status determination criteria for golden tilefish and specifies commercial/recreational allocations for snowy grouper and red porgy. In addition, NMFS removes language specifying commercial quotas for snowy grouper and red porgy that are no longer in effect and revises sea turtle bycatch mitigation requirements applicable to the Gulf reef fish fishery to add two devices that were inadvertently omitted from a prior rule. The intended effects of this final rule are to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery; minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish; and remove outdated language.

DATES: This rule is effective December 16, 2009, except for the following amendments. The amendment to § 622.18(c) is effective November 16, 2009; the amendment to § 622.10(c) is effective February 16, 2010; and the amendments to §§ 622.5, 622.8, and 622.18(b)(1)(ii) require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval for those amendments is received, NMFS will publish a notice in the **Federal Register** announcing the applicable effective date.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS), Final Regulatory Flexibility Analysis (FRFA), and Record of Decision may be obtained from Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Rich Malinowski, Southeast Regional Office, NMFS, and by e-mail to *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305.

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

On June 4, 2009, NMFS published a notice of availability for Amendment 15B and requested public comments (74 FR 26827). On June 30, 2009, NMFS published the proposed rule to implement Amendment 15B and requested public comments (74 FR 31225). NMFS approved Amendment 15B on September 1, 2009. The rationale for the measures contained in Amendment 15B is provided in the amendment and the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received 216 comments on Amendment 15B and the proposed rule, including 1 comment from a state agency, 2 comments from Federal agencies, and 213 comments from individuals (including 155 copies of a form letter sent by individuals). Of these comments, 14 expressed general opposition to Amendment 15B, one comment expressed general support, and one comment was unrelated to the scope of the actions contained in the amendment and the rule. The remaining comments addressed specific concerns related to the actions contained in the amendment and the rule, and those comments, as well as NMFS' respective responses, are summarized below.

Comment 1: One hundred fifty seven comments expressed concern regarding the allocation of snowy grouper. Several constituents stated the 95–percent commercial and 5–percent recreational allocation of snowy grouper is unbalanced and favors the commercial sector. Others cited National Standard 4 (NS 4) of the Magnuson-Stevens Act, regarding ''fair and equitable'' management measures, as not being met, stating that a fair allocation of the species would be 50–percent commercial and 50–percent recreational. Another commenter stated recreational data collection is insufficient to monitor recreational landings and is concerned any recreational overages will undermine efforts to rebuild the stock.

Response: The sector allocations for snowy grouper in Amendment 15B are based on historical landings by fishery sector, and are proportional to the total allowable catch (TAC) for the applicable species. The Council recommended and NMFS adopted snowy grouper allocations based on average annual harvests for each sector using the longest time series of data (1986–2005). The snowy grouper 95–percent commercial and 5–percent recreational allocation was supported by the Council's Snapper-Grouper Advisory Panel. It was concluded that the preferred allocation is fair and equitable based on the best scientific information available.

NMFS recognizes that snowy grouper recreational landings are more difficult to track than commercial landings. Snowy grouper are infrequently encountered by the current data collection program, which is the Marine Recreational Fisheries Statistical

Survey. Therefore, the Council has discussed, as an action for a future amendment, the possibility of comparing a recreational annual catch limit with recreational landings averaged over a range of years. For example, for 2010, landings from 2010 would be used; for 2011, landings from 2010 and 2011 would be used; and for 2012, landings from 2010, 2011, and 2012 would be used.

Comment 2: One hundred fifty five commenters who signed the form letter opposed updating management reference points for golden tilefish. They stated that such updates should be delayed until a peer-reviewed study is completed with more current data.

Response: Section 303(a) of the Magnuson-Stevens Act requires that regional fishery management councils must specify within their FMPs objective and measurable criteria for identifying when the stocks are overfished or when overfishing is occurring. These criteria are referred to by NMFS as stock status determination criteria, otherwise known as management reference points. Required criteria include maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT). The Council has specified numerical values for MSY, OY, MSST, and MFMT (the definition of MFMT, which is the fishing mortality that will produce MSY, would remain unchanged) for golden tilefish, in Amendment 15B, based on the most recent Southeast Data, Assessment, and Review (SEDAR) assessment for golden tilefish, which was completed in 2004. The data used in the 2004 SEDAR assessment and in Amendment 15B were determined to be the best available scientific information by the Southeast Fisheries Science Center (SEFSC). The management reference points specified for golden tilefish in Amendment 15B will continuously be reviewed and updated as new data becomes available. The next SEDAR assessment for golden tilefish is scheduled to begin in 2010. If the assessment results indicate a change is needed, the management reference point values may be updated through a framework action or a future FMP amendment.

Comment 3: Three commenters supported the prohibition on bag limit sales of snapper-grouper, however, 168 commenters (including 155 commenters who signed the form letter) expressed opposition to the measure, for one or more reasons. Those opposed to this measure are concerned: about the potential cost of purchasing a commercial limited access snapper-grouper permit, which they would need to sell their snapper-grouper caught in Federal waters; they will no longer be able to sell their catch if they only hold state-issued commercial licenses; recreational fishermen could begin to sell their catch illegally, creating an illegal market for snapper-grouper; the prohibition unfairly favors the commercial sector and inequitably impacts the recreational and for-hire sectors; and for-hire and private recreational vessel operators will no longer be able to defray their trip costs by selling bag-limit caught snapper-grouper. Further, several commenters alleged that the prohibition on bag-limit sales contradicts Amendment 7 (1994) to the FMP, which implemented a provision to allow the sale of snapper-grouper caught under the bag limits by fishermen who possess a state-issued commercial license, and that the prohibition on bag-limit sales is illegal and violates Magnuson-Stevens Act National Standards (NS) 4, 5, and 8.

Response: The cost and limited availability of Federal commercial snapper-grouper permits (or limited-access snapper-grouper permits) could be determining factors for those fishermen seeking to sell their catch. If a person who does not hold a Federal commercial snapper-grouper permit wishes to sell snapper-grouper harvested from the EEZ, that person must purchase two Federal commercial snapper-grouper permits in order to be issued one Federal commercial snapper-grouper permit. This two-for-one program was established in 1998 through Amendment 8 to the FMP.

The prohibition on sale of bag-limit caught snapper-grouper is not intended to financially penalize recreational fishermen who would like to sell their catch, rather it is intended to:

(1) eliminate the double counting of recreationally caught fish, which may be counted through the Marine Recreational Fishing Statistics Survey and by snapper-grouper dealers who report all landings as commercial; (2) improve enforcement by implementing regulations compatible with those already in place for reef fish harvested in the Gulf of Mexico; and (3) reduce the financial risk and negative economic impacts that would be incurred if snapper-grouper fisheries are closed early due to recreationally caught fish being counted against the commercial quotas.

Fishermen who hold a state-issued commercial license to sell fish but who do not hold a Federal commercial snapper-grouper permit may be considered commercial fishermen by their respective state. However, those same fishermen are not considered participants of the Federal commercial sector of the snapper-grouper fishery. Fishermen holding state-issued commercial licenses will still be allowed to sell snapper-grouper, provided those fish are caught in state waters (and the fishermen do not also hold a Federal for-hire snapper-grouper permit), unless and/or until their state implements regulations compatible with this final rule.

Illegal sale of snapper-grouper by recreational fishermen will likely be an enforcement issue similar to other current illegal fish sales in the South Atlantic. The Council's Law Enforcement Advisory Panel reported that the prohibition of bag-limit sales would aid law enforcement efforts because the universe of people involved in the sale of snapper-grouper would be reduced.

The main argument shared by recreational fishermen on this issue is the disparity of negative socioeconomic impacts between the commercial and recreational sectors. However, fishermen with Federal commercial snapper-grouper permits are more dependent on snapper-grouper species to make a living than individuals who possess a state license and can sell up to their bag limit. Commercial harvesters with a Federal commercial snapper-grouper permit that depend on the harvest and sale of fish for their livelihood have greater vessel safety requirements and associated expenses than recreational fishermen have with their private vessels. This fact, coupled with recent regulations that have established or reduced quotas to end overfishing of a number of snapper-grouper species, were the primary reasons the Council voted to eliminate the sale of bag limit catch to prevent an early closure of the commercial sector of the snapper-grouper fishery and to prevent market disruption.

The revenue from sales of snapper-grouper caught under the bag-limits by those vessel owners who possess state-issued commercial licenses traditionally have been used to help offset the cost of fishing trips. Prohibiting the sale of bag-limit caught fish could result in a decrease in recreational fishing effort, and for-hire vessels may require increased fees or reduced levels of services offered. The use of bag-limit sales as a form of crew payment is understood to be common industry practice. Elimination of the bag-limit sale provision could result in the increase of charter fees, lower crew wages, or fewer crew onboard.

Amendment 7 to the FMP implemented controls on the sale and

purchase of snapper-grouper by limiting bag-limit sale transactions to those who possessed a state-issued commercial license to sell and dealers who held a Federal snapper-grouper dealer permit. It was NMFS' intent to allow the sale of bag-limit caught fish in order to improve stock assessments with the supplemental data and allow the Council to better manage the snapper-grouper resource. However, since the Council has established new (reduced) commercial quotas to end overfishing of several snapper-grouper species the consequences of bag-limit sales has become more evident. All snapper-grouper landings that are sold are counted toward commercial quotas and commercial fisheries close when their respective quotas are reached. NMFS is implementing the prohibition on bag-limit sales to help avoid early closures for species caught by the commercial snapper-grouper fleet. This action does not restrict the recreational fishermen from harvesting their bag limit; it restricts the sale of those bag limit harvested fish.

National Standard 4 states, in part, that conservation and management measures shall not discriminate between residents of different States, but if it becomes necessary to allocate such fishing privileges among various fishermen, such allocation shall be fair and equitable to all such fishermen. This rule ensures that fish harvested by the recreational sector are not counted toward the commercial quotas, that total landings are accurate, that market disruption is avoided due to early snapper-grouper fishery closures, and that South Atlantic regulations for sale of recreationally caught snapper-grouper are consistent with those for reef fish in the Gulf of Mexico. NS 5 states that conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose. NMFS acknowledges the economic impacts of this action. The economic analysis contained within Amendment 15B indicates that there would be adverse economic impacts to those who have engaged in bag limit sales. However, prohibiting the sale of bag-limit caught snapper-grouper will enhance efficiency in the utilization of fishery resources through improved data integrity by eliminating the double counting of snapper-grouper species towards both the recreational and commercial landings, which will result in improved assessments and management. Efficiency will also be gained through improved enforcement, as previously discussed, and because of the implementation of compatible regulations in the South Atlantic and Gulf of Mexico. In regard to NS 8, which states in part that conservation and management measures shall provide for the sustained participation of communities and minimize adverse impacts on such communities to the extent practicable, this action would help sustain fishing communities whose fishermen possess Federal commercial snapper-grouper permits and are directly dependent upon the harvest and sale of snapper-grouper species.

Comment 4: Many commenters supported the bycatch monitoring methods contained in Amendment 15B for commercial vessels, however, 178 commenters, including those that signed the form letter, opposed the requirement for private recreational vessels to carry observers and/or video monitoring systems if selected to do so by the Science and Research Director, SEFSC, NMFS (SRD), stating that it is a violation of their constitutional rights.

Response: It is not the Council's or NMFS' intent to infringe on any rights guaranteed to private citizens of the United States and these requirements do not violate any person's rights guaranteed under the United States Constitution. The requirement for private recreational vessels fishing for snapper-grouper in the EEZ to carry observers, and use video monitoring equipment, among other monitoring methods, if selected to do so by the SRD, is intended solely to supplement existing data on interactions with bycatch species and obtain information on regulatory discards. Additionally, any vessel fishing within the confines of Federal waters is subject to Federal requirements regardless of the commercial or recreational status of the vessel. The Council voted, and NMFS agreed to adopt, measures to collect standardized bycatch data across all sectors of the snapper-grouper fishery in order to create a more reliable and comprehensive database to be used in future fisheries management decisions.

Comment 5: One commenter stated that the monitoring methods included in Amendment 15B should be applied to all vessels operating in the snapper-grouper fishery, not only a selected portion.

Response: All fishing vessels operating in this fishery, if selected, are subject to these monitoring requirements, however, NMFS agrees that total bycatch monitoring coverage would yield the greatest amount of bycatch data. Placing observers, electronic logbooks, and video monitoring systems onboard all commercial and recreational vessels fishing for snapper-grouper in the South Atlantic EEZ would be cost prohibitive and is not statistically necessary to create a robust data set. Therefore, the Council decided to implement bycatch monitoring methods only on vessels selected by the SRD.

Comment 6: One hundred fifty five commenters who signed the form letter opposed the action that allows an individual to transfer his or her limited access vessel permit to a corporation whose shares are all held by the individual or the individual and one or more of his or her immediate family members. The majority of these commenters also support further permit reductions in the fishery in order to protect snapper-grouper stocks in the South Atlantic.

Response: This action would add no additional permits to the fishery. The intent of this action is to allow family-owned fishing businesses to transfer individual snapper-grouper permits to a family-owned corporation, on a one-for-one basis, to obtain tax and liability benefits that may be provided to a corporation. The snapper-grouper limited access program requires new entrants into the fishery to purchase two commercial snapper-grouper permits in exchange for one permit. Some current permit holders would like to incorporate their fishing businesses and transfer their snapper-grouper permits to a new family-owned corporation without the need to buy a second permit. The Council concluded that the modification to the permit transferability requirements is fair and equitable based upon the information available. Under this action, an individual would be able to transfer his or her limited access transferable vessel permit to a corporation whose shares are all held by the individual or the individual and or one or more of his or her immediate family members. The permit may not be renewed or transferred if an annual corporate report shows a shareholder other than an immediate family member of the individual who originally transferred the vessel permit to the family corporation.

While an optimal fleet size to maximize benefits (biological, social, and economic) for the snapper-grouper fishery doesn't currently exist, reductions in the number of permits in the limited access program continue under the current ''two-for-one'' permit program. The Council may choose to further reduce the number of permits in this fishery in a future amendment.

Comment 7: One commenter expressed concern about any

disproportionate effects the modification to permit transferability requirements might have on low-income or subsistence fishermen. The same commenter stated a more liberal approach may be appropriate for permit transferability requirements if, indeed, low-income or subsistence fishermen were affected.

Response: An environmental justice analysis was conducted for all actions in Amendment 15B (see Section 7.5 of the FEIS), and it found that no minority, low-income, or subsistence groups would be disproportionately affected by actions therein.

Comment 8: One commenter opposed the requirement for all vessels with commercial and for-hire snapper-grouper vessel permits, carrying hook-and-line gear onboard, to: (1) immediately release incidentally caught smalltooth sawfish by following the latest NMFS approved guidance on smalltooth sawfish release techniques; (2) have a copy of the document, provided by NMFS, titled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury'' posted inside the wheelhouse, or within a waterproof case in a readily accessible area; (3) post the NMFS provided sea turtle handling and release guideline placard inside the wheelhouse, or in an easily viewable area if there is no wheelhouse; (4) tend to incidentally caught sea turtles in a manner consistent with the protocols specified in 50 CFR 635.21(c)(5)(ii); and (5) carry NMFS approved sea turtle release gear onboard.

Response: A 2006 Biological Opinion conducted by NMFS under the Endangered Species Act concluded that the impacts of the South Atlantic snapper-grouper fishery were likely to adversely affect threatened or endangered sea turtles and smalltooth sawfish. Based on the Biological Opinion, NMFS determined the need to implement sea turtle bycatch release equipment requirements, and sea turtle and smalltooth sawfish handling protocols and/or guidelines in the commercial and for-hire sectors of the snapper-grouper fishery. NMFS acknowledges the financial burden as well as the onboard storage issues related to requirements under this action. According to the economic impact analysis contained within the FEIS for Amendment 15B (Section 4.6.2), expenses per vessel are estimated to range from $617-$1,115.

Comment 9: One commenter asked if training in the proper use of sea turtle dehooking and disentanglement gear would be provided to fishermen in the snapper-grouper fishery, and how the success of requiring such gear would be monitored.

Response: Equipment specialists will conduct voluntary dockside training sessions for proper use of sea turtle release gear. Additionally, the protocol required onboard every Federally permitted snapper-grouper vessel contains step-by-step instructions on proper use of the required equipment and handling of entangled or hooked sea turtles. To monitor the efficacy of the requirement to carry sea turtle release gear, NMFS would need to implement an observer or video monitoring program in the snapper-grouper fishery. Presently, enforcement of this provision would occur via dockside and at-sea vessel inspections. Amendment 15B does include a requirement for federally permitted snapper-grouper vessels to carry an observer and/or video monitoring equipment on board if selected to do so by the SRD. Once funding is secured, NMFS' intention is to move forward with the implementation of an observer program for the snapper-grouper fishery of the South Atlantic.

Comment 10: One commenter stated the Snapper-Grouper Advisory Panel was unbalanced in its representation of commercial and recreational fishermen at the time the Advisory Panel voted against a motion to allow for the continued sale of bag limit caught snapper-grouper by fishermen holding state licenses to sell fish.

Response: Council advisory panels are made up of recreational and commercial fishermen, industry representatives, environmentalists and other interested members of the public who volunteer their time to advise the Council about trends in fisheries, environmental concerns relating to fish habitats and management impacts on fishermen and fishing communities. Advisory panel members serve 3-year terms and are appointed by the Council based on Committee recommendations. The advisory panel member's seat is open to qualified applicants at the end of the 3-year term, and the current member is also eligible for reappointment. Any motions or issues discussed by a specific advisory panel may be brought before the respective committee and Council for consideration. In this case, the issue of bag-limit sales was brought before, and voted on, by the Snapper-Grouper Committee as well as the Council. Both entities voted in favor of choosing the alternative to prohibit the sale of bag limit caught snapper-grouper in the South Atlantic as the preferred alternative. Subsequent to the Council's approval of Amendment 15B, the amendment was approved by the Secretary of Commerce.

Other Non-Substantive Changes Implemented by NMFS

This final rule removes the outdated 2008 quotas for snowy grouper and red porgy at § 622.42(e)(1) and (e)(6), respectively.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 15B is necessary for the conservation and management of the snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

An FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (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. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The purpose of this rule is to specify quotas for snowy grouper and red porgy; modify the sales provisions of snapper-grouper caught or possessed under the bag limit; implement a plan to monitor and assess bycatch; implement measures to minimize the impacts of incidental sea turtle and smalltooth sawfish take; and ease the requirements of snapper-grouper permit renewal and transfer. These measures are expected to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery, and minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish. The Magnuson-Stevens Act provides the statutory basis for this rule. In addition to these actions, Amendment 15B establishes allocation ratios for snowy grouper and red porgy, and management reference points and stock status criteria for golden tilefish.

No public comments were received that raised specific issues on the IRFA. However, comments were received from 13 individuals that addressed multiple issues relating to the general economic analysis conducted for the amendment and the proposed rule. Some of these comments address issues that are germane to the RFA, while others do not. However, while the Regulatory Flexibility Analysis (RFA) pertains to specific economic questions, there is a logical connection between all

economic issues and the nuances of which comments are or are not germane to the RFA may not be obvious to the public. In recognition of these considerations, all of the economic comments, regardless of whether they address issues relevant to the RFA, are addressed here.

Thirteen comments addressed the proposed prohibition on the sale of snapper-grouper harvested under the bag limit, and two comments addressed the potential costs of bycatch monitoring. Among the 13 comments on the sales prohibition, 8 expressed concern over the magnitude of the likely economic effects of the proposed rule; 2 comments stated that the cost of the necessary permit to allow continued bag-limit sales was prohibitive; 2 comments stated that markets would be harmed; 1 comment stated the rule will contribute to a regulatory-induced contraction of vessels in the fishery, resulting in a number of ''units'' that ''may approach a monopolistic level with perilous consequences≥; and 1 comment stated the economic analysis was inadequate because it did not sufficiently delineate the effects by user group, particularly the effects on individuals who possessed a North Carolina Standard Commercial Fishing License (SCFL). The two comments on bycatch monitoring stated that certain options, notably the use of observers and electronic monitoring, may be physically impractical or cost prohibitive.

NMFS agrees that this rule will result in adverse economic effects on fishermen who will no longer be able to continue to sell snapper-grouper harvested under the bag limit. Estimates of the average expected reduction in revenues associated with these harvests were provided in the analysis. Although some individual vessels will likely experience greater than average losses, across all affected entities, this rule is expected to reduce average annual fish sale revenues by approximately 17 percent for federally permitted for-hire vessels and approximately 7 percent for all other vessels. It is noted, however, that the primary revenue source for for-hire vessels is passenger fees and not fish sales, so the loss of these revenues should have a substantially lower impact on business profitability than the reduction in fish sales might imply. While vessels that will no longer be able to sell snapper-grouper harvested under the bag limit are expected to experience lower revenues, increased harvests and sales of snapper-grouper by vessels with the Federal commercial snapper-grouper permit will be possible, and the prohibition of the sale of fish harvested under the bag limit is necessary to achieve the Council's objectives.

NMFS agrees the cost of obtaining a Federal commercial snapper-grouper permit, resulting from the current limited access permit system that requires new entrants to purchase a Federal commercial snapper-grouper permit on the open market from a current permit holder, combined with the requirement that two current permits be purchased in order to enter the fishery, is prohibitive and, as a result, fishermen, who will no longer be able to sell bag-limit quantities of snapper-grouper are unlikely to acquire the necessary permits to continue commercial sales of these species. In the analysis of the proposed rule, the cost of a single Federal commercial snapper-grouper permit was estimated to range from $9,000-$21,000, but could be higher. As a result, affected vessels are expected to cease the sale of snapper-grouper and experience reductions in fish revenues ranging from, on average, 7 percent for commercial vessels and 17 percent for for-hire vessels, with some individual fishing vessels expected to experience greater than average reductions. While these vessels will be expected to be adversely affected, the Council has not determined at this time that it is appropriate to either eliminate the two-for-one permit requirement or allow increased participation in the commercial snapper-grouper fishery through other methods and, therefore, the elimination of snapper-grouper sales by vessels that do not have the Federal permit is necessary to achieve the Council's objectives.

NMFS disagrees that fish markets will be significantly affected by this rule. The prohibition on the sale of snapper-grouper harvested under the bag limit is only expected to affect those who may harvest and sell snapper-grouper and not the total amount of snapper-grouper harvested and sold. Thus, the total amount of snapper-grouper available to fish markets should not be substantially affected. Some individual market businesses, however, may experience declines in product flow, with others experiencing increases, because individual fishermen sell their harvests to different dealers. Markets that have historically purchased snapper-grouper harvested under the bag limit may have to develop new purchase strategies to maintain product flow, but total product availability across all markets is not expected to be reduced. Further, if the product mix of individual markets mirrors that of vessel sales, most markets should not be substantially dependent on sales of snapper-grouper harvested under the bag limit as snapper-grouper sales by fishermen that do not possess the Federal commercial snapper-grouper permit constituted less than eight percent of total sales of all species by these fishermen for 2004–2006.

NMFS disagrees that the rule will result in sufficient contraction of the fishery to raise monopoly concerns. Although the analysis for the proposed rule identified over 1,500 entities with recorded sales of snapper-grouper harvested under the bag limit for 2004–2006, over 700 entities have the necessary Federal commercial permit that will allow continued harvest and sale of these species. While the permit transfer provisions for this fishery are expected to result in further reduction over time of the number of vessels that operate in the fishery, the number of permitted vessels is sufficiently large that no monopoly concerns are evident.

NMFS disagrees that the economic analysis was inadequate because it did not sufficiently delineate the effects by user group. The economic analysis identified average historic harvest and sales activity by fishermen, by state, who did or did not possess the Federal commercial snapper-grouper permit. The expected economic effects of the proposed rule on affected entities equates to the loss of revenues from snapper-grouper sales by individuals who do not possess the Federal commercial snapper-grouper permit. In the case of North Carolina, fishermen who possessed either a SCFL or a Retired SCFL have been allowed to sell up to the recreational bag limit of snapper-grouper. The effects of the proposed rule on these entities was provided in the economic analysis, though the specific effects on North Carolina fishermen were pooled with those of South Carolina fishermen because of confidentiality. On average, the elimination of bag limit sales of snapper-grouper by these entities was estimated to affect approximately four percent of the total average annual sales of all marine species by these entities. Therefore, the results presented consisted of the expected economic effects on the subject group addressed in the comment. It is also noted, as discussed in the economic analysis in support of this rule, that state-licensed fishermen fishing in state waters who do not possess any Federal permit will be able to continue the harvest and sale of snapper-grouper harvested from state waters, and the expected economic effects described here will be reduced, if states do not adopt compatible regulations.

NMFS agrees that certain bycatch monitoring options may be physically

impractical, such as insufficient space on the vessel for an observer or no place to locate either an electronic logbook or video monitor, or cost prohibitive, particularly for some recreational vessels. However, any requirements would apply to a vessel only if selected, rather than all vessels, and NMFS expects these issues to be key considerations in the selection of vessels required to participate. Further, although subsequent operation and maintenance costs have been the responsibility of vessel owners where other electronic monitoring requirements, such as vessel monitoring systems, have been imposed, the initial purchase of the system may be government funded, further reducing the burden to the vessel. No decision on responsibility of these costs has been made at this time. However, NMFS expects that the selection of the method of data collection and the vessels affected will be appropriate to the type of vessel, considerate of the resultant burden, and will minimize any subsequent costs to the extent practicable.

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

This final rule is expected to directly impact commercial fish harvesters and for-hire operators. The Small Business Association has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries).

From 2001–2005, an average of 1,127 vessels per year were permitted to operate in the Federal commercial snapper-grouper fishery. However, over the 2004–2006 fishing years, an average of only 717 vessels per year that were permitted to operate in this fishery recorded snapper-grouper sales. The average annual dockside value of snapper-grouper sold by these vessels was approximately $12.96 million (nominal dollars), while the value of all other species sold by these vessels was approximately $14.33 million (nominal dollars), or total average annual revenues of approximately $27.29 million. The average annual dockside revenue per vessel from sales of all marine species for this period was approximately $38,000.

In 2005, 1,328 vessels were permitted to operate in the Federal snapper-grouper for-hire fishery, of which 82 are estimated to have operated as headboats, and 1,246 as charter vessels. Within these 1,328 vessels, 201 vessels also possessed a Federal commercial snapper-grouper permit and would be included in the summary information provided on the commercial sector. The charter vessels charge a fee on a vessel basis, and headboats charge a fee on an individual angler (head) basis. The charter vessel annual average gross revenue is estimated to range from approximately $62,000-$84,000 (2005 dollars) 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 appropriate estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states. From 2004–2006, an average of 159 vessels per year with the for-hire snapper-grouper permit had recorded sales of snapper-grouper species. The total average annual revenues from snapper-grouper species were approximately $316,000 (nominal dollars), while average annual revenues for all other species was approximately $1.52 million (nominal dollars), for total average annual revenues from fish sales of approximately $1.84 million. The average annual revenue per for-hire vessel from fish sales of all marine species for this period was approximately $11,600. It should be noted that these revenues are not included in the average gross for-hire revenues listed above, which only reflect revenues from charter fees.

The prohibition of sale of fish harvested under the bag limit will affect vessels that have historically sold snapper-grouper but do not possess a Federal commercial snapper-grouper permit. From 2004–2006, an average of 1,439 fishing vessels per year that could not be associated with either a Federal commercial or Federal for-hire snapper-grouper permit had recorded snapper-grouper sales. Total average annual revenues from snapper-grouper species for these vessels were approximately $2.09 million (nominal dollars), while average revenues from all other species were approximately $28.59 million (nominal dollars), for total average annual revenues of approximately $30.67 million. The average annual revenue per vessel from sales of all marine species for this period was approximately $21,000.

Some fleet activity may exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown, and all vessels are treated as independent entities in this analysis. Based on the average revenue figures described above, it is determined, for the purpose of this assessment, that all fishing operations that will be affected by this final rule are small entities.

This final rule will not explicitly impose any new reporting, record-keeping or other compliance requirements on small entities because this rule simply specifies the types of requirements that could be imposed to improve bycatch monitoring and assessment. An individual vessel would only be subject to new requirements if selected. However, the bycatch and monitoring assessment action could result in a requirement for the use of paper logbooks, electronic logbooks, video cameras, or the carrying of observers to aid in the monitoring of bycatch. All commercial snapper-grouper trips are currently required to complete logbook records, with each report estimated to take 10 minutes to complete. Over the years 2001–2005, commercial vessels operating in the snapper-grouper fishery took almost 16,000 trips, or approximately 14 trips per vessel. Assuming modification to the current logbook to include bycatch increased the time required to complete the form by 25 percent, the additional annual time burden to complete the form fishery-wide would be approximately 667 hours or 0.6 hours per vessel.

The headboat sector is also currently required to complete logbook reports for all trips, estimated to take 18 minutes per report. Assuming an average of 322 trips per vessel (note that many vessels take multiple trips per day, so the average number of trips does not equal days fished), 82 headboats, and a 25–percent increase in the amount of time required to complete the form to account for bycatch, the resultant increased annual time burden to the industry would be approximately 1,980 hours, or 24 hours per vessel.

Although charter vessels currently are required to complete logbooks if selected, no vessels in the charter-vessel sector are currently selected and required to submit logbooks. Assuming it took a charter vessel the same amount of time required for a commercial vessel to complete a bycatch-augmented logbook, 12.5 minutes, 1,246 charter vessels, and 146 trips per charter vessel

per year, if all vessels were required to complete logbooks, the total annual time burden to the industry would be approximately 37,900 hours or 30.4 hours per vessel.

There would be no anticipated costs of logbook reporting beyond the opportunity cost of completing the logbook forms. Current logbook programs provide fishermen with addressed, pre-paid envelopes for returning completed forms. Completing the logbooks would not be expected to require special skills.

Similar burden estimates are not available for the use of electronic logbooks. Electronic logbooks would be expected to take less time to complete because certain response variables could be preprogrammed and transmission would be simplified. Electronic logbooks are estimated to cost $500 per unit, but responsibility for this expense is undetermined at this time. Considering the widespread familiarity with and usage of computers throughout today's society, special skills to use an electronic logbook would not be expected, though some initial training or demonstration and a short learning curve would be logical.

The use of video cameras to monitor and record bycatch is likely a method that would, if used, be imposed on only a small portion of participants in the snapper-grouper fishery due to its cost and complexity. Purchase, installation, and maintenance costs of video systems would likely be borne by the government, though some cost-sharing with fishermen may occur. Additional details are unavailable at this time, so concrete determinations on fishermen burden or skill requirements cannot be made.

This final rule will directly affect all vessels that operate in the commercial snapper-grouper fishery, all vessels that have a Federal snapper-grouper charter vessel/headboat permit, and all vessels that harvest snapper-grouper from the EEZ and sell their catch to federally permitted dealers. All affected entities have been determined, for the purpose of this analysis, to be small entities. Because all entities that are expected to be affected by this final rule have been determined to be small entities, no disproportionate effects on small entities relative to large entities are expected.

Only four of the actions in this final rule, including: the two changes in quota, the prohibition on bag-limit sales, and the gear requirements to minimize the incidental take of sea turtles and smalltooth sawfish, are expected to have direct economic impacts on fishing entities. The snowy grouper quota of 82,900 lb (37,603 kg) gutted weight is expected to result in a loss of 1,100 lb (499 kg) of snowy grouper to the commercial sector. Assuming an average ex-vessel price of $2.31 per pound (2006 dollars), this reduction is valued at approximately $2,500, or a loss of approximately $13 per vessel active in the fishery (190 vessels; 2001–2005 average number of commercial vessels per year with snowy grouper landings). The red porgy quota of 190,050 lbs (86,205 kg) gutted weight is expected to result in a gain of 63,050 lb (28,599 kg) gutted weight of red porgy to the commercial sector. This gain is comprised of approximately 59,000 lbs (26,762 kg) gutted weight resulting from the increase in red porgy TAC as a result of the rebuilding strategy implemented through Amendment 15A to the FMP and the remaining increase resulting from an expected one percent increase due to the commercial allocation established by Amendment 15B. Assuming an average ex-vessel price of $1.40 per pound (2006 dollars), the total gain in commercial quota is valued at approximately $88,300, or a gain of approximately $493 per vessel active in the fishery (179 vessels; 2001–2005 average number of commercial vessels per year with red porgy landings).

Assuming the implementation of compatible regulations in all states, thus encompassing snapper-grouper harvested in both state and Federal waters as well as marketed through all state and federally permitted dealers, the prohibition on bag-limit sales is projected to result in the transfer of approximately $2.4 million in nominal ex-vessel revenues (2004–2006 average) from for-hire and commercial fishing vessels that do not have a Federal commercial snapper-grouper permit to the federally permitted commercial snapper-grouper sector. This will constitute a total reduction of approximately $316,000 per year from fish sales by vessels in the federally permitted for-hire fishery, or a 17–percent reduction in average annual gross revenues from fish sales per vessel, and approximately $2.085 million per year in sales from commercial vessels that do not posses a Federal commercial snapper-grouper permit, or a 7–percent reduction in average annual gross revenues per vessel. It should be noted that snapper-grouper fish sales by federally permitted for-hire vessels, estimated at approximately $2,000 per vessel on average, constitute a minor portion of total average annual revenues, with the majority of revenues coming from charter fees. As discussed above, South Atlantic charter vessels are estimated to have average gross annual revenues of approximately $32,000-$89,000, across all states, while headboat average annual revenues are estimated to range from $149,000-$362,000.

If compatible regulations are not adopted in any state, the estimated reduction in bag-limit sales revenues will be limited to those harvests that originate from the EEZ by all vessels, bag-limit harvests from state waters by vessels with the Federal charter vessel/headboat permit for South Atlantic snapper-grouper, and harvests that are marketed through dealers with a Federal permit. This will lower the reduction in bag-limit sales to approximately $1.562-$1.799 million, accounting for the estimated portion of bag-limit sales that originate in state waters (approximately 9 percent) and the estimated portion of bag-limit sales that are marketed through dealers without Federal licenses (approximately 21–35 percent). For the Federal for-hire sector, using the average EEZ bag-limit sales (approximately $267,000) and dealer proportions (approximately 11 percent state dealer sales if the North Carolina and South Carolina proportion is applied throughout and 34 percent otherwise), the reduction in bag limit sales will be approximately $175,000-$238,000. For the non-Federal sector, using the average EEZ bag-limit sales (approximately $1.921 million) and dealer proportions (approximately 23–percent state dealer sales if the North Carolina and South Carolina proportion is applied throughout and 35 percent otherwise), the reduction will be approximately $1.246 million to $1.483 million. These values equate to approximately a 10–13 percent reduction in average annual for-hire fish-sales revenues ($175,000-$238,000/159 vessels/$11,568 total average annual revenues) and approximately a 4–5 percent reduction in average annual revenues to non-federally permitted vessels ($1.246-$1.483 million/1,439 vessels/$21,317 total average revenues).

The transference of these revenues to the Federal commercial snapper-grouper sector will result in an estimated increase of approximately 9 percent in nominal ex-vessel revenues per year ($2.4 million/717 vessels/$38,000 average annual revenues) if compatible regulations are adopted by all states, and from 5 percent to 6 percent if no states adopt compatible regulations ($1.422-$1.729 million/717 vessels/$38,000 average annual revenues).

The gear requirements to minimize the incidental take impact on sea turtles and smalltooth sawfish are estimated to increase vessel gear costs by $617-

$1,115, based on low and high estimated costs, respectively, for each of the 12 different pieces of required gear and assuming the vessel does not already possess any of the required gear. Few actual vessels are expected to have to incur the maximum cost, however, because most vessels are expected to already possess and use most of this gear or allowable substitutes. For-hire vessels that exclusively harvest fish through snorkeling or diving activities and do not possess hook-and-line gear on-board will not have to carry the required gear. For those vessels that need to carry the gear, any costs will be one-time expenditures, subject to breakage or loss replacement.

Three alternatives, including the status quo, were considered for the action to address the sale of snapper-grouper harvested under the bag limit. This final rule will prohibit the purchase and sale of bag-limit fish harvested from or possessed in the EEZ by vessels that did not possess the Federal commercial snapper-grouper permit, and bag-limit fish harvested in either state or EEZ waters by vessels that possess the Federal charter vessel/headboat permit for South Atlantic snapper-grouper. The first alternative, the status quo, would continue to allow the sale of snapper-grouper harvested under the bag limit, continue to allow the Federal commercial snapper-grouper quota to be harvested and sold by vessels that did not possess the Federal commercial snapper-grouper permit, continue increased commercial quota pressure and accelerated quota closures, result in continued adverse economic effects on the Federal commercial snapper-grouper sector, and not achieve the Council's objectives.

The second alternative to the prohibition of sales of snapper-grouper harvested under the bag limit would allow continued sales by vessels with a Federal for-hire snapper-grouper permit. While this would reduce the adverse economic effects on the Federal commercial snapper-grouper sector associated with the status quo, these effects would not be eliminated, thereby generating less net economic benefits for this sector and associated businesses than this final rule.

Four alternatives, including the status quo, were considered for the action to establish a program to monitor and assess bycatch. This final rule will require the use of a variety of bycatch monitoring methods, which include observers and use of an ELB or video monitoring program, until the Atlantic Coastal Cooperative Statistics Program (ACCSP) bycatch monitoring program can be implemented. The first alternative to the bycatch monitoring program in this final rule, the status quo, would only utilize existing information, would not improve current capabilities to monitor and assess bycatch, and would not achieve the Council's objectives. The second alternative would require the implementation of the ACCSP bycatch monitoring program. The ACCSP is a cooperative state-federal program whose mission is to design, implement, and conduct marine fisheries statistics data collection programs and to integrate those data into a single data management system that will meet the needs of fishery managers, scientists, and fishermen. The ACCSP design includes data modules for catch and effort data, permit and vessel registration, biological data, bycatch data, quota monitoring data, economic data, and sociological data. These modules are being implemented on a priority basis consistent with available funding. At this time, funding is not available for implementation of the bycatch data module. While this program would generate the best data in the shortest period of time, with accompanying social and economic benefits, the program lacks the flexibility of allowing interim methods until such time as the preferred methods can be funded and adopted. As a result, this alternative would not meet the Council's objectives. The overall cost to implement the ACCSP bycatch monitoring program has not been identified.

The third alternative to the bycatch monitoring program in this final rule would implement a program that is less comprehensive than the program selected. This program would require a variety of reporting and monitoring tools, including observers, logbooks, and video monitoring, among other methods, but would be less structured and systematic than the ACCSP program or the program specified by this final rule. The cost of this program is unknown. As a result of being less structured and systematic, however, this program would be expected to be less costly than the program selected, but would also be expected to result in poorer data and generate fewer long-term benefits than the program in this final rule.

Three alternatives, including the status quo, were considered for the action to establish sea turtle and smalltooth sawfish take impact minimization measures. This final rule will require a number of impact minimization measures, including the carrying of release equipment. The first alternative to the final equipment requirements, the status quo, would not achieve the desired take-impact minimization and would not meet the Council's objectives.

The second alternative to the final equipment requirements would require the acquisition of less costly equipment (vessels with less than 4 ft (1.2 m) of freeboard would be required to carry less release gear and vessels with more than 4 ft (1.2 m) of freeboard would have more gear substitution options). However, these requirements would not be expected to result in the same reduction in bycatch impact minimization for these species and, as a result, would not be expected to result in as much protection for the species and net economic and social benefits for society.

Three alternatives, including the status quo, were considered for the action to establish the permit renewal period. This final rule will allow 1 year after permit expiration for permit renewal. The first alternative to the renewal period in this final rule, the status quo, would retain the current 60-day renewal requirement and would not achieve the Council's objective of increasing permit renewal flexibility.

The second alternative to the renewal period in this final rule would allow 6 months after permit expiration for permit renewal. While this would add greater flexibility for permit renewal relative to the status quo, thereby reducing the likelihood of unintended permit loss and associated economic losses, this alternative would not be consistent with the permit renewal period of most other permits and would not be as flexible as the renewal period in this final rule. Having common renewal periods makes it possible to renew all permits at the same time, decreases the burden associated with permit renewal, and decreases the possibility of unintended permit loss due to non-renewal.

Seven alternatives, including the status quo, were considered for the action to establish options for transfer provisions for permits owned by corporations comprised of family members. This final rule will allow the transfer of the permit to a corporation comprised solely of immediate family members. Five of the alternatives are variations of the transfer provisions of the final rule and vary by differences in required action if the requirement for the submission of the annual corporate report includes shareholders not listed on the original permit application. The first alternative to the transfer provisions of this final rule, the status quo, would continue to require a two-for-one permit exchange in order for a

permit holder to incorporate their business operation and change the ownership of the permit to the corporation. Current permit holders would be prevented from receiving the tax and other financial benefits of incorporation without incurring the added expense of purchasing a second snapper-grouper permit. Because this restriction was outside the scope of the Council's original intent for the two-for-one permit transfer requirement, maintaining the status quo would not achieve the Council's objectives.

The second alternative to the transfer provisions of this final rule would treat the addition of family members as corporate shareholders the same as non-family members. Thus, once a permit is transferred to a corporation, renewal of the permit would not be restricted by change in shareholders. This alternative would allow the most liberal transfer flexibility but would not preserve the Council's intent to promote family-owned fishing businesses.

The third alternative to the transfer provisions of this final rule would not allow a permit to be renewed and transferred if the annual corporate report showed a shareholder not listed on the original corporate documentation. This alternative would be the most restrictive of the sub-set of alternatives that allow family incorporation. Because this alternative would eliminate the flexibility to change corporate shareholders even among family members, this alternative would result in less economic benefits than this final rule.

The fourth alternative to the transfer provisions of this final rule would require a two-for-one transfer if the annual corporate report showed a shareholder not listed on the original corporate documentation. This requirement would increase the cost of transfer because of the cost of a second permit, estimated to cost between $9,000 and $21,000, and generate less net economic benefits than this final rule.

The fifth alternative to the transfer provisions of this final rule would require either a two-for-one transfer or a transfer back to person who is an immediate family member of the permit holder who originally transferred the permit to the family corporation if the annual corporate report showed a shareholder not listed on the original corporate documentation. This requirement would either increase the cost of transfer or eliminate the tax and financial benefits of incorporation and, thus, generate less net economic benefits than this final rule.

The sixth alternative to the transfer provisions of this final rule would eliminate the two-for-one permit transfer requirement. Permit holders would be able to transfer their permit to corporations, family owned or otherwise, and freely change shareholders without incurring the cost of obtaining an additional permit. While this would create the most flexible transfer conditions, it would eliminate the ability to reduce the size of the commercial snapper-grouper fleet through permit renewal requirements. While the optimal fleet size to maximize social and economic benefits to the nation has not been identified, the fishery is believed by the Council to still be overcapitalized and further contraction is necessary. Thus, this alternative would generate less net economic benefits than this final rule.

In addition to the actions discussed above, Amendment 15B considered alternatives to establish allocation ratios for snowy grouper and red porgy, and management reference points and stock status criteria for golden tilefish. These alternatives are discussed in the following paragraphs.

Four alternatives, including the status quo, were considered for the action to set the snowy grouper allocation, which was necessary to establish the commercial quota and recreational allocation. The final action will set the allocation to the recreational sector at 5 percent, resulting in a commercial allocation of 95 percent. The first alternative to the final allocation, the status quo, would not establish commercial and recreational allocations. Because allocations are necessary to quantify the commercial quota, this alternative would not achieve the Council's objective.

The second alternative to the final snowy grouper allocation would set the recreational allocation at 7 percent, while the third alternative would set the recreational allocation at 12 percent. Both alternatives would be expected to increase the economic benefits to the recreational sector while reducing the economic benefits to the commercial sector. Net economic benefits to the nation cannot be determined with available data. These alternatives were not selected as the final snowy grouper allocation because they were derived from shorter time periods than the final allocation, 1992–2005 and just 2005, respectively, compared to 1986–2005 for the final allocation, resulting in excessive influence of unrealistic spikes in recreational landings.

Four alternatives, including the status quo, were considered for the action to set the red porgy allocation. The final action will set both the commercial and recreational allocations equal at 50 percent. The status quo would not establish commercial and recreational allocations. Because allocations are necessary to quantify the commercial quota, this alternative would not achieve the Council's objective.

The second alternative to the final red porgy allocation would set the recreational sector allocation to 32 percent, while the third alternative would set the recreational allocation to 56 percent. Each sector would be expected to receive increased or decreased economic benefits relative to the status quo as their allocation increased or decreased. Net benefits to the nation under any alternative cannot be quantified with available data. Neither of these alternatives were selected as the final action because each would involve substantial changes from what the Council believes, based on advisory panel comment, is the most equitable allocation, which is the average sector harvest from 1999–2003, or 49 percent commercial and 51 percent recreational. The final action varies from this allocation by only one percentage point, allocating 50 percent of the TAC to each sector. While not precisely matching the average 1999–2003 harvest, the Council believes that this allocation equitably accounts for the increased value of red porgy to the recreational sector while reversing declines in commercial harvests due to previous regulatory action.

Two alternatives, including the status quo, were considered for the action to specify MSY for golden tilefish. The final MSY is approximately 336,000 lb (152,407 kg) whole weight. The alternative to the final MSY, the status quo, does not specify an MSY. Because specification of an MSY is a required component of an FMP, this alternative would not achieve the Council's objective.

Four alternatives, including the status quo, were considered for the action to specify OY for golden tilefish. The final OY is estimated to be approximately 327,000 lb (148,325 kg) whole weight. Similar to the status quo MSY, the status quo alternative for OY does not specify a value for OY. Because specification of an OY is a required component of an FMP, this alternative does not achieve the Council's objective. The second and third alternatives would establish OYs of approximately 315,000 lb (142,882 kg) whole weight and approximately 333,000 lb (151,046 kg) whole weight, respectively and are, respectively, more and less conservative than the final action. The second alternative to the final OY is believed to

be more conservative than necessary to protect the resource and would be expected to result in greater foregone economic benefits than the final OY. Conversely, the third alternative to the final OY is believed to be insufficiently conservative to protect the resource. The final OY is believed to be the appropriate choice to minimize foregone economic benefits while protecting the resource.

Three alternatives, including the status quo, were considered for the action to specify the MSST for golden tilefish. The final MSST will establish a value of approximately 1.454 million lb (0.660 million kg) whole weight. The first alternative to the final MSST, the status quo, would establish an MSST of approximately 1.784 million lb (0.809 million kg) whole weight, would require the largest minimum stock size, and would increase the likelihood that the resource be declared overfished, necessitating harvest reductions and imposing short term adverse economic impacts. The second alternative to the final MSST would require the smallest minimum stock size of approximately 969,000 lb (439,531 kg) whole weight. While this specification would minimize, among the three alternatives, the likelihood of the stock being declared overfished, this stock level is believed to be insufficiently conservative to provide adequate protection to the resource. The final MSST specifies a minimum stock size intermediate to the other alternatives and is believed to be the appropriate choice to minimize the likelihood of triggering restrictive management while protecting the resource.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the South Atlantic snapper-grouper fishery and the Gulf reef fish fishery.

Pursuant to 5 U.S.C. 533(d), there is good cause to waive the 30-day delay in effective date for one of the measures contained in this final rule which relieves a restriction, namely the extension of the time period to renew a limited access permit. Under current regulations, limited access permit holders have 60 days to renew their permits after the expiration date. This final rule extends the renewal period to 1 year. If the expiration date of a limited access permit were to fall within the 30-day delay in effective date of this rule, the permit holder would only have 60 days to renew their permit. However, waiving the 30-day delay in effective date for this measure, and implementing the 1-year renewal period immediately, reduces undue burden on the fleet and decreases the possibility of permit loss due to non-renewal.

This final rule contains collection-of-information requirements subject to the PRA. These requirements have been submitted to OMB for approval. NMFS will publish a notice in the **Federal Register** when these requirements have been approved by OMB and are effective (see **DATES**).

The public reporting burdens for these collections of information are estimated to average--(1) 10 minutes for each logbook submission, (2) 4 minutes for each notification of a vessel trip, (3) 20 minutes for each vessel and gear characterization form, (4) 31 minutes for each ELB installation and data download, (5) 8 hours for each video monitor installation and data download, and (6) 20 minutes for each change of ownership. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

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

Dated: November 9, 2009

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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

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

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

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

■ 2. In § 622.2, the definition of ''Smalltooth sawfish'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Smalltooth sawfish means the species Pristis pectinata, or a part thereof.

* * * * *

■ 3. In § 622.5, paragraphs (a)(1)(iv), (b)(1), and (b)(2) are revised and paragraph (g) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(iv) *South Atlantic snapper-grouper*—

(A) *General reporting requirements.* The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) *Electronic logbook/video monitoring reporting.* The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(1)(iv)(B) is required for permit renewal.

(C) *Wreckfish reporting.* The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must—

(*1*) Maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(*2*) Make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

* * * * *

(b) * * *

(1) *Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo*—(i) *General reporting requirement*. The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(ii) *Electronic logbook/video monitoring reporting*. The owner or operator of a vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD. Compliance with the reporting requirements of this paragraph (b)(1)(ii) is required for permit renewal.

(2) *Reporting deadlines*—(i) *Charter vessels*. Completed fishing records required by paragraph (b)(1)(i) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats*. Completed fishing records required by paragraph (b)(1)(i) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

(g) *Private recreational vessels in the South Atlantic snapper-grouper fishery*. The owner or operator of a vessel that fishes for or lands South Atlantic snapper-grouper in or from the South Atlantic EEZ who is selected to report by the SRD must—

(1) Maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD. Completed fishing records must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(2) Participate in the NMFS-sponsored electronic logbook and/or video monitoring reporting program as directed by the SRD.

■ 4. In § 622.7, paragraph (d) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in § 622.5.

* * * * *

■ 5. In § 622.8, paragraph (a)(6) is added to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(6) *South Atlantic snapper-grouper*. (i) A vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(6)(i).

(ii) Any other vessel that fishes for South Atlantic snapper-grouper in the South Atlantic EEZ must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

* * * * *

■ 6. In § 622.10, paragraph (b)(1) is revised and paragraph (c) is added to read as follows:

§ 622.10 Conservation measures for protected resources.

* * * * *

(b) * * *

(1) *Sea turtle conservation measures*. (i) The owner or operator of a vessel for which a commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued, as required under §§ 622.4(a)(2)(v) and 622.4(a)(1)(i), respectively, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in §§ 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a dipnet, tire, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in §§ 635.21(c)(5)(i)(E) through (L) of this chapter with the following modifications: the dipnet handle can be of variable length, only one NMFS-approved short-handled dehooker is required (i.e., § 635.21(c)(5)(i)(G) or (H) of this chapter); and life rings, seat cushions, life jackets, and life vests or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, tire, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted ''V'', long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C)) of this chapter and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, and life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

* * * * *

(c) *South Atlantic snapper-grouper commercial vessels and charter vessels/headboats*—(1) *Sea turtle conservation measures*. (i) The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-

grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i), respectively, and whose vessel has on board any hook-and-line gear, must post inside the wheelhouse, or within a waterproof case if no wheelhouse, a copy of the document provided by NMFS titled, ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' and must post inside the wheelhouse, or in an easily viewable area if no wheelhouse, the sea turtle handling and release guidelines provided by NMFS.

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in § 635.21(c)(5)(i) and (ii) of this chapter, respectively.

(iii) The required gear must meet the specifications described in § 635.21(c)(5)(i)(A) through (L) of this chapter with the following modifications: only one NMFS-approved long-handled dehooker (§ 635.21(c)(5)(i)(B) or (C) of this chapter) and one NMFS-approved short-handled dehooker (§ 635.21(c)(5)(i)(G) or (H) of this chapter) are required; and life rings, seat cushions, life jackets, life vests, or any other comparable, cushioned, elevated surface that allows boated sea turtles to be immobilized, may be used as alternatives to tires for cushioned surfaces as specified in § 635.21(c)(5)(i)(F) of this chapter.

(2) *Smalltooth sawfish conservation measures*. The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under §§ 622.4(a)(2)(vi) and 622.4(a)(1)(i), respectively, that incidentally catches a smalltooth sawfish must—

(i) Keep the sawfish in the water at all times;

(ii) If it can be done safely, untangle the line if it is wrapped around the saw;

(iii) Cut the line as close to the hook as possible; and

(iv) Not handle the animal or attempt to remove any hooks on the saw, except with a long-handled dehooker.

§ 622.15 [Amended]

■ 7. In § 622.15, in paragraphs (c)(4)(iii) and (c)(5) remove cross references to ''§ 622.5(a)(1)(iv)(B)'' and add in its place the cross reference ''§ 622.5(a)(1)(iv)(C)(*1*)''.

■ 8. In § 622.18, paragraphs (b)(1)(ii) and (c) are revised to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

* * * * *

(b) * * *

(1) * * *

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit—

(A) From one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father; or

(B) From an individual to a corporation whose shares are all held by the individual or by the individual and one or more of the following: husband, wife, son, daughter, brother, sister, mother, or father. The application for transfer of a permit under this paragraph (b)(1)(ii)(B) and each application for renewal of such permit must be accompanied by a current annual report of the corporation that specifies all shareholders of the corporation. A permit will not be renewed if the annual report shows a new shareholder other than a husband, wife, son, daughter, brother, sister, mother, or father.

* * * * *

(c) *Renewal*. NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

■ 9. In § 622.42, paragraphs (e)(1) and (e)(6) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(1) *Snowy grouper*. For the fishing year that commences January 1, 2009, and for subsequent fishing years—82,900 lb (37,603 kg).

* * * * *

(6) *Red porgy*. For the fishing year that commences January 1, 2009, and for subsequent fishing years- 190,050 lb (86,205 kg).

* * * * *

■ 10. In § 622.44, paragraph (c)(3) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(3) *Snowy grouper*. (i) Until the quota specified in § 622.42(e)(1) is reached—100 lb (45 kg).

(ii) See § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

* * * * *

■ 11. In § 622.45, paragraph (d) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) *South Atlantic snapper-grouper*. (1) A South Atlantic snapper-grouper harvested or possessed in the EEZ on board a vessel that does not have a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi), or a South Atlantic snapper-grouper harvested in the EEZ and possessed under the bag limits specified in § 622.39(d), may not be sold or purchased. In addition, a South Atlantic snapper-grouper harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper may not be sold or purchased regardless of where harvested, i.e., in state or Federal waters.

(2) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(3) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(vi).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(5) No person may sell or purchase a snowy grouper, gag, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic, i.e., in state or Federal waters, by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.42(e) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

(6) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area

other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(7) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(8) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., in state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (d)(9) of this section.

(9) The documentation supporting a dealer's purchase or sale of applicable species during the times specified in paragraphs (d)(6) through (d)(8) of this section must contain:

(i) The information specified in part 300, subpart K, of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the applicable species;

(iii) The port and date of offloading from the vessel harvesting the applicable species; and

(iv) A statement signed by the dealer attesting that the applicable species was harvested from an area other than the South Atlantic.

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