

of the golden eagle in the western United States. Golden eagles are vulnerable to collisions with wind turbines. Because of this risk, many of the current and planned wind facilities require permits under the Bald and Golden Eagle Protection Act to legally authorize any take of eagles that may occur. We are soliciting comments and recommendations on our draft *Eagle Conservation Plan Guidance*.

We request comments and suggestions on the *Guidance*. We anticipate preparing further guidance to address incidental eagle takes under other circumstances. Explaining the reasons and rationale for your comments where appropriate will help as we consider them.

We will take into consideration the relevant comments, suggestions, or objections that we receive by the comment due date indicated above in the **DATES** section. These comments, suggestions, or objections, and any additional information received may lead us to adopt a final guidance that differs from this guidance.

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You can ask us in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so.

As published elsewhere in today's **Federal Register**, the Service is simultaneously soliciting comments on the draft Land-based Wind Energy Guidelines.

**Authority:** The authorities for this notice are the Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703–712); Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703; the Bald and Golden Eagle Protection Act (16 U.S.C. 668a–d), 704, 712, 742j–1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; and 31 U.S.C. 9701.

Dated: January 31, 2011.

#### Rowan Gould,

Director, U.S. Fish and Wildlife Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 101124579–1088–01]

RIN 0648–BA51

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Red Snapper Management Measures

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule that would implement a regulatory amendment (Regulatory Amendment 10) 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). This proposed rule would remove the snapper-grouper area closure implemented through Amendment 17A to the FMP. The intended effect of this proposed rule is to help achieve optimum yield (OY) for the fishery and minimize socio-economic impacts to snapper-grouper fishermen, without increasing the risk of the red snapper resource experiencing overfishing.

**DATES:** Written comments must be received on or before March 21, 2011.

**ADDRESSES:** You may submit comments on the proposed rule identified by 0648–BA51 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:** Rick DeVactor, 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.

To submit comments through the Federal e-rulemaking portal: <http://www.regulations.gov>, enter “NOAA–

NMFS–2010–0249” in the keyword search, then check the box labeled “Select to find documents accepting comments or submissions”, then select “Send a comment or submission”. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone 843–571–4366; fax 843–769–4520; e-mail [safmc@safmc.net](mailto:safmc@safmc.net); or may be downloaded from the Council's Web site at <http://www.safmc.net/>.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVactor, 727–824–5305.

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

In the South Atlantic, the red snapper stock is currently overfished and undergoing overfishing. The stock status was determined through a Southeast Data Assessment and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 15, which was completed in February 2008. Based on this stock assessment, Amendment 17A to the FMP was developed to end the overfishing of red snapper and rebuild the stock. The final rule to implement

Amendment 17A was published in the **Federal Register** on December 9, 2010 (75 FR 76874). The management measures implemented through the final rule included a prohibition on the harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) (and in State or Federal waters for a vessel with a Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper), a requirement for the use of non-stainless steel circle hooks when fishing for snapper-grouper species with hook-and-line gear north of 28° N. latitude in the South Atlantic EEZ, and an area closure for South Atlantic snapper-grouper. The snapper-grouper area closure includes 4,827 square miles (7,768 square km) off the coasts of southern Georgia and northeast Florida where the harvest and possession of snapper-grouper species would be prohibited, except when fishing with black sea bass pot gear or spearfishing gear for species other than red snapper.

Through the SEDAR 24 benchmark stock assessment, updated information on the status of the red snapper stock became available in late October 2010. The SEDAR 24 assessment incorporated the high landings from recent years, as well as new information regarding the selectivity of older and larger red snapper to hook-and-line gear, post-release mortality data, and methodologies for estimating historic landings of red snapper. The Council's Scientific and Statistical Committee (SSC) reviewed the new assessment in November 2010 and endorsed model runs in the assessment that suggest the snapper-grouper area closure could be modified without compromising the objective of ending red snapper overfishing. Modifying the area closure would also minimize negative socioeconomic effects on snapper-grouper fishing communities. The SEDAR 24 assessment has determined, similar to SEDAR 15, that the red snapper stock is overfished and undergoing overfishing, however, the rate of overfishing found in SEDAR 24 is less than the rate of overfishing found in the previous stock assessment (SEDAR 15).

Given the information in the new stock assessment, an emergency rule to delay the effective date of the snapper-grouper area closure was published on December 9, 2010 (75 FR 76890). The emergency rule delayed the effective date of the area closure from January 3, 2011, until June 1, 2011, with a possible 186-day extension, unless superseded by subsequent rulemaking. A correction to the emergency rule was published on December 20, 2010, to correct a previous

error (75 FR 79309). The delayed effective date provided the Council time to respond to the new scientific information from the SEDAR 24 benchmark stock assessment. The Council voted to approve Regulatory Amendment 10 to modify the area closure implemented through Amendment 17A to the FMP, based upon the new stock assessment information.

Regulatory Amendment 10 evaluates alternatives to the snapper-grouper area closure approved in Amendment 17A to the FMP. These alternatives include decreases in the size of the area closure, decreases in the duration of the area closure, and the removal of the area closure entirely.

At its December 2010 meeting, the Council voted to remove the snapper-grouper area closure entirely as their preferred alternative in Regulatory Amendment 10.

Regulatory Amendment 10 presents information from SEDAR 24 that suggests the red snapper fishing moratorium in the South Atlantic has been more effective in reducing the mortality of red snapper than previously determined from the results of SEDAR 15. The analysis contained in the regulatory amendment also evaluates fishing effort reduction, in addition to the reduction in red snapper removals in 2010 as reported through the Marine Recreational Fishing Statistics Survey (MRFSS). Evidence provided by MRFSS suggests effort has been reduced by 33 percent and total red snapper removals in pounds have been reduced by 81 percent when 2010 data are compared to the 2007–2009 baseline data. The required reduction in removals of red snapper to end overfishing has been determined to be 70 to 75 percent.

When recent reductions in fishing effort are considered, the red snapper moratorium, implemented through Amendment 17A to the FMP, is projected to end red snapper overfishing and rebuild the stock without the additional implementation of the snapper-grouper area closure. Therefore, the proposed action in Regulatory Amendment 10 to remove the snapper-grouper area closure approved in Amendment 17A to the FMP seeks to prevent significant direct economic loss to snapper-grouper fishermen and achieve OY for the fishery, without subjecting the red snapper resource to overfishing.

#### **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 regulatory amendment, 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 initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. 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 Council (*see ADDRESSES*). A summary of the IRFA follows.

The rule proposes to remove the snapper-grouper area closure provision implemented through Amendment 17A to the FMP. This provision is a year-round closure, *i.e.*, prohibition of harvest, retention, and possession of any species in the snapper-grouper fishery management unit, except for snapper-grouper harvested with spearfishing gear or allowed to be harvested with a sea bass pot, within an area corresponding to commercial logbook grids (cells) 2880, 2980, and 3080 for depths from 98 ft (30 m) to 240 ft (73 m).

The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The proposed rule would not establish any new reporting, record-keeping, or other compliance requirements.

This proposed rule is expected to directly affect commercial harvesting and for-hire fishing operations. The Small Business Administration 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 \$7.0 million (NAICS code 713990, recreational industries).

From 2007–2009, an average of 895 vessels-per-year had valid permits to operate in the commercial snapper-grouper fishery. Of these vessels, 751 held transferable permits and 144 held non-transferable permits. On average, 797 vessels landed snapper-grouper species, generating dockside revenues of approximately \$14.514 million (2008 dollars). Each vessel, therefore, generated an average of approximately \$18,000 annually in gross revenues from snapper-grouper. Gross dockside revenues by State are distributed as follows: \$4.054 million in North Carolina, \$2.563 million in South Carolina, \$1.738 million in Georgia/Northeast Florida, \$3.461 million in central and southeast Florida, and \$2.695 million in the Florida Keys. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

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

From 2007–2009, an average of 1,797 vessels had valid permits to operate in the snapper-grouper for-hire fishery, of which 82 are estimated to have operated as headboats. The for-hire fleet is comprised 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 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 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 rule 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 but its extent is unknown, and all vessels are treated as independent entities in this analysis.

The proposed rule is expected to directly affect all Federally permitted commercial vessels that operate in the South Atlantic snapper-grouper fishery as well as for-hire vessels operating out of northeast Florida and Georgia. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore,

it is determined that the proposed action will affect a substantial number of small entities.

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

The economic analysis done for the proposed rule estimated the changes in net operating revenues to commercial and for-hire vessels. These changes were estimated assuming the closure provision, within Amendment 17A to the FMP, commenced on January 3, 2011, although its implementation has been delayed via emergency rule until June 1, 2011, unless superseded by subsequent rulemaking. For the current analysis, net operating revenue was equated to profit.

The proposed action to eliminate the area closure that was adopted in Amendment 17A to the FMP is estimated to have a non-uniform change in the short-term profits of commercial vessels operating in the South Atlantic snapper-grouper fishery. Annual profits would increase approximately by \$358,000 for vessels in northeast Florida and Georgia and by \$103,000 for vessels in southeast Florida. On the other hand, annual profits would decrease approximately by \$241,000 for vessels in North Carolina, by \$129,000 in South Carolina, and by \$2,000 for vessels in the Florida Keys. The net effect of the proposed action on commercial vessels as a whole would be an average increase in annual profits of approximately \$88,000. Vessels fishing with vertical-line gear are the ones most affected by the proposed action.

The differential effects of the proposed action on commercial vessels in various geographic areas in the South Atlantic are mainly determined by the manner in which quotas for certain snapper-grouper species, such as gag, red grouper, black grouper, and vermilion snapper, would be met. Although the proposed action would not close very specific areas off the coasts of Georgia and northeast Florida, commercial vessels operating in other areas would also be affected via the possible quota closures of some snapper-grouper species. Opening the areas closed under Amendment 17A would allow commercial vessels from southeast Florida, northeast Florida, and Georgia to harvest more snapper-grouper species than they may have under the closure, such as vermilion snapper, gag, and red grouper, and this would tend to increase their profits. Such a harvest increase, however, may lead to reaching certain snapper-grouper

quotas sooner, which could result in lower harvest by vessels in North Carolina, South Carolina, and the Florida Keys. These vessels would then experience reductions in their profits. The more restrictive quotas are those for vermilion snapper and gag. The quota for gag is especially critical, because it also serves as a trigger mechanism for closing the harvest of all shallow-water groupers.

For-hire vessels operating in northeast Florida and Georgia are expected to be the only for-hire vessels affected by the proposed action. This is based on the extent of for-hire vessel fishing activities in the subject three statistical areas set for closure under Amendment 17A to the FMP. As a result of the proposed action in this regulatory amendment, annual profits are expected to increase by \$300,000 for charterboats and \$1,000,000 for headboats.

Eleven alternatives, including the proposed action, were considered for the area closure. The first alternative to the proposed action is the no action alternative. Among the alternatives, this would result in the largest negative economic effects on small entities. The second alternative to the proposed action is a May–October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases for both the commercial and for-hire vessels than the proposed action. The third alternative to the proposed action is a May–August closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in a lower profit increase to the for-hire vessels and a slightly higher profit increase to commercial vessels than the proposed action. The overall net effect of this alternative would be a lower profit increase than that under the proposed action.

The fourth alternative to the proposed action is a July–December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The fifth alternative to the proposed action is a May–December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The sixth alternative to the proposed action is a May–December closure of cells 2880, 2980, and 3080 in depths from 66 ft (20 m) to 240 ft (73 m) for the first year and a May–October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second

and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action.

The seventh alternative to the proposed action is a May–October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a June–July closure of cell 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The eighth alternative to the proposed action is a May–October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a July closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The ninth alternative to the proposed action

is a July–December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a January–April closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action.

The tenth alternative to the proposed action is a May–December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a January–April closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action.

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

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

Dated: February 14, 2011.

**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 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.*

#### **§ 622.35 [Amended]**

2. In § 622.35, the suspension on paragraph (l) is lifted and paragraph (l) is removed and reserved.

[FR Doc. 2011–3733 Filed 2–17–11; 8:45 am]

**BILLING CODE 3510–22–P**