

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Carolina: Alamance (FEMA Docket No: B-1030).	Unincorporated areas of Alamance County (08-04-4817P).	December 10, 2008; December 17, 2008; <i>The Times-News</i> .	Mr. David I. Smith, Manager, Alamance County, Alamance County Office Building, 124 West Elm Street, Graham, NC 27253.	April 16, 2009 .....	370001
Iredell (FEMA Docket No.: B-039).	Unincorporated areas of Iredell County (08-04-2756P).	January 7, 2009; January 14, 2009; <i>Statesville Record &amp; Landmark</i> .	Mr. Joel Mashburn, Manager, Iredell County, P.O. Box 788, Statesville, NC 28687.	May 14, 2009 .....	370313
Oklahoma: Oklahoma (FEMA Docket No: B-1036).	Town of Arcadia (08-06-2651P).	January 7, 2009; January 14, 2009; <i>The Oklahoman</i> .	The Honorable Marilyn Murrell, Mayor, Town of Arcadia, P.O. Box 268, Arcadia, OK 73004.	December 23, 2008 ..	400551
Tulsa (FEMA Docket No: B-1036).	City of Broken Arrow (08-06-2075P).	January 9, 2009; January 16, 2009; <i>Tulsa Daily Commerce &amp; Legal News</i> .	The Honorable Wade McCaleb, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, OK 74013.	December 24, 2008 ..	400236
Pennsylvania: Allegheny (FEMA Docket No: B-1036).	Municipality of Monroeville (09-03-0036P).	January 12, 2009; January 19, 2009; <i>Pittsburgh Post Gazette</i> .	The Honorable Gregory Rosenko, Mayor, Municipality of Monroeville, 2700 Monroeville Boulevard, Monroeville, PA 15146.	December 31, 2008 ..	420054
Berks (FEMA Docket No: B-1030).	Township of Colebrookdale (08-03-1560P).	December 11, 2008; December 18, 2008; <i>The Boyertown Area Times</i> .	The Honorable Todd Gamler, President, Township of Colebrookdale, Board of Commissioners, 765 West Philadelphia Avenue, Boyertown, PA 19512.	April 17, 2009 .....	421057
Chester (FEMA Docket No: B-1033).	Township of Birmingham (08-03-1499P).	December 30, 2008; January 6, 2009; <i>The Daily Local News</i> .	The Honorable John L. Conklin, Chairman, Birmingham Township, Board of Supervisors, 1040 West Street Road, West Chester, PA 19382-8012.	May 6, 2009 .....	421474
Texas: Fort Bend (FEMA Docket No: B-1036).	Fort Bend County M.U.D #23 (08-06-2237P).	January 9, 2009; January 16, 2009; <i>Fort Bend Herald</i> .	The Honorable Ellen Hughes, Board President, Fort Bend County Municipal, Utility District No. 23, 1715 Misty Fawn Lane, Fresno, TX 77545.	December 31, 2008 ..	481590
Harris (FEMA Docket No: B-1036).	Unincorporated areas of Harris County (08-06-2044P).	January 9, 2009; January 16, 2009; <i>Houston Chronicle</i> .	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	January 30, 2009 .....	480287

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 17, 2009.

**Deborah S. Ingram,**

*Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 0808041045-9796-02]

**RIN 0648-AW64**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 16**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved measures of Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP)(Amendment 16), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule establishes a seasonal closure of the recreational and commercial fisheries for gag and associated shallow-water grouper species; establishes a seasonal closure of the recreational fishery for vermilion snapper; reduces the aggregate bag limit for grouper and tilefish; reduces the bag limit for gag or black grouper combined; reduces the bag limit for vermilion snapper; prohibits captain and crew of a vessel operating as a charter vessel or headboat from retaining any fish under

the aggregate bag limit for grouper and tilefish or the vermilion snapper bag limit; establishes semiannual quotas for the commercial vermilion snapper fishery; establishes a quota for the commercial gag fishery; establishes restrictions on the possession, sale, and purchase of gag and associated shallow-water grouper species after the gag commercial quota is reached; and requires possession of a dehooking device on board a vessel when fishing for South Atlantic snapper-grouper and use of such device as needed to release fish with a minimum of injury. In addition, Amendment 16, for both gag and vermilion snapper, revises the definitions of maximum sustainable yield (MSY) and optimum yield (OY), specifies total allowable catch (TAC), and establishes interim allocations of TACs for the recreational and commercial sectors. Amendment 16 also specifies a minimum stock size threshold (MSST) for gag and, based on the new assessment, for vermilion snapper. The intended effects of this final rule are to end overfishing of gag and vermilion snapper, protect shallow-water grouper during their spawning season, and reduce bycatch mortality of snapper-grouper species in the South Atlantic.

**DATES:** This final rule is effective July 29, 2009.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) and the Record of Decision (ROD) may be obtained from Karla Gore, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; email [Karla.Gore@noaa.gov](mailto:Karla.Gore@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, telephone: 727-824-5305, fax: 727-824-5308, e-mail: [Karla.Gore@noaa.gov](mailto:Karla.Gore@noaa.gov).

**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 December 24, 2008, NMFS published a notice of availability of Amendment 16 and requested public comment (73 FR 79037). On February 6, 2009, NMFS published the proposed rule to implement Amendment 16 and requested public comment (74 FR 6257). NMFS partially approved Amendment 16 on March 25, 2009; the provision requiring possession and use of a venting tool has been disapproved and

is not included in this final rule. Amendment 16 proposed a requirement to use venting tools and dehooking devices to reduce bycatch mortality of incidentally caught snapper-grouper species. In light of the public comments and new information opposing the use of venting tools, along with scientific studies that suggest the use of venting tools may actually increase mortality of some species depending on capture depth, the part of the action that requires the possession and use of venting tools has been disapproved as being overly broad and not in accordance with the administrative record developed for Amendment 16. The rationale for the measures in Amendment 16 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

#### Comments and Responses

The following is a summary of the 120 comments NMFS received on Amendment 16 Final Environmental Impact Statement (FEIS), Notice of Availability, and the proposed rule from the public, state and county agencies and non-governmental organizations and the respective NMFS' responses. Of these comments, six expressed general opposition to Amendment 16 and seven comments expressed general support. Other comments provided specific concerns related to the amendment and those comments are addressed below. Three comments were received that were unrelated to the scope of this action and are therefore not addressed.

*Comment 1:* Thirty-nine comments were received expressing concern the management measures proposed in Amendment 16 would cause economic hardship on the commercial, recreational and for-hire sectors, and would have negative consequences on the tourism industry and affected communities.

*Response:* NMFS recognizes the management measures proposed in Amendment 16 will have immediate, short-term, negative socioeconomic impacts on the fisheries and communities of the South Atlantic region. The Council made efforts to balance the requirement of the Magnuson-Stevens Act to end overfishing of gag and vermilion snapper and minimize associated adverse socioeconomic impacts to the extent practicable. NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to analyze the economic impacts of the proposed rule on small entities, including commercial fishermen, charter vessels and headboats. The IRFA was included with the proposed rule. A FRFA accompanies this final rule and

considers the comments received on this action. A Regulatory Impact Review has also been prepared that provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. This analysis was included in the FEIS. To minimize socioeconomic impacts, the Council included an action in Amendment 16 which would allow the Regional Administrator to make adjustments to vermilion snapper management measures if a new assessment indicated an improved status of the stock. The new benchmark assessment for vermilion snapper was completed in October 2008 and verified the stock was experiencing overfishing but indicated less restrictive management measures were needed. Based on the action included in Amendment 16 to allow the Regional Administrator to address this situation, less restrictive management measures were adopted for vermilion snapper.

*Comment 2:* Two comments were received expressing concern that the gag closure proposed in Amendment 16 should not apply to Florida fishermen as gag are not often caught in Florida and the closure is unnecessary.

*Response:* The intent of Amendment 16 is not limited to just the protection of gag and vermilion snapper. Rather, the focus of the management actions is to improve the status of shallow-water grouper species including gag, black grouper, red grouper, scamp, red hind, rock hind, coney, yellowfin grouper, yellowmouth grouper, and tiger grouper. These shallow-water grouper species change sex, are long lived, and may be particularly vulnerable to overexploitation during the spawning season since many grouper species (i.e. black grouper, gag, scamp, red hind) form aggregations at known locations. Therefore, the Council not only sought to address overfishing of gag and vermilion snapper through measures in the amendment, but they also recognized the need to protect shallow-water grouper in spawning condition, as well as grouper spawning aggregations, which are more susceptible to overfishing since they are easily targeted by commercial and recreational fishermen. Information provided by scientists from the Southeast Fisheries Science Center (SEFSC) indicates some spawning aggregations of black grouper in South Florida have likely been fished out. The Council also received information indicating gag were commonly caught in the Florida Keys 15 to 18 years ago and were targeted during the January-March spawning season. The concern that management actions are not needed in the Florida Keys

because so few gag are caught in the area was addressed when the Council considered an alternative that included different management measures for gag and shallow-water grouper species for Monroe County relative to areas north within the Council's jurisdiction.

*Comment 3:* Three comments were received that opposed the use of venting tools to release incidentally caught snapper grouper species. These comments stated that possession and use of venting tools by anglers should not be required because they may not reduce mortality nor provide any benefits to released fish. Three other comments supported the use of venting tools.

*Response:* Research has shown that venting, when properly executed, will likely increase survival of some species captured at certain depth zones. The use of venting tools may also reduce predation on reef fish species by allowing rapid return to depth, making them less vulnerable to predators. However, the benefits of venting are not clear for all species, and recent studies suggest venting could cause harm in some cases. Therefore, NMFS has decided to disapprove the portion of the action that requires venting tools until guidance is developed specifying species and capture depths for which venting is most appropriate.

*Comment 4:* Sixteen comments were received stating the data used to determine stock status and develop Amendment 16 are flawed.

*Response:* Status determinations for gag and vermilion snapper were derived from the Southeast Data Assessment and Review (SEDAR) process. SEDAR is an inclusive and rigorous process designed to ensure each stock assessment reflects the best available scientific information. The findings and conclusions of each SEDAR workshop are documented in a series of reports, which are ultimately reviewed and discussed by the Council and their Science and Statistical Committee (SSC). The stock assessments determined gag is experiencing overfishing and is approaching an overfished condition; and vermilion snapper is experiencing overfishing but is not overfished. On June 12, 2007, the Council was notified gag and vermilion snapper are experiencing overfishing. At its June 2008 meeting, the SSC determined the results of the gag assessment are based upon the best available science and recommended harvest levels based on the fishing mortality rate associated with optimum yield in accordance with the new mandates specified by the reauthorized Magnuson-Stevens Act, which requires catch levels be set at a level to ensure

overfishing does not occur. The new stock assessment for vermilion snapper was determined by the SSC to be based on the best available science in December 2008. Additionally, the SEFSC issued a memorandum dated December 18, 2008, certifying that Amendment 16 is based upon the best available science.

Red grouper and black grouper have been listed as experiencing overfishing in every Report to Congress on the Status of U.S. Fisheries since 1999. The latest information on the status of these species was published by the SEFSC in 2001. The SSC reviewed this report at their October 2005 meeting and concluded that in the absence of new SEDAR assessments, the existing determinations based on the 2001 report are the best available science. Further, on November 14, 2008, the SEFSC indicated that in the absence of new assessments, red grouper and black grouper are considered to be experiencing overfishing. The Council recognizes there is no recent SEDAR assessed information to indicate stock status of red grouper and black grouper; however, there are several recent publications by SEFSC staff suggesting red grouper and black grouper are undergoing overfishing. Black grouper and red grouper are scheduled for SEDAR stock assessments in 2009, which will be completed in 2010. Given the reauthorized Magnuson-Stevens Act requires the Council to end overfishing of all species, the Council believed it was appropriate to take actions to reduce harvest of red grouper and black grouper. Furthermore, the Council's intent is also to protect shallow-water grouper species in spawning condition including black grouper and red grouper as well as grouper spawning aggregations, which form during January through April. A 4-month spawning season closure could have positive biological effects including protecting spawning aggregations, increasing the percentage of males, enhancing reproductive success, reducing fishing mortality, increasing the magnitude of recruitment, and reducing the chance that overfishing is occurring.

*Comment 5:* Twenty-five comments were received opposing the recreational and for-hire management measures and pointing to the commercial longline and shrimp trawl fisheries as the cause of the snapper-grouper species decline. Commenters stated that strict regulations are needed for the commercial fisheries.

*Response:* The management measures proposed in Amendment 16 are intended to end overfishing of gag and vermilion snapper and protect shallow-

water grouper species in spawning condition, some of which are taken incidentally when targeting gag and vermilion snapper. Vermilion snapper, gag, and shallow-water grouper species are targeted by commercial and recreational fishermen. Management measures imposed by the Council are intended to reduce harvest in proportion to the total landings from each sector. The preferred alternatives in Amendment 16 would result in commercial/recreational allocations of 68 percent/32 percent and 51 percent/49 percent for vermilion snapper and gag, respectively. To achieve the yield at 75 percent of  $F_{MSY}$  and end gag overfishing, a reduction of 35 percent in commercial harvest and 37 percent in recreational harvest would be required. To achieve the yield at 75 percent of  $F_{MSY}$  and end vermilion overfishing, a reduction of 47 percent of the recreational harvest and 29 percent of commercial harvest is necessary. These reductions have been recommended by the Council's SSC and determined by the SEFSC to be based on the best available scientific information. To achieve these reductions in harvest, commercial and recreational management measures are required. Management measures directed at the commercial fishery only will not achieve the required reductions. Bottom longline gear used in the snapper-grouper fishery and shrimp trawl gear likely have minimal impacts of fishing mortality of gag and vermilion snapper. Bottom longline gear is restricted to depths greater than 50 fathoms (91.4 m) where these species rarely occur and is used to target deep water snapper-grouper species such as golden tilefish and snowy grouper. Vermilion snapper, gag, and shallow-water grouper species are not commonly taken as bycatch in the shrimp trawl fishery.

*Comment 6:* Eight comments were received in support of the spawning season closures but in opposition to the other proposed measures (i.e. bag limit reductions).

*Response:* The Council considered a broad range of management measures to end overfishing of vermilion snapper and gag. The Council decided not to adopt seasonal closures for vermilion snapper and gag as the only management measure for the recreational sector because a longer time period would be required to end overfishing without bag limit reductions.

*Comment 7:* Two comments were received that oppose the recreational regulations and point to the unchecked populations of goliath grouper as they prey on other shallow-water grouper species.

*Response:* The Magnuson-Stevens Act requires the Council to prepare a plan amendment or proposed regulations to end overfishing. The Council considered a broad range of management measures to reduce harvest of vermilion snapper, gag, and shallow-water grouper species in the recreational sector. The goliath grouper populations are thought to be increasing and likely prey on snapper-grouper species. However, there is no evidence that goliath grouper populations are having a negative impact on populations of vermilion snapper, gag, or shallow-water grouper species.

*Comment 8:* Four comments were received in support of bag limit reductions and in opposition to the seasonal closures; stating that without a seasonal closure, fishermen would be allowed to fish year round.

*Response:* The management measures proposed in Amendment 16 are needed to end overfishing of gag and vermilion snapper and to improve the status of all shallow-water grouper species, some of which are taken incidentally when targeting gag and vermilion snapper. Reducing the gag bag limit from 2-fish per person per day bag limit to 1 fish per person per day, the 5-fish grouper aggregate to 3 fish per trip, and the vermilion snapper bag limit from 10 fish per person per day to 5 fish per person per day would not be sufficient to end overfishing of gag and vermilion snapper. The Council did not support an increase in the size limit of gag and other shallow-water groupers because the discard rate is already high and an increase in the size limit would likely increase the discard rate and the number of fish thrown back dead. The Council supported a January through April closure for gag and other shallow-water grouper because this is a known spawning period for these species. Furthermore, many of the grouper species form spawning aggregations at known locations increasing their vulnerability to fishing pressure. The Council also did not support an increase in the size limit of vermilion snapper because the magnitude of regulatory discards was already high. The Council supported a seasonal closure for vermilion snapper during November through March because the greatest amount of recreational fishing for this species occurs during the summer months, and the November through March closure would have less negative economic and social impacts than a summer closure. In order to achieve the necessary reduction in harvest, a combination of bag limit reductions and seasonal closures is necessary.

*Comment 9:* Six comments were received in opposition to the vermilion snapper bag limit reduction and vermilion snapper seasonal closure. Commenters stated that these measures would restrict the headboat and charter vessel fisheries to a point that would not be economically viable.

*Response:* To end vermilion snapper overfishing and achieve 75 percent of  $F_{MSY}$ , a reduction of 47 percent of the recreational harvest and 29 percent of commercial harvest is necessary. The Council considered a combination of management measures for the vermilion snapper recreational sector that included a combination of reduced bag limits, seasonal closures, and increased size limits. The Council considered three alternatives, which increase the recreational size limit in combination with a reduction in the bag limit and a seasonal closure. The Council chose not to select as their preferred alternative an increase in the minimum size limit because it would be expected to increase the number of regulatory discards as was observed when the recreational size limit was increased to 11 inches (28 cm) total length (TL) in 1999 and again in 2007, when the recreational size limit was increased to 12 inches (31 cm) TL. Instead, the Council chose to reduce harvest through a combination of bag limit adjustments and seasonal closures. The length of the closed season may influence its effectiveness in reducing fishing mortality on vermilion snapper due to shifting of effort to weeks before and after the closure. A longer closed season, as proposed in alternatives that require greater reductions in harvest, may be more effective, as it would be more difficult for fishermen to shift all their effort. The Council recognizes that the bag limit reduction and seasonal closure will have negative economic impacts on the headboat and charter vessel components of the fishery; however, reductions in harvest are needed to end overfishing. The Council chose the combination of management measures that they believed would end overfishing and have the least amount of short-term negative and social impacts on the headboat and charter sectors. In addition, the Council believed that a winter closure of vermilion snapper would have less negative economic and social impacts than a summer closure because most of the fishery is prosecuted during summer.

*Comment 10:* Two comments were received on the cumulative impacts of Amendment 16, a possible interim rule for red snapper, and the future Amendment 17 which will set annual catch limits and accountability

measures for snapper-grouper species experiencing overfishing. The comments indicated the combination of these amendments and management measures will have severe economic and social impacts for the commercial, headboat, charter and recreational fisheries and their communities.

*Response:* The cumulative impacts of Amendment 16 were described and analyzed in the cumulative effects analysis (CEA) of the FEIS. The CEA takes into consideration past, current and reasonable foreseeable management actions. Amendment 17 is being developed by the Council, and it is difficult to determine when it would be implemented, if it is approved by the Secretary of Commerce. At this time, it is not possible to determine the economic and social impacts. However, Amendment 17 will include a CEA that will analyze the impacts of that action as well as those recently implemented (i.e. Amendment 16). Further, the management measures in Amendment 17 will consider the effects of management measures being implemented through Amendment 16. If an interim rule for red snapper is developed for implementation, the associated impacts would be evaluated in the environmental assessment and other supporting documents.

*Comment 11:* Four comments referenced the most recent red grouper and black grouper stock assessments as being outdated, and claim these data sources should not be used as a basis for implementing a seasonal closure. One comment objected to a 4-month shallow-water grouper closure based on the status of gag.

*Response:* The actions proposed in Amendment 16 are not based solely upon the status of red grouper, black grouper, or gag. In addition to actions intended to end overfishing of gag and vermilion snapper, the intent of Amendment 16 and the proposed January-April closure is to protect all shallow-water grouper species during their spawning season, regardless of their status. These shallow-water grouper species include: Gag, red grouper, and black grouper, which are listed as undergoing overfishing; scamp, which is not experiencing overfishing; and yellowmouth grouper, tiger grouper, yellowfin grouper, red hind, rock hind, graysby, and coney, whose status is unknown. The Council believed a January-April spawning season closure was warranted because shallow-water grouper species change sex, are long lived, and are particularly vulnerable to overexploitation during the spawning season since many grouper species (i.e. black grouper, scamp, gag, red hind, and

others) form aggregations at known locations. Furthermore, many grouper species occur in the same location at the same time further increasing susceptibility to fishing gear.

While the actions in Amendment 16 are not dependent upon the status of red grouper and black grouper, it is acknowledged in the amendment that red grouper and black grouper are listed as experiencing overfishing in The Report to Congress on the Status of U.S. Fisheries (2008), and actions proposed in Amendment 16 would likely improve their status. SEDAR assessments are scheduled for red grouper and black grouper in 2009–2010. The SEFSC and the SSC indicate in the absence of new assessments, red grouper and black grouper are undergoing overfishing.

*Comment 12:* Several North Carolina groups stated that if the State of Florida fails to comply with Federal rules, a large portion of the recreational catch of gag could occur in Florida's state waters and these catches would be deducted from an annual catch limit (ACL) resulting in seasonal closures, which could deprive North Carolina from equal access to the fishery.

*Response:* Amendment 16 does not establish catch limits or quotas for the recreational sector. As required by the reauthorized Magnuson-Stevens Act, ACLs are being considered for the gag recreational sector in Amendment 17, which is being developed by the Council. Furthermore, Amendment 18 is being developed and includes alternatives for regional catch limits for the gag recreational sector.

*Comment 13:* One individual stated all allocations should be 50 percent recreational, 30 percent commercial, and 20 percent for-hire. This would result in an allocation between recreational and commercial business as 50/50.

*Response:* The allocation for vermilion snapper and gag is based on historical landings in the commercial and recreational sectors. The Council was concerned that splitting the recreational allocation into for-hire and private sectors would increase the uncertainty associated with recreational landings estimates. The Snapper-Grouper Advisory Panel (AP) and Council examined the complete time series for vermilion snapper and noticed there was little difference in the percentage of commercial and recreational landings when any time series was examined. The AP and Council concluded the longest time series of landings (Alternative 2) was the best approach for estimating allocations. In addition, the Council discussed whether an additional

alternative was necessary but, given the similar distribution of commercial and recreational landings over the years, the Council concluded two alternatives were appropriate for this action. Using historical landings, there was no basis for an alternative that would allocate 50 percent of the TAC to the commercial and recreational sectors.

In contrast, the Council chose an allocation for gag that is 51 percent commercial and 49 percent recreational and is the closest to the Snapper-Grouper AP's recommendation for a 50/50 allocation. The AP examined the allocation tables and noted the distribution of catch was about 50/50 in recent years and they believed this was fair among the two sectors. This alternative would specify commercial and recreational allocation at percentages that have occurred in recent years.

*Comment 14:* Two individuals indicated separate quotas were needed for North Carolina.

*Response:* The Council considered an alternative which would establish regional quotas for gag. The Council's rationale was that fishermen off Florida could have an advantage and catch part of the quota early in the year when bad weather would prevent fishermen from catching gag off North Carolina and South Carolina. The Council examined monthly gag landings and found the percentage of annual gag landings among states was similar after the proposed January through April spawning season closure would take place; thus, negating the underlying rationale for proposing a regional quota. The Council examined commercial landings of vermilion snapper and found that over 70 percent occurred off of North Carolina and South Carolina; therefore, regional quotas were not considered for this species.

*Comment 15:* One commenter expressed concern about the vermilion snapper assessment stating that "despite the misgivings of the Committee of Independent Experts (CIE) about the models used, the Scientific and Statistical Committee (SSC) of the SAFMC approved the assessment as being acceptable for management."

*Response:* Contrary to the statement of the commenter, the SSC did not override the opinions of the review panel, consisting of individuals from the CIE, when accepting the vermilion snapper assessment as best available science. The CIE indicated there was some uncertainty as to whether or not vermilion snapper was experiencing overfishing; however, the CIE accepted the assessment. The CIE stated, "The panel accepted the vermilion snapper

stock assessment, and concluded that the stock was not over-fished. However, the panel concluded that over-fishing was occurring but this conclusion was highly uncertain due to a lack of robustness to key model assumptions." Therefore, the conclusions of the SSC are in accordance with those from the CIE for the vermilion snapper SEDAR stock assessment.

#### Changes from the Proposed Rule

In the proposed rule (74 FR 6257, February 6, 2009), amendatory instruction 8 incorrectly indicated that in § 622.45 paragraph (d)(8) was being revised; however, it was paragraph (d)(7) that was to be revised. This final rule corrects the paragraph designation in the amendatory instruction and the associated codified text. Other than the paragraph designation, there is no change to the associated regulatory text.

In accordance with the disapproval of the measure requiring possession and use of a venting tool, paragraph § 622.41(n)(2) has been removed and reserved in this final rule.

#### Classification

The Administrator, Southeast Region, NMFS determined that Amendment 16 is necessary for the conservation and management of the South Atlantic 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.

NMFS prepared an FRFA for this action. 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 supporting the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Several comments were received on the economic effects of the proposed rule. However, no comments specific to the IRFA were received. Many comments stated the proposed rule would have devastating economic effects on the regional fishing industry. Some comments noted that the proposed seasonal closure would create undue hardships on for-hire crew, support industries, and associated communities. Other comments stated that the economic analysis underestimated the adverse economic effects of the proposed rule on the for-hire sector in particular and the recreational sector in general because of the large number of recreational fishers

and fishing trips and the large amount of recreational expenditures. Finally, three comments opposed the proposed mandatory possession and use of venting tools.

The economic analysis conducted for the proposed rule estimated the expected quantitative effects of each alternative to the extent possible. Qualitative discussion of expected effects was provided where data or analytical techniques were not available. The economic analysis concluded that, with the exception of the no action alternatives, practically all alternatives would result in short-term adverse economic effects on fishers, support industries, and associated communities. Some alternatives to the proposed rule would be expected to result in lower adverse economic effects but would not achieve the Council's objective for that particular action. Other alternatives to the proposed rule may have been projected to achieve the Council's objectives but were projected to result in greater adverse economic effects than the proposed rule. No options exist that meet the conservation goals with lesser economic impacts.

The economic analysis conducted for the proposed rule evaluated the expected change in economic value, where economic value was measured by net operating revenues for commercial and for-hire vessels and consumer surplus for recreational anglers. Although an expenditure analysis, as suggested by public comment, is useful for examining the distributional effects of a regulatory change, evaluating the change in economic value is the appropriate methodology for analyzing the costs and benefits to society of the proposed management measures.

The proposed requirement for the possession and use of a venting tool has been disapproved and is not included in this final rule because this requirement is overly broad and not in accordance with the administrative record supporting Amendment 16. This action may be re-considered when guidance is developed specifying species and capture depths for which venting is most appropriate. NMFS agrees with the Council's choice of preferred alternatives for the other actions as those which would be expected to best achieve the Council's objectives while minimizing the adverse effects on fishers, support industries, and associated communities and no additional changes in the final rule were made in response to public comment.

This final rule is expected to directly affect vessels that operate in the South Atlantic commercial and for-hire snapper-grouper fisheries. The Small

Business Administration (SBA) 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 affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is \$7 million (NAICS code 713990, recreational industries).

A commercial snapper-grouper permit is required to operate in the South Atlantic snapper-grouper fishery, and a two-tier license limitation program, which imposes a 225-lb (102-kg) snapper-grouper trip limit for some vessels and an unlimited snapper-grouper trip-limit for other vessels, has been in effect in this fishery since 1998. Logbook data from 2001–2006 were used in the analysis of the expected impacts of this action. Over this period, an average of 1,101 vessels per year were permitted to operate in the commercial snapper-grouper fishery. However, only an average of 922 vessels per year had recorded landings of snapper-grouper species. The total average annual dockside revenue from snapper-grouper species and all other species harvested on trips that harvested snapper-grouper species over this period was approximately \$15.58 million (2005 dollars), resulting in a per vessel average of approximately \$16,900. The highest producers included an average of 27 vessels per year that harvested more than 50,000 lb (22,680 kg) of snapper-grouper per year, valued at approximately \$100,000 per vessel. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries that are not covered by the logbook program. As such, the revenues from these fisheries cannot be determined with these data and are not reflected in the totals provided above.

Although a vessel that possesses a commercial snapper-grouper permit can harvest any snapper-grouper species, except for wreckfish which requires a separate permit, during the period 2001–2006, only 299 vessels per year had recorded harvests of gag and only 259 vessels had recorded harvests of vermilion snapper. These totals are not additive, because some vessels landed both species. Total dockside revenues from all snapper-grouper species and other species on trips that harvested gag averaged approximately \$5.74 million

(2005 dollars) over this period, resulting in a per vessel average of approximately \$19,200. Total dockside revenues from all snapper-grouper species and all other species on trips that harvested vermilion snapper averaged approximately \$6.98 million (2005 dollars) over this period, resulting in a per vessel average of approximately \$26,950. Among the vessels with recorded gag harvests, an average of 12 vessels per year harvested more than 10,000 lb (4,536 kg) of gag per year, generating dockside revenues of approximately \$29,300 per vessel. An average of 43 vessels per year harvested more than 10,000 lb (4,536 kg) of vermilion snapper, generating dockside revenues of approximately \$24,000 per vessel.

For the period 2001–2006, an average of 1,273 vessels were permitted to operate in the snapper-grouper for-hire fishery, of which 82 are estimated to have operated as headboats. Within this total of vessels, 235 vessels also possessed a commercial snapper-grouper permit and would be included in the summary information provided above on the commercial sector. The for-hire fleet consists of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average annual gross revenue (in 2005 dollars) for charter vessels 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 appropriate estimates are \$170,000–\$362,000 for Florida vessels, and \$149,000–\$317,000 for vessels in the other states. 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 in this analysis as independent entities.

Based on the average revenue figures provided above, NMFS determines, for the purpose of this analysis, that all commercial and for-hire vessels that will be affected by this final rule are small entities. Because all entities expected to be affected by this final rule are considered small entities, the issue of disproportional impacts of this final rule on small and large entities does not arise.

The gag and other shallow-water grouper management measures are expected to reduce annual net operating revenues of commercial vessels by approximately \$848,000 for all vessels combined that harvest at least 1.0 lb (0.45 kg) of snapper-grouper. Based on an average of 299 vessels per year with

recorded gag landings and an average of 922 vessels per year with recorded snapper-grouper landings, this reduction in net revenue results in an average of approximately \$2,800 per vessel with gag landings and approximately \$900 per vessel with snapper-grouper landings. Although net revenues are not directly comparable to gross revenues, the average annual revenues from all species on trips that harvested gag is estimated to be approximately \$19,200 and the comparable revenue total for snapper-grouper vessels is approximately \$16,900.

For the for-hire fishery, the gag and other shallow-water grouper management measures in this final rule are expected to reduce annual producer surplus for the entire fishery by approximately \$285,000. Although 1,456 vessels are permitted to operate in the snapper-grouper fishery, not all vessels are expected to harvest or be affected by the gag and other shallow-water grouper regulations. However, a meaningful method for determining how to apportion the expected reduction in producer surplus over the vessels in the fleet has not been identified.

The vermilion snapper management measures in this final rule are expected to reduce annual operating revenues to commercial vessels that harvest snapper-grouper by approximately \$1.62 million. Based on an average of 259 vessels per year with recorded vermilion snapper landings and 922 vessels per year with recorded snapper-grouper landings, this reduction in net revenue results in an average of approximately \$7,300 per vessel with vermilion snapper landings and approximately \$1,800 per vessel with snapper-grouper landings. As stated above, although net revenues are not directly comparable to gross revenues, the average annual revenue from all species on trips that harvested vermilion snapper is estimated to be approximately \$26,950 and the comparable average revenue total for snapper-grouper vessels is approximately \$16,900.

For the for-hire fishery, the vermilion snapper management measures in this final rule are expected to reduce annual producer surplus for the entire fishery by approximately \$58,000. Similar to the discussion on the gag and other shallow-water grouper management measures, a meaningful method for apportioning the expected reduction in producer surplus over the 1,456 vessels in the fleet has not been identified.

The requirement in this final rule to use dehooking tools to reduce the

bycatch mortality of snapper-grouper is expected to increase gear costs by less than \$15 per vessel. Many fishermen are not expected to incur any new gear costs as a result of this requirement because the possession and use of dehooking devices is expected to already be widespread.

Two alternatives, including the final action, were considered for the action to specify the gag TAC. The single alternative to the final TAC is the no action alternative, which would not set a TAC for gag. Because a TAC is required to make some management determinations, the no action alternative would not achieve the Council's objective.

Four alternatives, including the final action, were considered for the action to specify an interim allocation for gag. The first alternative to the final action, the no action alternative, would not establish an allocation of gag between the commercial and recreational sectors. The absence of an allocation would hinder overall TAC management and the ability to take corrective action in the appropriate sector should TAC overages occur. This alternative, therefore, would not achieve the Council's objective. The other two alternatives to the final action would result in higher allocations to the commercial sector than the final action and, thus, would result in lower adverse economic impacts on the commercial small entities. However, these alternatives would increase the adverse impacts on the recreational sector (for-hire businesses). The overall net effects of the alternative allocations cannot be estimated at this time due to the absence of appropriate data and comparable commercial and recreational models. The final allocation was selected because it best matches with current harvest distributions and is, thus, expected to be the least disruptive to current harvest practices.

Seven alternatives (with sub-alternatives), including the final actions, were considered for the action to specify gag and other shallow-water grouper management measures. The final action encompasses three separate alternatives: one alternative to establish a spawning closure, one alternative to establish a directed commercial quota, and one alternative to establish recreational management measures. The first alternative to the final action is the no action alternative, which would apply to both the commercial and recreational sectors. The no action alternative would not achieve the Council's objective of ending overfishing of gag. Two alternatives to the final action would only apply to the commercial sector.

The first of these alternatives would divide the commercial quota into North Carolina/South Carolina and Georgia/Florida regional sub-quotas. Although this alternative may result in a more even distribution of the economic effects of the final quota across participants in all South Atlantic states, the total reduction in economic value is expected to be greater than that of the final action. The second commercial alternative to the final action would establish a 1,000-lb (454-kg) trip limit. This alternative would be expected to result in greater adverse economic effects than the final action. One alternative to the final action would apply only to the recreational sector and would extend the final action's spawning closure by an additional month. As a result, this alternative would increase the adverse economic effects on the recreational sector. A final alternative would apply to both the commercial and recreational sectors. This alternative would establish special management regulations for waters off Monroe County, Florida. This alternative would be expected to result in greater adverse economic effects on entities in the commercial sector than the final action and have only minor economic effects on entities in the recreational sector.

Two alternatives, including the final action, were considered for the action to specify the vermilion snapper TAC. The single alternative to the final TAC is the no action alternative, which would not set a TAC for vermilion snapper. Because a TAC is required to make some management determinations, the no action alternative would not achieve the Council's objective.

Two alternatives, including the final action, were considered for the action to specify an interim allocation for vermilion snapper. The only alternative to the final action is the no action alternative, which would not establish an allocation for vermilion snapper. The absence of an allocation would hinder overall TAC management and the ability to take corrective action in the appropriate sector should TAC overages occur. This alternative, therefore, would not achieve the Council's objective.

Five alternatives (with multiple sub-alternatives), including the final action, were considered for the action to establish management measures for vermilion snapper. The final action encompasses three separate alternatives: one alternative to establish a directed commercial quota, one alternative to allocate the commercial quota to two periods, January through June and July through December, and one alternative to establish recreational management

measures. The first alternative to the final action is the no action alternative, which would not change current management measures for vermilion snapper. The no action alternative would not achieve the Council's objective of ending overfishing of vermilion snapper. Two alternatives to the final action would only apply to the commercial sector. The first of these alternatives addresses the seasonal allocation of the commercial quota and contains two sub-alternatives. The first of these sub-alternatives would allocate 40 percent of the quota to the first season and 60 percent to the second season instead of the final action's 50 percent allocation to each period (as adjusted for post quota bycatch mortality (PQBM)). This alternative would be expected to have almost identical effects on commercial entities as the final action and is not expected to reduce the overall adverse economic effects of the final action. The second sub-alternative would maintain the equal 50-percent seasonal allocation (as adjusted for PQBM), as in the final action, but would lengthen the first season by 2 months, thereby establishing 8-month and 4-month seasons. This alternative would be expected to result in greater adverse economic impacts on commercial entities than the final action. The second alternative to the final action that would apply only to the commercial sector would establish a 1,000-lb (454-kg) trip limit and a May 1st start to the fishing year in lieu of seasonal quotas. Relative to the final action, this alternative would be expected to result in slightly lower adverse economic effects for vessel trips landing at least 1.0 lb (.45 kg) of vermilion snapper, but the Council did not choose this alternative because it would alter the distribution of harvests across the various areas. One alternative, which includes five sub-alternatives including the final action, would apply only to the recreational sector. Two of these sub-alternatives would maintain the zero bag limit for captain and crew, similar to the final action, but would impose higher minimum size limits and lower bag limits. As a result, these two sub-alternatives would be expected to result in greater adverse economic impacts on recreational small entities than the final action. The remaining two alternatives would maintain the zero bag limit for captain and crew like the final action. The first of these two alternatives would also establish a higher minimum size limit and a higher bag limit but a shorter seasonal closure than the final action.

As a result of the higher bag limit and shorter seasonal closure, this alternative would result in lower adverse economic effects than the final action. The Council believes, however, that this alternative would have lower probability of achieving the target reduction in recreational harvest than the final action. The second of these two alternatives would maintain the same size limit as the final action but would establish a lower bag limit and longer seasonal closure. This alternative would result in greater adverse economic impacts on small entities than the final action. Overall, the Council believes that the final action on bag limit and seasonal closure, while maintaining the current size limit, will provide a higher probability of achieving the target reduction in recreational harvest at a reasonably acceptable economic cost to small entities.

Three alternatives (with one set of sub-alternatives), including the final action, were considered for the action to reduce the bycatch mortality of snapper-grouper. The first alternative to the final action is the no action alternative, which would not require additional measures to reduce bycatch mortality of snapper-grouper and would not achieve the Council's objective. In addition to the requirement of the final action for vessels fishing for snapper-grouper to possess dehooking devices and use them as needed, the second alternative to the final action would also require the use of circle hooks and venting tools. This alternative could be expected to adversely affect the harvest of certain target species because the morphology of mouths and biting habits of some fish species would not allow circle hooks to be an effective harvest gear. As a result, this alternative would be expected to reduce the harvest of target species and result in greater adverse economic effects than the final action. Additionally, within this rejected alternative, sub-alternatives considered the application of the requirements to only the commercial sector, just the recreational sector, or both sectors. The final rule will apply to both sectors. Although the application of the new bycatch reduction requirements to a single sector would reduce the adverse economic effects for the exempted sector, the overall benefits of bycatch reduction would be lower. As a result, sector exemption would not achieve the Council's objective. The original proposed action would require the use of dehooking devices and venting tools, but the venting tool requirement has been disapproved for the final rule as being overly broad and not in

accordance with the administrative record. This action may be reconsidered when guidance is developed specifying species and capture depths for which venting is most appropriate.

In addition to the actions discussed above, Amendment 16 considered alternatives to establish management reference points and stock status criteria for gag and vermilion snapper. These alternatives are discussed in the following paragraphs.

For both gag and vermilion snapper, the final management reference points are such that MSY would be equated to the yield produced at  $F_{MSY}$ ,  $F_{OY}$  equated to the fishing mortality rate specified in the rebuilding plan when the stock is overfished or at 75 percent of  $F_{MSY}$  when the stock is rebuilt, and OY equated to the yield produced at  $F_{MSY}$ . In terms of economic effects, these management reference points only have meaningful content when evaluated through the management measures that would restrict the respective species to the allowable harvest levels. Also, because they are reference points and would not directly place any harvest restrictions on the fishery, none of the alternatives would result in any direct effects on any entities in the gag and vermilion snapper fisheries.

Two alternatives, including the final action, were considered for the action to specify gag and vermilion snapper management reference points. The first alternative to the final action, the no action alternative, would retain the current definitions of MSY and OY. These definitions are not consistent with the most recent scientific advice and would not achieve the Council's objective of basing management decisions on the best available scientific information. The second alternative contains three sub-alternatives for the specification of OY, one of which is the final OY specification. Each of the two alternative specifications to the final OY is based on the same specification of MSY, but provides for different OY levels, one more than the final OY and one less. All OY levels, including the final action, would result in relatively restrictive management measures. However, the final OY is expected to provide the best balance between short-term adverse economic impacts and long-term protection to the stock.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the final 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.

List of Subjects in 50 CFR Part 622

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

Dated: June 23, 2009

John Oliver,

Deputy Assistant Administrator For Operations, 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 § 622.35, paragraphs (j) and (k) are added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

(j) Seasonal closure of the recreational and commercial fisheries for gag and associated grouper species. During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, i.e., in state or Federal waters.

(k) Seasonal closure of the recreational fishery for vermilion snapper. The recreational fishery for vermilion snapper in or from the South Atlantic EEZ is closed from November 1 through March 31, each year. In addition, for a person on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, this closure applies in the South Atlantic, regardless of where the fish are harvested, i.e., in state or Federal waters. During the closure, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero.

§ 622.36 [Amended]

3. In § 622.36, paragraph (b)(4) is removed and reserved.

4. In § 622.39, paragraphs (d)(1)(ii) introductory text, (d)(1)(ii)(A), and (d)(1)(v) are revised to read as follows:

§ 622.39 Bag and possession limits.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) Grouper and tilefish, combined—

3. However, no grouper or tilefish may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. In addition, within the 3-fish aggregate bag limit:

(A) No more than one fish may be gag or black grouper, combined;

\* \* \* \* \*

(v) Vermilion snapper—5. However, no vermilion snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

\* \* \* \* \*

5. In § 622.41, paragraph (n) is added to read as follows:

§ 622.41 Species specific limitations.

\* \* \* \* \*

(n) Required gear in the South Atlantic snapper-grouper fishery. For a person on board a vessel to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (n)(1) of this section.

(1) Dehooking device. At least one dehooking device is required and must be used as needed to remove hooks embedded in South Atlantic snapper-grouper with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(2) [Reserved]

6. In § 622.42, paragraph (e)(4) is revised, and paragraph (e)(7) is added to read as follows:

§ 622.42 Quotas.

\* \* \* \* \*

(e) \* \* \*

(4) Vermilion snapper. (i) For the period January through June each year—315,523 lb (143,119 kg).

(ii) For the period July through December each year—302,523 lb (137,222 kg).

(iii) Any unused portion of the quota specified in paragraph (e)(4)(i) of this section will be added to the quota specified in paragraph (e)(4)(ii) of this section. Any unused portion of the quota specified in paragraph (e)(4)(ii) of this section, including any addition of quota specified in paragraph (e)(4)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

\* \* \* \* \*

(7) Gag—352,940 lb (160,091 kg).

\* \* \* \* \*

7. In § 622.43, paragraph (a)(5) is revised to read as follows:

§ 622.43 Closures.

\* \* \* \* \*

(a) \* \* \*

(5) South Atlantic gag, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, and red porgy. (i) The appropriate bag limits specified in § 622.39(d)(1) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species taken from or possessed in the EEZ is prohibited.

(ii) The bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(iii) For gag only, when the commercial quota for gag is reached, the provisions of paragraphs (a)(5)(i) and (ii) of this section apply to gag and the following associated grouper species: black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney.

\* \* \* \* \*

8. In § 622.45, paragraph (d)(7) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

\* \* \* \* \*

(d) \* \* \*

(7) 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 or charter vessel/headboat permit for South

Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., 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. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K 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 such fish;

(iii) The port and date of offloading from the vessel harvesting such fish, and;

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

\* \* \* \* \*

[FR Doc. E9-15342 Filed 6-26-09; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080521698-9067-02]

RIN 0648-XQ01

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces a temporary closure of the Eastern U.S./Canada Area to limited access NE multispecies days-at-sea (DAS) vessels. Based upon Vessel Monitoring System (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has projected that the total allowable catch (TAC) of

Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area from May 1, 2009, through July 31, 2009, would be harvested on or around June 24, 2009, if current catch rates continue. This action is being taken to prevent the Eastern U.S./Canada Area TAC specified for the first quarter of the 2009 fishing year from being exceeded. This area will be reopened on August 1, 2009, to provide access to the shared U.S./Canada Stocks of cod, haddock, and yellowtail flounder.

**DATES:** The temporary closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr June 26, 2009, through 2400 hr local time, July 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Allison Murphy, Fishery Management Specialist, (978) 281-9122, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The final 2009 Interim Rule published on April 13, 2009 (73 FR 17030) set the Eastern GB cod TAC allocation for the 2009 fishing year at 527 mt. The Interim Rule also delayed the opening of the Eastern U.S./Canada Area to trawl vessels until August 1, 2009, and set a TAC for the first quarter of the 2009 fishing year for fixed-gear vessels at 5 percent of the annual TAC (26.4 mt). To prevent over-harvesting the TAC allocations for the U.S./Canada Management Area, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to close access to the Eastern U.S./Canada Area for all limited access NE multispecies DAS vessels.

Based upon VMS daily catch reports and other available information, 79 percent of the first quarter 2009 Eastern GB cod TAC of 26.4 mt has been harvested. Assuming this catch rate continues, it is estimated that 100 percent of the 2009 Eastern GB cod TAC specified for the first quarter will be caught on or around June 24, 2009. Therefore, based on the available information described above, to ensure that the first quarter TAC for Eastern GB cod will not be exceeded, the Eastern U.S./Canada Area is temporarily closed to all limited access NE multispecies DAS vessels, effective 0001 hr June 26, 2009, pursuant to § 648.85(a)(3)(iv)(E). This area will reopen on August 1, 2009, to all NE multispecies DAS vessels fishing with approved gear, as well as to

vessels participating in the Eastern U.S./Canada Haddock Special Access Program, for the purpose of providing access to the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder, pursuant to the regulations at § 648.85(a)(3)(iv)(D).

Vessel owners that have made a correct VMS declaration indicating their intention to fish in the Eastern U.S./Canada Area, and crossed the demarcation line prior to 0001 hr June 26, 2009 may continue to fish for the remainder of their trip in the Eastern U.S./Canada Area. Vessels that are currently declared into the Eastern U.S./Canada Area and have already "flexed out" or "flexed west," may not reenter the Eastern U.S./Canada Area after 0001 hr June 26, 2009. Any vessel that leaves the Eastern U.S./Canada Area after 0001 hr June 26, 2009 is prohibited from reentering the Eastern U.S./Canada Area for the remainder of the fishing year, unless otherwise notified.

#### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. The temporary closure of the Eastern U.S./Canada Area to NE multispecies DAS vessels is necessary to prevent the Eastern U.S./Canada Area GB cod TAC cap from being exceeded during the first quarter of the 2009 fishing year. It is projected that 100 percent of the GB cod TAC cap of 5 percent will be harvested if the Eastern U.S./Canada Area is closed immediately. This projection was not available until June 19, 2009.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to prevent over-harvesting the U.S./Canada Management Area TACs. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action to halt the catch of GB cod in the Eastern U.S./Canada Area and prevent the first quarter Eastern U.S./Canada Area GB cod TAC from being exceeded prior to the end of the first quarter, July 31, 2009. To allow vessels to continue fishing effort on Eastern GB cod during the period necessary to publish and receive comments on a proposed rule could allow the Eastern GB cod harvest to