

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 141107936–5399–02]

RIN 0648–BE55

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 29**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 29 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Amendment 29), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Amendment 29 and this final rule revise annual catch limits (ACLs) and recreational annual catch targets (ACTs) for four unassessed snapper-grouper species and three snapper-grouper species complexes based on an update to the acceptable biological catch (ABC) control rule and revised ABCs for 14 snapper-grouper stocks. Additionally, this final rule revises management measures for gray triggerfish in Federal waters in the South Atlantic region, including modifying minimum size limits, establishing a split commercial season, and establishing a commercial trip limit. The purpose of this final rule is to revise ACLs for select snapper-grouper species using the best scientific information available, and to address concerns about inconsistent minimum size limits among states, and early harvest closures in the commercial sector for gray triggerfish.

**DATES:** This rule is effective July 1, 2015.

**ADDRESSES:** Electronic copies of Amendment 29, which includes an environmental assessment (EA), a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/sg](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg).

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

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South

Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On November 24, 2014, NMFS published a notice of availability for Amendment 29 and requested public comment through January 23, 2015 (79 FR 69819). On December 8, 2014, NMFS published a proposed rule for Amendment 29 and requested public comment through January 7, 2015 (79 FR 72567). NMFS approved Amendment 29 on February 20, 2015. The proposed rule and Amendment 29 set forth the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 29 and this final rule is provided below.

**Management Measures Contained in Amendment 29 and This Final Rule**

Amendment 29 updates the ABC control rule for unassessed stocks, revises the ABCs for 14 snapper-grouper species through application of the new control rule, and revises the recreational ACTs for three snapper-grouper species complexes and four snapper-grouper species based on the revised ABCs. Amendment 29 and this final rule revise the ACLs for the commercial and recreational sectors for three snapper-grouper species complexes and four snapper-grouper species based on the revised ABCs, and for gray triggerfish, modify the minimum size limits, and establish a split commercial fishing season and a commercial trip limit.

**Amendment 29 Updates the ABC Control Rule**

Amendment 29 modifies the ABC control rule to use the Only Reliable Catch Stocks (ORCS) approach, recommended by the Council's Scientific and Statistical Committee (SSC), which is a method for calculating ABC values for unassessed stocks when there is only reliable catch information available. Amendment 29 describes the ORCS approach in detail. Amendment 29 employs the ORCS approach to revise ABC values for the following unassessed snapper-grouper species: Bar jack, margate, red hind, cubera snapper, yellowedge grouper, silk snapper, Atlantic spadefish, gray snapper, lane snapper, rock hind, tomtate, white grunt, scamp, and gray triggerfish.

**Revise Annual Catch Limits for Select Species**

Amendment 29 and this final rule revise the ACLs for the commercial and

recreational sectors for three snapper-grouper species complexes and four snapper-grouper species based on the revised ABCs using the ORCS approach, and set the ACL and optimum yield (OY) equal to the ABC for the snappers complex, grunts complex, shallow-water complex, bar jack, Atlantic spadefish, and gray triggerfish. For scamp, the ACL and OY equal 90 percent of the ABC, due to concerns about stock status.

**Modify Minimum Size Limit for Gray Triggerfish**

Amendment 29 and this final rule establish a 12-inch (30.5-cm), fork length (FL), minimum size limit for gray triggerfish in Federal waters off North Carolina, South Carolina, and Georgia for both the commercial and recreational sectors and increase the minimum size limit to 14 inches (35.6 cm) FL off the east coast of Florida for both the commercial and recreational sectors.

**Establish a Split Commercial Season for Gray Triggerfish**

Amendment 29 and this final rule divide the annual commercial fishing season for gray triggerfish into two 6-month fishing seasons and allocate 50 percent of the 312,324 lb (141,668 kg) commercial gray triggerfish ACL, or 156,162 lb (70,834 kg), round weight, to each fishing season, January 1 through June 30, and July 1 through December 31. When the quota is reached during either fishing season, the commercial sector closes. In addition, any unused portion of the quota from the first fishing season is added to the quota in the second season. Any unused portion of the quota specified in the second fishing season, including any addition of quota from the first season, becomes void and is not added to any subsequent quota. Because this final rule is being implemented halfway through the 2015 fishing year and commercial landings of gray triggerfish have accumulated, the quota for the 2015 July 1 through December 31 fishing season will be the difference between the new total commercial ACL of 312,324 lb (141,668 kg) and the amount of commercial landings that have occurred by July 1, 2015.

**Establish a Commercial Trip Limit for Gray Triggerfish**

Amendment 29 and this final rule establish a commercial trip limit of 1,000 lb (454 kg), round weight, for gray triggerfish.

**Comments and Responses**

NMFS received a total of 15 comment letters from the public during the

comment period on Amendment 29 and the proposed rule. Of these, seven expressed opposition and one expressed support for actions in Amendment 29. The remaining letters were unrelated to the actions proposed in the amendment. The comments related to Amendment 29 and NMFS's respective responses are summarized below.

*Comment 1:* The ORCS approach is not based on the best available scientific information because it diverges from the recommendations contained within the Berkson *et al.* (May 2011) ORCS Working Group NOAA Technical Memorandum and previous technical guidance from NMFS (*i.e.*, Restrepo *et al.* (July 1998) NOAA Technical Memorandum) that indicate maximum landings should only be used in the catch statistic for lightly exploited non-target species.

*Response:* NMFS disagrees, and both the Council's SSC and the NMFS Southeast Fisheries Science Center (SEFSC) determined that the actions in Amendment 29 are based on the best scientific information available. The SSC and the Council considered the recommendations in the technical guidance from the Berkson *et al.* (May 2011) ORCS Working Group NOAA Technical Memo, which can be found in Appendix H of Amendment 29, and Restrepo *et al.* (1998), which can be found at <http://www.nmfs.noaa.gov/sfa/NSGtkgd.pdf>, and determined that the use of maximum landings for the catch statistic for the species addressed by Amendment 29 was appropriate based on the following considerations. The Chair of the SSC indicated that the stocks addressed through the ORCS approach in Amendment 29 are, for the most part, minor stocks, and the probability that they are already overexploited is lower than for the species that have been assessed. That is because for many of these unassessed species, catch is not directed but is incidental to other targeted species, and landings are episodic and highly variable, with some years of fairly high catches and other years of low catches. The SSC considered the use of a median, instead of maximum, catch statistic for these stocks, but was concerned that it would not adequately represent the high fluctuation in landings. Therefore, the SSC set the catch statistic at the upper bound of the band of landings during the time period 1999–2007 to account for the variability in catch, intending that the resulting ABC from using maximum landings as the catch statistic in ORCS would serve as a limit, not a target, and landings would be expected, on average, to be below the ABC. Accountability

measures would be triggered if an ACL that resulted from the ABC was reached or projected to be reached. However, if the ABC is repeatedly exceeded, that would suggest that effort for a stock is not incidental but is directed and expanding, and Council action would be needed.

*Comment 2:* NMFS failed to take a hard look at the environmental consequences of its proposed action to set ABCs for species in Amendment 29. Peer-reviewed literature and scientific evidence presented to NMFS, the Council, and the SSC demonstrates that the use of catch scalars, that set an ABC level as a multiple of the maximum catch statistic or at the third highest historic landings, have high probabilities of overfishing and reduce long-term yields. Despite having been notified of these environmental consequences before and during scoping for Amendment 29, neither Amendment 29 nor the proposed rule addresses any of this scientific information or seeks to justify the rationale behind the decision based on the information presented to NMFS and the Council. Furthermore, NMFS has not taken a hard look at the significant new information that has come to light in recent publications.

*Response:* NMFS and the Council have taken a hard look at the environmental consequences of setting the ABCs for species in Amendment 29, including reviewing the recommendations from the ORCS Workgroup, the simulation approach presented to the SSC and the Council, and other information available during the development of the amendment. Studies by Newman *et al.* 2015 and a December 2014 report from the Natural Resources Defense Council, as cited by the commenter, were published after Amendment 29 was approved by the Council for submission to the Secretary of Commerce, and were not available during the development of the document. Because these additional studies did not indicate that drastic changes have occurred in the fishery, it was unnecessary to revise the management measures in Amendment 29 (50 CFR 600.315(e)(1)).

Additionally, during two workshops in August 2012 and April 2013, the Council's SSC discussed the ORCS approach for determining the ABCs of unassessed species in the South Atlantic, and extensively discussed the designation of a catch statistic used in the ORCS approach to specify the ABC for the 14 species in Amendment 29.

At the October 2013 SSC meeting, a member of the public who is an academic scientist, presented a simulation approach to inform the SSC

about new methods they could consider. The simulation approach, which was subsequently published in March 2014, was conducted on two *assessed* species, porgy and snapper, and was not conducted on any of the 14 unassessed snapper-grouper species addressed by Amendment 29. The SSC discussed this simulation approach, but did not consider the presentation to be a relevant evaluation of how the ORCS method was applied to the *unassessed* stocks in Amendment 29. Instead, the SSC reiterated its prior endorsement, from its August 2012 workshop, of using the ORCS approach to revise the ABCs for 14 unassessed species with the maximum landings as the catch statistic. The SSC considered ORCS to be the best approach to allow the stocks to yield their historic average landings in the future.

At its March 2014 meeting, the Council was informed of a public comment expressing concerns with using maximum landings as the catch statistic for ORCS and received a presentation on the SSC's use of the ORCS method, and on the simulation approach, which was presented to the SSC in October 2013. At its June 2014 meeting, the Council further discussed the SSC's rationale for choosing maximum landings as a catch statistic in the ORCS approach, and discussed the report from the April 29–May 1, 2014, SSC Meeting which contains a dissenting opinion from one SSC member (addressed in the response to comment 3, below) regarding concerns with how the ORCS approach was being applied. Based on all the foregoing and for the reasons explained in the above response to comment 1, the Council decided to move forward with the proposed revisions to the ABC control rule as recommended by the SSC, with the understanding that further revisions to the ABC control rule may be warranted in the future.

*Comment 3:* One member of the SSC concluded that the ORCS approach was not based on the best available science and the associated catch level recommendations should not be used for fisheries management.

*Response:* During the discussion of Amendment 29 at the April 29–May 1, 2014, SSC Meeting, a few members of the SSC expressed concerns with the application of the ORCS approach and one member disagreed with the use of the ORCS approach and requested his position be presented as a "minority opinion" in the report of the April 29–May 1, 2014, SSC Meeting. The SSC member did not agree with the choice of catch statistics and associated scalars because he thought it would provide

less of a buffer for uncertainty than that prescribed for assessed species in the ABC control rule. However, despite this SSC member's individual opinion, the SSC reaffirmed its decision at that meeting and in the report of their April 29–May 1, 2014, meeting regarding the application of the ORCS approach to specify the catch level

recommendations contained in Amendment 29. Further, the SSC confirmed that the ORCS approach, as applied in Amendment 29, still represents the best scientific information available and considered the associated catch level recommendations appropriate for management. NMFS finds that Amendment 29 is based on the best scientific information available.

*Comment 4:* A recent peer-reviewed article documents how the South Atlantic and Gulf of Mexico fishery management regions routinely and almost uniformly set ABCs for previously unassessed stocks above the long-term mean landings (e.g., 3rd highest landings over 10 years or 2 standard deviations above the mean), while all other regions with large numbers of data-poor stocks take a more precautionary approach. The use of catch scalars that are set above historic mean landings/catch levels conflicts with the way catch scalars are applied throughout the rest of the country.

*Response:* NMFS disagrees.

Information presented in the comment shows that the ABCs for a substantial portion of the data poor species from the Western Pacific Fishery Management Council are also set at levels greater than median and mean levels, and the Pacific Fishery Management Council also set ABCs at levels greater than median and mean levels for some species. The ABCs for species in the South Atlantic and Gulf of Mexico were based on recommendations from the Council's SSC and Gulf of Mexico Fishery Management Council's SSC, and were considered to be the best scientific information available at the time. In August 2012 and April 2013, the Council's SSC extensively discussed the designation of a catch statistic to be used in the ORCS approach for the unassessed species addressed in Amendment 29. For many of these unassessed species, catch is incidental to other targeted species, and landings are episodic and highly variable. The SSC considered the use of median landings as a catch statistic but was concerned that it would not adequately represent the high fluctuation in landings. By using maximum landings for the catch statistic in the ORCS approach, the SSC recommended an

ABC that is a limit, not a target. The ABC is set slightly above the level where stock biomass and landings will vary naturally but average landings would be expected to be below the ABC. Accountability measures would be triggered if an ACL that resulted from the ABC was exceeded.

*Comment 5:* The Southeast Region's approach to stock assessment and ABC setting for data limited stocks leaves all of the analysis and decision making to the Councils and SSC with no substantive analytical support from expert stock assessment scientists in the SEFSC.

*Response:* The Magnuson-Stevens Fishery Conservation and Management Act National Standard 1 guidelines state that each fishery management council should establish an ABC control rule based on the scientific advice from its SSC (50 CFR 600.310(f)(4)). The ABCs are then recommended by the SSC to the fishery management council, usually through the application of the ABC control rule. The Council's SSC, which includes expert stock assessment scientists, including two scientists from the SEFSC during the development of Amendment 29, made recommendations for modifications to the ABC control rule and application of the ORCS approach contained in Amendment 29 during the SSC's extensive workshop discussions in August 2012 and April 2013.

The ABC control rule considers different levels and methods for setting ABCs, depending on the availability of data. For unassessed species, the control rule allows for the ABC to be determined using Depletion-Based Stock Reduction Analysis (DBSRA), Depletion-Corrected Average Catch (DCAC), third highest landings, or median landings. Amendment 29 modifies the ABC control rule to add the ORCS approach to the list of methods that can be used to calculate ABC values for unassessed stocks that may have only reliable catch data.

Regardless of which level of the ABC control rule is applied and which method is used, when the Council ultimately chooses an ABC in an amendment to the FMP, that amendment will be reviewed by the SEFSC to advise whether the amendment is based upon the best scientific information available. The SEFSC reviewed Amendment 29 and determined that it is based upon the best scientific information available. NMFS agrees with that determination.

*Comment 6:* Amendment 29 and the ABC control rule for the snapper-grouper fishery fail to incorporate and account for discard mortality in the ACL

setting mechanism. The FMP, as amended by Amendment 29, fails to include a standardized bycatch reporting methodology (SBRM).

*Response:* NMFS disagrees. The ABC control rule for the snapper-grouper fishery was established in 2012 through the Comprehensive ACL Amendment, which amended the FMP. Applying the control rule requires consideration of different levels and methods for setting an ABC and considers discard mortality. As discussed above, Amendment 29 modifies the ABC control rule to add the ORCS approach to the list of methods that can be used to calculate ABC values for unassessed stocks. When employing the ORCS approach to specify the ABCs for the 14 species addressed in Amendment 29, the SSC considered discard mortality to calculate the risk of overexploitation. Their evaluation of discard mortality for a species included both the discard mortality rate and magnitude of discards. Thus, discard mortality was accounted for in setting the ACLs for the species in Amendment 29.

The FMP does contain an SBRM, and the SBRM uses a variety of sources to assess and monitor bycatch, such as those set forth in Amendment 15B to the FMP. Additionally, Amendment 29 includes a bycatch practicability analysis (Appendix F), which describes bycatch and discard information being collected for the species addressed in this amendment, and provides an overview of the programs to collect bycatch information for snapper-grouper species in the southeast region.

Additionally, in 2014, a workgroup was established in the southeast region to determine the effectiveness of the current SBRMs in all FMPs in the southeast region. This is an ongoing effort, and the workgroup will be providing recommendations on how to improve the SBRMs as needed in 2015. NMFS anticipates that if adjustments to SBRMs based on the recommendations of the workgroup are needed, they will be made through amendments to FMPs.

*Comment 7:* Amendment 29 does not comply with the National Environmental Policy Act in that it fails to consider a reasonable range of alternatives for Action 1 to update the ABC control rule. There are only two alternatives for Action 1, including the no action alternative. At the very least, the EA should have fully examined the impacts of the alternative catch scalars and other data-limited methods discussed in the ORCS Technical Memorandum, Restrepo *et al.* (1998), and the practices of other NMFS fishery management regions. These include the use of a more precautionary catch

statistic, such as the mean or median historic catch level, as well as alternative data-limited methods, such as DBSRA and DCAC.

*Response:* NMFS disagrees. A reasonable range of alternatives was considered in Amendment 29. In addition, the SSC and the Council considered the recommendations in technical guidance from the Berkson *et al.* (May 2011) ORCS Working Group NOAA Technical Memo, which can be found in Appendix H of Amendment 29, and Restrepo *et al.* (1998), which can be found at <http://www.nmfs.noaa.gov/sfa/NSGtgd.pdf>. The use of mean or median historic catch levels, and DBSRA and DCAC data-limited methods, which are also used in other regions, are already a part of the Council's current ABC control rule. As such, they were considered by the Council as a component of Alternative 1, the no action alternative.

Action 1 analyzes two alternatives: Alternative 1, the no-action, status quo alternative; and Alternative 2, which adds the ORCS approach recommended to the Council by its SSC to the list of methods that can be used to determine an ABC. Under the ABC Control rule developed in Amendment 29, Level 1 is used for stocks with assessment information, DBSRA is used in Level 2, DCAC is used in Level 3, ORCS is used in Level 4, and the third highest or median landings is Level 5 of the updated ABC control rule.

The National Standard 1 guidelines state that "for stocks and stock complexes required to have an ABC, each Council must establish an ABC control rule based on scientific advice from its SSC." The SSC provided no other options or modifications to the ABC control rule for the Council to consider. Therefore, the Council and NMFS determined that it was reasonable to analyze the two alternatives for modifications to the ABC control rule, and that there was no other reasonable alternative.

*Comment 8:* NMFS should have conducted an environmental impact statement (EIS) for the actions in Amendment 29.

*Response:* An EIS was conducted for the Comprehensive ACL Amendment, because that amendment first established the ABC control rule, applied the control rule to specify ABCs and ACLs for all snapper-grouper species and species managed under other FMPs, and also specified sector allocations. Amendment 29 proposes to modify one aspect of the ABC control rule through the addition of the ORCS approach, and utilize the ORCS approach to revise ABCs for 14 snapper-

grouper species. For the reasons set forth in its EA, NMFS determined that the actions in Amendment 29 would not lead to significant biological, economic, social, or administrative impacts and that an EIS was not required. This determination was made in the finding of no significant impact.

*Comment 9:* Scientific advances in data-limited assessment methods and tools provide a more scientifically defensible and transparent framework for conducting an assessment and setting ABCs for data limited stocks. The Data-Limited Fisheries Toolkit should have been used to specify ABCs for data-limited stocks.

*Response:* The Data-Limited Fisheries Toolkit was referenced in a 2015 publication by Newman *et al.* and in a December 2014 report from the Natural Resources Defense Council. Amendment 29 was approved by the Council in September 2014 and the toolkit was not available for consideration during the development of the amendment. Because this additional information did not indicate that drastic changes have occurred in the fishery, it was unnecessary to revise the management measures in Amendment 29 (50 CFR 600.315(e)(1)). However, the SEFSC is planning to examine the use of the toolkit at data limited workshops in the Caribbean and Gulf of Mexico, and there is potential for use of the toolkit in the South Atlantic in the future.

*Comment 10:* How are the estimates for recreational landings of gray triggerfish determined?

*Response:* Recreational landings for gray triggerfish and other snapper-grouper species are collected through the Marine Recreational Information Program (MRIP), and the Southeast Region Headboat Survey (SRHS). In the southeast region, MRIP covers both coastal Atlantic states from Maine to Florida and Gulf of Mexico coastal states from Florida to Louisiana. (Texas provides data on recreational landings through their coastal creel survey conducted by the Texas Division of Parks and Wildlife.) MRIP provides estimated landings and discards for six 2-month periods (waves) each year. The survey provides estimates for three recreational fishing modes: Shore based fishing, private and rental boat fishing, and for-hire charter and guide fishing. Catch data are collected through dockside angler intercept surveys of completed recreational fishing trips and effort data are collected using telephone surveys. The SRHS estimates landings and discards for headboats in the U.S. South Atlantic and Gulf of Mexico from required electronic logbooks. Landings data from MRIP and SRHS are compared

to the recreational ACL. If the ACL has been met or exceeded, an accountability measure is triggered, such as an in-season closure. If landings for either MRIP or SRHS are incomplete, projections of landings based on information from previous years are used to predict when the ACL is expected to be met.

*Comment 11:* Closing gray triggerfish is going to be detrimental to the fishermen of South Carolina. There needs to be different regulations for different states. One management scheme does not fit all areas.

*Response:* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, as required by National Standard 3 of the Magnuson-Stevens Act. However, NMFS agrees that one management scheme for gray triggerfish might not be appropriate for all areas of the South Atlantic, and Amendment 29 should allow more access to gray triggerfish by fishermen in North Carolina and South Carolina. Currently, commercial harvest for gray triggerfish opens on January 1, and closes when the commercial ACL is met. Fishermen in North Carolina and South Carolina sometimes have limited or no access to gray triggerfish in the early months of the year due to poor weather, and could risk unsafe conditions to fish at that time. Amendment 29 includes an action to change the current management scheme by dividing the annual commercial fishing season for gray triggerfish into two 6-month fishing seasons with two separate quotas to improve fishing opportunities for gray triggerfish throughout the South Atlantic and throughout the year. This action would allocate 50 percent of the commercial gray triggerfish ACL to the time period January 1 through June 30, and 50 percent to the time period July 1 through December 31. A split commercial season would likely increase access to gray triggerfish in North Carolina and South Carolina during times of the year when weather conditions are good. NMFS also expects that the split commercial season will align the commercial harvest of gray triggerfish with that of vermilion snapper, as these are two species are commonly caught together.

*Comment 12:* The minimum size limit for gray triggerfish should be 12 inches (30.5 cm), fork length (FL), for both recreational and commercial fishermen in state and Federal waters. The recreational bag limit should be five fish per person per day. Enforcement is hindered when rules are different for state and Federal waters.

*Response:* Currently there is no minimum size limit for gray triggerfish in Federal waters off North Carolina, South Carolina, and Georgia. This final rule specifies a minimum size limit for gray triggerfish of 12 inches (30.5 cm) FL in Federal waters off North Carolina, South Carolina, and Georgia. The current minimum size limit for gray triggerfish is 12 inches (30.5 cm), total length (TL), in Federal waters off the east coast of Florida. This final rule specifies a minimum size limit of 14 inches (35.6 cm) FL for gray triggerfish in Federal waters off the east coast of Florida. The Florida Fish and Wildlife Conservation Commission recently approved an increase in the minimum size limit for gray triggerfish from 12 inches (30.5 cm) FL to 14 inches (35.6 cm) FL in state waters off the east coast of Florida. The Council's purpose is to achieve consistency with Florida regulations and aid law enforcement, since a 14-inch (35.6 cm) FL minimum size limit for gray triggerfish is already in place for Federal and state waters off the west coast of Florida. Gray triggerfish are included in the Federal 20-fish aggregate snapper-grouper bag limit and Amendment 29 did not include an action to establish a more specific recreational bag limit for gray triggerfish. A stock assessment is currently underway for gray triggerfish, and the Council may consider adjustments to management measures for the species pending the outcome of the assessment.

*Comment 13:* The minimum size limit for gray triggerfish is unnecessary and will only add to discards the Council deducts from quotas every year with no benefit to the fish, fishermen, or consumer.

*Response:* This final rule includes management measures for gray triggerfish to modify the minimum size limit for the commercial and recreational sectors, implement a split commercial season and a commercial trip limit. The Council determined that these management measures were needed to provide biological benefits for gray triggerfish and lengthen the fishing season.

Because most gray triggerfish currently retained are larger than the 12-inch (30.5-cm) FL minimum size limit included in this final rule for commercial and recreational fishermen off Georgia and the Carolinas, increased discards are not expected. Regulatory discards would be expected to increase with a 14-inch (35.6-cm) FL fork length minimum size limit; however, the survival of released fish is estimated to be high (87.5 percent). The establishment of a 12-inch (30.5-cm) FL

minimum size limit off Georgia and the Carolinas, as well as an increase in the minimum size limit off the east coast of Florida is expected to have increased biological benefits for gray triggerfish through improved spawning opportunities. Thus, increased biological benefits associated with spawning opportunities at larger size limits would offset negative effects of the low level of mortality associated with a small increase in regulatory discards. The combined effect of the commercial management measures proposed for gray triggerfish is expected to benefit fishermen by lengthening the commercial fishing season.

*Comment 14:* The commercial trip limit does nothing to avoid closures or regulatory discards. The gray triggerfish quota should be managed with a 100 lb (45 kg) bycatch allowance for the final 25 percent of each seasonal quota to limit closures and discards. This would follow the Magnuson-Stevens Act mandates to limit waste and make efficient use of our resources. Failure to follow these mandates should result in non-compliant amendments getting sent back to the Council with instructions to correct its mistakes.

*Response:* Closures would still be expected if the gray triggerfish quota was managed with a 100 lb (45 kg) bycatch allowance for the final 25 percent of each seasonal quota. The Council selected a 1,000-lb (454 kg), round weight, trip limit as its preferred alternative. The Council considered various commercial trip limit alternatives, including an alternative that would reduce the commercial trip limit to 200 lb (91 kg), round weight, for the final 25 percent of each seasonal quota. Analysis provided in Amendment 29 indicated that a step-down in the trip limit to 200 lb (91 kg), round weight, would lengthen the season by only a small amount, and would provide little economic benefit to fishermen. Regulatory discards of gray triggerfish can be expected after an ACL is reached or after a small trip limit is reached if fishermen are targeting co-occurring species. However, in situations where there are discarded gray triggerfish due to regulations, survival of released gray triggerfish is estimated to be high (87.5 percent).

#### **Classification**

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of South Atlantic snapper-grouper species and is consistent with Amendment 29, the FMP, the Magnuson-Stevens Act, and other

applicable law. This final rule has been determined to be not significant for purposes of Executive Order 12866. Pursuant to section 604 of the Regulatory Flexibility Act, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA uses updated information, when available, and analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

The description of the action, why it is being considered and the legal basis for the rule are contained in the preamble of the proposed rule and in the preamble of this final rule. Section 604(a)(2) of the RFA requires NMFS to summarize significant issues raised by the public in response to the IRFA, a summary of the assessment of such issues, and a statement of any changes made as a result of the comments. No significant issues were raised by the public in response to the IRFA.

Up to 681 commercial fishing vessels operate in the snapper-grouper fishery of the South Atlantic and NMFS estimates that up to 592 businesses will be directly affected; however, as explained below, the number is likely closer to 287. According to the Small Business Administration (SBA) size standards, a business in the finfish fishing industry (NAICS 114111) is considered a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$20.5 million. NMFS estimates that all of the directly affected businesses have annual revenues less than the size standard. Consequently, up to 592, but more likely closer to 287, small commercial fishing businesses own and operate the directly affected vessels. From 2009 through 2013, an annual average of 281 commercial fishing vessels landed gray triggerfish and 6 landed bar jack.

Anglers who catch snapper-grouper species in the South Atlantic exclusive economic zone will be directly affected; however, anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private or leased vessels. Recreational for-hire fishing vessels will be indirectly affected.

Amendment 29 changes the ABC rule and assigns scalar values and risk tolerance levels for ORCS. These are administrative actions that do not have a direct economic impact on any small entity.

The rule revises the total and commercial ACLs for Atlantic spadefish, bar jack, gray triggerfish, scamp, grunts complex, shallow-water grouper

complex, and snappers complex. The commercial ACLs for scamp and the grunts complex will decrease, while the commercial ACLs for the other species and species complexes will increase. Because baseline commercial landings are less than the current and revised commercial ACLs for Atlantic spadefish, scamp, grunts complex, shallow-water grouper complex, and snappers complex, NMFS expects no impact on annual landings of and associated dockside revenues from these five species and species complexes.

NMFS expects the revised commercial ACL for gray triggerfish to increase annual dockside revenue from gray triggerfish landings from \$44,118 to \$66,674 (2013 dollars). Florida businesses would receive approximately 14 percent to 27 percent of those benefits (\$6,177 to \$18,002) and North Carolina, South Carolina, and Georgia businesses would receive from 86 percent to 73 percent (\$57,340 to \$32,206). Divided across all 592 businesses, the average annual increase in dockside revenue from gray triggerfish landings would range from approximately \$75 to \$113 (2103 dollars) per business. However, the number of small businesses directly affected is likely less than that. From 2009 through 2013, an annual average of 281 vessels landed gray triggerfish. The average annual benefit would range from approximately \$157 to \$237 (2013 dollars) per small business across 281 small businesses.

NMFS expects the revised commercial ACL for bar jack to increase average annual dockside revenue from bar jack landings from \$0 to \$1,943 (2013 dollars), and divided across all 592 businesses, the average annual benefit would range from \$0 to approximately \$3 (2013 dollars) per business. However, if that benefit is divided across the average of six vessels with bar jack landings annually from 2009 through 2013, the average annual benefit would range from \$0 to \$324 (2013 dollars) per small business.

This rule revises the minimum size limit for gray triggerfish to 12 inches (30.5 cm) FL in Federal waters off North Carolina, South Carolina, and Georgia, and 14 inches (35.6 cm) FL off the east coast of Florida. NMFS estimates that these minimum size limits will reduce baseline commercial landings of gray triggerfish in North Carolina, South Carolina, and Georgia from 1 percent to 3 percent and in Florida from 14 percent to 22 percent. These size limits are expected to reduce average annual dockside revenue from gray triggerfish landings from \$14,775 to \$42,595 in the region as a whole. NMFS estimates

these impacts will not be shared equally across the region. NMFS estimates that average annual dockside revenue from gray triggerfish landings could decrease. That average decrease can range from \$10,269 to \$31,121 (2013 dollars) in Florida and from \$3,825 to \$13,517 (2013 dollars) in the other three states. The average loss of dockside revenue per small business could range from \$53 to \$151 in Florida (with 205 businesses) and from \$50 to \$178 in the other three states (with 76 businesses).

NMFS estimates the combined changes of the commercial ACL and minimum size limits for gray triggerfish to yield a net increase in average annual dockside revenue from gray triggerfish landings in the combined states of North Carolina, South Carolina, and Georgia. The average annual net benefit could range from \$18,689 to \$53,515 (2013 dollars). With an estimated 76 businesses annually landing gray triggerfish in these states, the average annual increase could range from \$246 to \$704 per small business. The combined changes of the commercial ACL and minimum size limit for gray triggerfish are estimated to produce a net decrease in dockside revenue from gray triggerfish landings in Florida in four of six baseline scenarios. The net average annual loss could range from \$1,803 to \$24,945 in the state. In two scenarios, however, Florida businesses could collectively receive an average net gain in dockside revenue from \$398 to \$7,733. With an estimated 205 small businesses in Florida that annually land gray triggerfish, the average annual net loss of dockside revenue from gray triggerfish landings could be from \$9 to \$122 or the average annual net gain could be from \$2 to \$38 per small business.

This rule will divide the commercial season for gray triggerfish into two 6-month seasons, with each season receiving 50 percent of the commercial ACL. NMFS expects the split seasons to have no effect on annual landings or dockside revenues. However, the divided commercial season will provide small businesses an increased opportunity to fish for gray triggerfish in the summer months when weather conditions are more favorable.

This rule will establish a commercial trip limit for gray triggerfish of 1,000 lb (454 kg), round weight, which is expected to increase the number of days that each season is open; however, NMFS also expects no change in annual landings and dockside revenues. From 2009 through 2013, an annual average of 10 percent of vessels with landings of gray triggerfish had landings that exceeded the trip limit. This indicates

28 vessels and small businesses that annually land the species could be directly affected. These 28 vessels will either have less annual landings and dockside revenue from the same number of trips or have to increase the number of trips to maintain landings and dockside revenues at their current levels. These 28 vessels may be larger than the average vessel and the trip limit could decrease their net revenue per pound by increasing their average cost per pound. There is insufficient information, however, to estimate the impact, if any, on net revenues from gray triggerfish landings.

The net annual benefit is the sum of an average annual increase in dockside revenues ranging from \$44,118 to \$68,617 and an average annual decrease in dockside revenues ranging from \$14,778 to \$42,595. This results in a collective net annual benefit ranging from \$1,523 to \$53,839 to 287 small businesses.

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 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 interested parties.

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

Annual catch limit, Annual catch target, Commercial trip limit, Fisheries, Fishing, Quotas, Size limit, Snapper-grouper, South Atlantic.

Dated: May 26, 2015.

**Samuel D. Rauch III,**

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

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

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

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

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

■ 2. In § 622.185, paragraph (c)(2) is revised to read as follows:

#### **§ 622.185 Size limits.**

\* \* \* \* \*

(c) \* \* \*

(2) *Gray triggerfish*. (i) *In the South Atlantic EEZ off Florida*—14 inches (35.6 cm), FL.

(ii) *In the South Atlantic EEZ off North Carolina, South Carolina, and Georgia*—12 inches (30.5 cm), FL.

■ 3. In § 622.190, add paragraph (a)(8) and revise the heading of paragraph (c)(1) to read as follows:

**§ 622.190 Quotas.**

(8) *Gray triggerfish*. (i) For the period January through June each year—156,162 lb (70,834 kg), round weight.

(ii) For the period July through December each year—156,162 lb (70,834 kg), round weight.

(iii) Any unused portion of the quota specified in paragraph (a)(8)(i) of this section will be added to the quota specified in paragraph (a)(8)(ii) of this section. Any unused portion of the quota specified in paragraph (a)(8)(ii) of this section, including any addition of quota specified in paragraph (a)(8)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

(1) *South Atlantic gag, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, red porgy, wreckfish, and gray triggerfish*.

■ 4. In § 622.191, paragraph (a)(11) is added to read as follows:

**§ 622.191 Commercial trip limits.**

(11) *Gray triggerfish*. Until the applicable quota specified in either § 622.190(a)(8)(i) or (ii) is reached, 1,000 lb (454 kg), round weight. See § 622.190(c)(1) for the limitations regarding gray triggerfish after either quota specified in § 622.190(a)(8)(i) or (ii) is reached or projected to be reached.

■ 5. In § 622.193:

■ a. The first sentence of paragraphs (i)(1)(i), (i)(2), (j)(1)(i), (j)(2), (m)(1)(i), (m)(2), (p)(1)(i), (p)(2), (q)(1)(i), (q)(2), (t)(1)(i), and (t)(2) are revised;

■ b. Paragraph (x) is revised; and

■ c. The heading for paragraph (p) is revised.

The revisions read as follows:

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

(i) \* \* \*

(1) \* \* \*

(i) If commercial landings for scamp, as estimated by the SRD, reach or are projected to reach the commercial ACL of 219,375 lb (99,507 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

(2) *Recreational sector*. If recreational landings for scamp, as estimated by the SRD, exceed the recreational ACL of 116,369 lb (52,784 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(j) \* \* \*

(1) \* \* \*

(i) If commercial landings for other SASWG, as estimated by the SRD, reach or are projected to reach the commercial ACL of 55,542 lb (25,193 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. \* \* \*

(2) *Recreational sector*. If recreational landings for other SASWG, as estimated by the SRD, exceed the recreational ACL of 48,648 lb (22,066 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(m) \* \* \*

(1) \* \* \*

(i) If commercial landings for bar jack, as estimated by the SRD, reach or are projected to reach the commercial ACL of 13,228 lb (6,000 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

(2) *Recreational sector*. If recreational landings for bar jack, as estimated by the SRD, exceed the recreational ACL of

49,021 lb (22,236 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(p) *Other snappers complex (including cubera snapper, gray snapper, lane snapper, dog snapper, and mahogany snapper)*—(1) \* \* \*(i) If commercial landings combined for this other snappers complex, as estimated by the SRD, reach or are projected to reach the complex commercial ACL of 344,884 lb (156,437 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. \* \* \*

(2) *Recreational sector*. If the combined recreational landings for this other snappers complex, as estimated by the SRD, exceed the recreational ACL of 1,172,832 lb (531,988 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL for this complex in the following fishing year. \* \* \*

(q) \* \* \*

(1) \* \* \*

(i) If commercial landings for gray triggerfish, as estimated by the SRD, reach or are projected to reach the applicable commercial ACL (commercial quota) specified in § 622.190(a)(8)(i) or (ii), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that portion of the fishing year applicable to the respective quota. \* \* \*

(2) *Recreational sector*. If recreational landings for gray triggerfish, as estimated by the SRD, exceed the recreational ACL of 404,675 lb (183,557 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register,

to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

\* \* \* \* \*

(t) \* \* \*

(1) \* \* \*

(i) If commercial landings for Atlantic spadefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 150,552 lb (68,289 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) *Recreational sector.* If recreational landings for Atlantic spadefish, as estimated by the SRD, exceed the recreational ACL of 661,926 lb (300,245 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational

landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(x) *Grunts complex (including white grunt, sailor's choice, tomtate, and margate)*—(1) *Commercial sector.* (i) If commercial landings for the grunts complex, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 217,903 lb (98,839 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of the grunts complex is prohibited, and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limits. These bag and possession limits 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.

(ii) If the combined commercial landings for the grunts complex exceed the ACL, and at least one of the species in the complex is overfished, based on

the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings for the grunts complex, as estimated by the SRD, exceed the recreational ACL of 618,122 lb (280,375 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for the grunts complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

\* \* \* \* \*

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