6. Initial Regulatory Flexibility Analysis

6.1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA does not contain any decision criteria; instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the FMP or amendment (including framework management measures and other regulatory actions). The RFA is also intended to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct a regulatory flexibility analysis for each proposed rule. The regulatory flexibility analysis is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. In addition to analyses conducted for the RIR, the regulatory flexibility analysis provides: 1) A statement of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; 5) an identification, to the extent practical, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and 6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Additional information on the description of affected entities was presented in **Section 3.8,** and additional information on the expected economic impacts of the proposed action was presented in **Sections 4.0** and **5.0**. These are included herein by reference.

6.2 Statement of Need for, Objectives of, and Legal Basis for the Rule

The purpose and need, issues, problems, and objectives of the proposed rule are presented in **Section 1.0** and are incorporated herein by reference. In summary, the purpose of this amendment includes: (1) specifying allowable catch limit (ACL) and an accountability measure for red snapper, with management measures to end overfishing and reduce the probability that catches will exceed the stock's ACL; (2) specifying status determination criteria for red snapper; (3) specifying a rebuilding plan for red snapper; (4) requiring the use of circle hooks in the snapper grouper fishery; and, (5) specifying a monitoring program for red snapper. The

Magnuson-Stevens Fishery Conservation and Management Act, as amended, provides the statutory basis for the proposed rule.

6.3 Identification of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict with the Proposed Rule

No duplicative, overlapping, or conflicting Federal rules have been identified. Previous amendments, whether already implemented or in the process of being implemented, have been considered in designing the various actions in this amendment.

6.4 Description and Estimate of the Number of Small Entities to Which the Proposed Rule will Apply

This proposed action is expected to directly affect commercial fishers and for-hire operators. The 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 its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2003-2007, an average of 944 vessels per year was permitted to operate in the commercial snapper grouper fishery. Of these vessels, 749 held transferable permits and 195 held non-transferable permits. On average, 890 vessels landed 6.43 million pounds of snapper grouper and 1.95 million pounds of other species on snapper grouper trips. Total dockside revenues from snapper grouper species stood at $13.81 million (2007 dollars) and from other species, at $2.30 million (2007 dollars). Considering revenues from both snapper grouper and other species, the revenues per vessel would be $18,101. An average of 27 vessels per year harvested more than 50,000 pounds of snapper grouper species per year, generating at least, at an average price of $2.15 (2007 dollars) per pound, dockside revenues of $107,500. Vessels that operate in the snapper grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

Although a vessel that possesses a commercial snapper grouper permit can harvest any snapper grouper species, not all permitted vessels or vessels that landed snapper grouper landed all of the six major species in this amendment. The following average number of vessels landed the subject species in 2003-2007: 292 for gag, 253 for vermilion snapper, 220 for red snapper, 237 for black sea bass, 323 for black grouper, and 402 for red grouper. Combining revenues from snapper grouper and other species on the same trip, the average revenue (2007 dollars) per vessel for vessels landing the subject species would be $20,551 for gag, $28,454 for vermilion snapper, $22,168 for red snapper, $19,034 for black sea bass, $7,186 for black grouper, and $17,164 for red grouper.

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

For the period 2003-2007, an average of 1,635 vessels was permitted to operate in the snapper grouper for-hire fishery, of which 82 are estimated to have operated as headboats. Within the total number of vessels, 227 also possessed a commercial snapper grouper permit and would be included in the summary information provided on the commercial sector. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue is estimated to range from approximately $62,000-$84,000 for Florida vessels, $73,000-$89,000 for North Carolina vessels, $68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South Carolina vessels. For headboats, the appropriate estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states.

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

Some fleet activity may exist in both the commercial and for-hire snapper grouper sectors but its extent is unknown, and all vessels are treated as independent entities in this analysis.

6.5 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

A potential change in reporting and record-keeping introduced by the proposed action pertains to the establishment of a fishery independent monitoring program. Only those selected among the qualified applicants would be subject to the new requirements, leaving unaffected all other participants in the fishery. The proposed action would require that fishing gear be appropriately stowed when transiting the areas closed to fishing. Allowing vessels, in possession of snapper grouper on board, to transit the closed areas would mitigate the potential increase in travel costs as well as avoid additional safety hazards. The gear stowage requirement would help ensure that the fishing prohibition in the closed areas is not circumvented.

6.6 Substantial Number of Small Entities Criterion

The proposed action is expected to directly affect all Federally permitted commercial and for-hire vessels that operate in the South Atlantic snapper grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, it is determined that the proposed action will affect a substantial number of small entities.

6.7 Significant Economic Impact Criterion

The outcome of 'significant economic impact' can be ascertained by examining two issues: disproportionally and profitability.

Disproportionally: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities that are expected to be affected by the proposed rule are considered small entities, so the issue of disproportionality does not arise in the present case.

Profitability: Do the regulations significantly reduce profit for a substantial number of small entities?

The proposed action is expected to reduce short-run harvests and fishing opportunities of commercial and for-hire vessels that, in turn, would reduce their short-run revenues and profits. In the following discussion, net operating revenue is considered equivalent to profit.

The proposed action on red snapper MSY, rebuilding schedule, rebuilding strategy, optimum yield, and accountability measures lays the ground for implementation of stringent management measures in the short run. These measures have direct effects on net operating revenues of affected small entities.

The proposed action to prohibit all commercial and recreational fishing for, harvest, and possession of red snapper year-round in the South Atlantic EEZ and to prohibit commercial and recreational fishing for, harvest, and possession of species (except when caught with spearfishing gear) in the snapper grouper FMU year-round in the area that includes commercial logbook grids 2880, 2980, 3080, and 3180 between 98 feet and 240 feet is expected to reduce net operating revenues of commercial vessels operating in the South Atlantic by an average of approximately $438,000, assuming no action alternatives for Amendment 17B, or $940,000 when combined with the preferred alternatives of Amendment 17B. This measure is also expected to reduce the net operating revenues of for-hire vessels operating in the South Atlantic by approximately $5.05 million. Most of the effects would be borne by commercial and for-hire vessels operating in northeast Florida and Georgia. Moreover, most of the effects would fall on commercial vessels using vertical lines and on headboats. However, it is highly probable that the effects on headboats are overestimated.

Exempting snapper grouper species, except red snapper, caught with spearfishing gear in the closed areas would mitigate the effects of the area closures on commercial vessels. These effects are already incorporated in the estimated effects of the fishing prohibition on red snapper and fishing prohibition of snapper grouper in the closed areas. There are no known recreational spearfishing activities in the closed areas.

Requiring the use of non-off set, non-stainless steel circle hooks when fishing for snapper grouper species with hook and line gear north of 28 degrees is expected to increase the fishing costs of some commercial and for-hire vessels. Depending on the physical structure of a fish's mouth and the way that they take bait, the circle hook requirement may reduce the harvest of some desired species. The potential cost increase and harvest reduction cannot be estimated,

although they are deemed to be relatively small considering that circle hooks are already used in some vessels.

Establishing a fishery independent monitoring program to track progress of red snapper may benefit some vessels in the short run if they are selected to participate in the program. This benefit cannot be estimated but is deemed relatively small considering the likelihood that only few vessels would be included in the program.

The estimated short-term reductions in the net operating revenues of the affected small entities, particularly those on for-hire vessels may be considered substantial. Small entities operating off of northeast Florida and Georgia are expected to bear most of the short-run adverse economic effects.

6.8 Description of Significant Alternatives

Details of the various alternatives are provided in **Section 2.0** and are included herein by reference. The following describes the proposed action and significant alternatives to the proposed action.

The proposed action consists of the following:

1. MSY for red snapper equals the yield produced by F_{MSY} or the F_{MSY} proxy. FMSY proxy is $F_{40\%SPR}$ and the MSY proxy value is 2,304,000 lbs whole weight.

2. Define a rebuilding schedule as the maximum recommended period to rebuild if T_{MIN} > 10 years. The maximum recommended period equals T_{MIN} + one generation time. This would equal 35 years with the rebuilding time period starting in 2010 and ending in 2044.

3. Define a rebuilding strategy for red snapper that sets F_{OY} equal to 97% F_{MSY} (97%$F_{40\%SPR}$) and rebuilds in 35 years. The ACL (total removals) specified for 2010 would remain in effect beyond 2010 until modified. Establish an ACL based on landings, with the ACL in 2010 equal 0. OY at equilibrium would be 2,291,000 lbs whole weight. Establish three AMs: (a) track CPUE of red snapper via a fishery-independent monitoring program to track changes in biomass and take action to end overfishing if assessment indicates progress is not being made; (b) track the red snapper biomass and CPUE through fishery-dependent sampling; and, (c) CPUE of red snapper would be evaluated every three years and adjustments would be made by the framework action.

4. Prohibit all commercial and recreational fishing for, harvest, and possession, of red snapper year-round in the South Atlantic EEZ. Prohibition of red snapper applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat or commercial permit for South Atlantic snapper grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters. Prohibit commercial and recreational fishing for, harvest, and possession, of species in the snapper grouper

FMU year-round in an area that includes commercial logbook grids 2880, 2980, 3080, and 3180 between 98 feet (16 fathoms; 30 m) to 240 feet (40 fathoms; 73 m).

5. Allow fishing for, harvest and possession of snapper grouper species (with the exception of red snapper) in the closed areas if fish were harvested with spearfishing gear.

6. Allow transit through areas closed to snapper grouper harvest. The prohibition on possession does not apply to a person aboard a vessel that is in transit with snapper grouper species on board and with fishing gear appropriately stowed.

7. Require the use of non-off set, non-stainless steel circle hooks when fishing for snapper grouper species with hook and line gear north of 28 degrees. It is unlawful to possess snapper grouper species without possessing non-off set, non-stainless steel circle hooks. Apply to the use of natural baits only.

8. Establish fishery independent monitoring program to track progress of red snapper. Sampling would include deployment of chevron traps, cameras, and hook and line at randomly selected stations.

Two alternatives, including the proposed action, were considered for MSY/ MSY proxy for red snapper. The only alternative to the proposed action is the no action alternative, which uses $F_{30\%SPR}$ as proxy for F_{MSY}. This alternative is less conservative than the proposed action, and thus provides less assurance that overfishing would be ended and the stock rebuilt within the specified time frame.

Four alternatives, including the proposed action, were considered for the red snapper rebuilding schedule. The first alternative to the proposed action, the no action alternative, would not define a rebuilding schedule for red snapper. Considering that a previous rebuilding schedule expired in 2006 and the stock is overfished, this alternative would not meet the MSA requirements. The second alternative to the proposed action would define a rebuilding schedule equal to 15 years, which is the shortest possible period to rebuild in the absence of fishing mortality. Even if retention of red snapper is prohibited, red snapper would still be caught since they have temporal and spatial coincidence with other species fishermen target. Hence, adopting this alternative would mean more stringent regulations than those of the proposed action, thereby affecting a wider range of fisheries and more economically important snapper grouper species. This would result in much larger economic effects in the short run which may or may not be recouped in the long run unless those other affected snapper grouper species become substantially abundant and fisheries become more economically important. The third alternative to the proposed action would define a rebuilding schedule equal to 25 years, which is the mid-point between the shortest possible (15 years) and maximum (35 years) timeframe to rebuild the stock. This alternative would require more stringent regulations in the short run and thus more short-run adverse economic effects than the proposed action. Uncertainties associated with assessments and effectiveness of proposed management measures to reduce red snapper mortality, particularly due to incidental catches, present some issues on rebuilding the stock in a timeframe shorter than the proposed action.

Nine alternatives, including the proposed action, were considered for rebuilding strategy, OY, ACL, and AM. With the exception of the no action alternative, each alternative includes two sub-alternatives for ACL, and each ACL in turn includes three alternatives for AM. It may be noted that the three AM alternatives are identical for all alternatives and sub-alternatives, so they do not merit additional discussions here. The first alternative to the proposed action, the no action alternative, would not specify an ACL and so would not meet the MSA requirements. In addition, it would set F_{OY} at a level equivalent to 85% $F_{40\%SPR}$ such that OY at equilibrium equals 2,196,000 lbs whole weight. This would then imply more restrictive measures than the proposed action, resulting in larger adverse economic effects in the short run. With a lower OY level, it also would tend to generate lower long-run economic benefits than the proposed action. The second alternative to the proposed action would define a red snapper rebuilding strategy that sets F_{OY} at a level equivalent to 85% $F_{40\%SPR}$ such that OY at equilibrium equals 2,199,000 lbs whole weight. This alternative would imply more restrictive measures in the short run, resulting in larger short-run adverse economic effects and potentially lower long-run benefits than the proposed action. The first sub-alternative would base the ACL on landings, with the ACL equal to 0 in 2010. This is identical to the proposed action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 89,000 lbs whole weight in 2010. This would still require prohibition of red snapper harvest by both the commercial and recreational sectors. In addition, this would require monitoring of dead discards so that total removal would not exceed the ACL. The difficulty of monitoring dead discards, together with the likelihood that self-reported discards would be understated, raises concerns regarding the eventual effectiveness of the rebuilding strategy. The third alternative to the proposed action would define a red snapper rebuilding strategy that sets F_{OY} at a level equivalent to 75% $F_{40\%SPR}$ such that OY at equilibrium equals 2,104,000 lbs whole weight. This alternative would imply more restrictive measures in the short-run, resulting in larger short-run adverse economic effects and potentially lower long-run benefits than the proposed action. The first sub-alternative is identical to the proposed action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 79,000 lbs whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards. The fourth alternative to the proposed action would define a red snapper rebuilding strategy that sets F_{OY} at a level equivalent to 65% $F_{40\%SPR}$ such that OY at equilibrium equals 1,984,000 lbs whole weight. This alternative would imply more restrictive measures in the short run, resulting in larger short-run adverse economic effects and potentially lower long-run benefits than the proposed action. The first sub-alternative is identical to the proposed action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 68,000 lbs whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards. The fifth alternative to the proposed action would define a red snapper rebuilding strategy that sets F_{OY} at a level equivalent to 85% $F_{30\%SPR}$ such that OY at equilibrium equals 2,392,000 lbs whole weight. This alternative would imply less restrictive measures in the short run, resulting in lower short-run adverse economic effects and potentially higher long-run benefits (because of a higher OY) than the proposed action. However, a rebuilding strategy based on $F_{30\%SPR}$ as a proxy for MSY would be less conducive to rebuilding the stock within a specified timeframe, and this may hamper the realization of higher long-term benefits. The first sub-alternative is identical to the proposed action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 125,000 lbs whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards, although the higher ACL than that of previous

sub-alternatives would tend to mitigate but not erase such concerns. The sixth alternative to the proposed action would define a red snapper rebuilding strategy that sets F_{OY} at a level equivalent to 75% $F_{30\%SPR}$ such that OY at equilibrium equals 2,338,000 lbs whole weight. This alternative would imply less restrictive measures in the short run, resulting in lower short-run adverse economic effects and potentially higher long-run benefits (because of a higher OY) than the proposed action. However, a rebuilding strategy based on $F_{30\%SPR}$ as a proxy for MSY would be less conducive to rebuilding the stock within a specified timeframe, and this may hamper the realization of higher long-term benefits. The first sub-alternative is identical to the proposed action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 111,000 lbs whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards, although the higher ACL than that of some previous sub-alternatives would tend to mitigate but not erase such concerns. The seventh alternative to the proposed action would define a red snapper rebuilding strategy that sets F_{OY} at a level equivalent to 65% $F_{30\%SPR}$ such that OY at equilibrium equals 2,257,000 lbs whole weight. This alternative would imply less restrictive measures in the short run, resulting in lower short-run adverse economic effects but potentially lower long-run benefits (because of a lower OY) than the proposed action. However, a rebuilding strategy based on $F_{30\%SPR}$ as a proxy for MSY would be less conducive to rebuilding the stock within a specified timeframe, and this may hamper the realization of higher long-term benefits. The first sub-alternative is identical to the proposed action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 97,000 lbs whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards, particularly that the ACL is lower than that of some previous sub-alternatives. The eighth alternative to the proposed action would define a red snapper rebuilding strategy that sets F_{OY} at a level equivalent to 98% $F_{30\%SPR}$ such that OY at equilibrium equals 2,464,000 lbs whole weight. This alternative would imply less restrictive measures, resulting in lower short-run adverse economic effects and potentially higher long-run benefits (because of a higher OY) than the proposed action. However, a rebuilding strategy based on $F_{30\%SPR}$ as a proxy for MSY would be less conducive to rebuilding the stock within a specified timeframe, and this may hamper the realization of higher long-term benefits. The first sub-alternative is identical to the proposed action. The second sub-alternative would base the ACL on total removal, with the ACL equal to 144,000 lbs whole weight in 2010. This sub-alternative raises similar issues of concern associated with the monitoring of dead discards, although the higher ACL may mitigate but not erase those concerns.

Fourteen alternatives, three of which comprise the proposed action, and three sub-alternatives, one of which is the proposed action, were considered for the red snapper management measures. The first alternative to the proposed action, the no action alternative, would not conform to the MSA requirements to address the overfished and overfishing conditions of red snapper. The second alternative to the proposed action would prohibit all commercial and recreational fishing for, harvest, and possession of red snapper year-round in the South Atlantic EEZ. This alternative has been determined to be insufficient to rebuild the red snapper stock within the specified timeframe due to discard mortalities from fishing for co-occurring snapper grouper species. The third alternative to the proposed action is similar to the proposed action, except that it would close all water depths in the four subject areas. This alternative would result in larger short-run adverse economic effects than the proposed action. The fourth alternative to the proposed action is similar to the proposed action, except that it would close more water depths in

the shallower parts of the four subject areas. This alternative would result in larger short-run adverse economic effects than the proposed measure. The fifth alternative to the proposed action is similar to the proposed action, except that it would close more water depths in the deeper parts of the four subject areas. This alternative would result in slightly larger short-run adverse economic effects than the proposed measure. The sixth alternative to the proposed action differs from the proposed action by closing three additional areas and all water depths in the subject seven areas. This alternative would result in substantially larger short-run adverse economic effects than the proposed action. The seventh alternative to the proposed action differs from the proposed action by closing three additional areas and more water depths in the shallower parts of the subject seven areas. This alternative would result in substantially larger short-run adverse economic effects than the proposed action. The eighth alternative to the proposed action differs from the proposed action by closing three additional areas. This alternative would result in substantially larger short-run adverse economic effects than the proposed action. The ninth alternative to the proposed action differs from the proposed action by closing three additional areas and more water depths in the deeper parts of the subject seven areas. This alternative would result in substantially larger short-run adverse economic effects than the proposed action. The tenth alternative to the proposed action would, in combination with any of the alternatives that would prohibit fishing for red snapper and close four or seven areas to snapper grouper fishing, allow fishing for, harvest and possession of snapper grouper species (except red snapper) in the closed areas if fish were harvested with black sea bass pots with endorsements. Relative to the proposed action, this alternative would have negligible additional effects on commercial vessels and none on for-hire vessels. The eleventh alternative to the proposed action would, in combination with any of the alternatives that would prohibit fishing for red snapper and close four or seven areas to snapper grouper fishing, allow fishing for, harvest and possession of snapper grouper species (except red snapper) with bottom longline gear in the closed areas deeper than 50 fathoms. Relative to the proposed action, this alternative would have negligible additional effects on commercial vessels and none on for-hire vessels. Three sub-alternatives, including the proposed action, were considered for vessels transiting through the closed areas. The first sub-alternative would be less restrictive than the proposed action by not requiring that fishing gear be appropriately stowed when vessels transit through the closed areas. This alternative would slightly mitigate the adverse economic effects of the closed areas, but it could compromise the effectiveness of enforcing regulations in the closed areas. The second sub-alternative to the proposed action would be less restrictive than the proposed action for vessels with wreckfish on board. This alternative would particularly avoid the potential unintended adverse effects of vessels fishing for wreckfish, but it could also compromise the effectiveness of enforcing regulations in the closed areas.

Three alternatives, including the proposed action, were considered for requiring the use of circle hooks. The first alternative to the proposed action, the no action alternative, would not require the use of circle hooks, and so would not entail any additional fishing cost. On the other hand, it would not take advantage of the potential afforded by circle hooks in reducing discard and bycatch mortality of red snapper, particularly in the center of the red snapper fishing area. The second alternative to the proposed action would require the use of circle hooks throughout the South Atlantic EEZ and not just north of 28 degrees as in the proposed action. This alternative could entail higher fishing costs than the proposed action. It could also lower vessel revenues

when some species cannot be effectively caught with circle hooks, particularly in the southern areas where red snapper harvest is relatively low.

Three alternatives, including the proposed action, were considered for the red snapper monitoring program. The first alternative, the no action alternative, would not entail any additional cost by utilizing existing data collection programs. However, existing data collection programs may not be adequate to collect vital information on red snapper during the time harvest of the species is prohibited. The second alternative to the proposed action would establish a red snapper fishery dependent monitoring program involving for-hire vessels. This alternative offers some potential as the proposed action in collecting the needed information on red snapper, especially during the period harvest of the species is prohibited. Although the near ideal approach is to combine this alternative with the proposed action, funding for both may not be available on a continuing basis.