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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130403321-3321-01]

RIN 0648-BD16

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Snapper-Grouper Fishery off the Southern Atlantic States;  
Regulatory Amendment 19

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 19 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, Regulatory Amendment 19 and this rule would revise the optimum yield (OY), the commercial and recreational annual catch limits (ACLs) and the recreational annual catch target (ACT) for black sea bass harvested in or from the South Atlantic exclusive economic zone (EEZ). This rule would also establish an annual prohibition on the use of black sea bass pots in the South Atlantic from November 1 through April 30. The intent of this rule is to provide socio-economic benefits to snapper-

grouper fishermen and communities that utilize the snapper-grouper resource, while maintaining fishing mortality at sustainable levels according to the best scientific information available. The rule would also prevent interactions between black sea bass pot gear and whales listed under the Endangered Species Act (ESA) during periods of large whale migrations and during the northern right whale calving season off of the southeastern coast.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2013-0096" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:  
<http://www.regulations.gov>. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0096](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0096), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Rick DeVactor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments

received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Regulatory Amendment 19, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/pdfs/SGRegAmend19.pdf>.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727-824-5305, or e-mail: [rick.devictor@noaa.gov](mailto:rick.devictor@noaa.gov).

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes black sea bass, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY for federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks while achieving OY from the fishery, and to minimize bycatch and bycatch mortality to the extent practicable. The black sea bass component of the snapper-grouper fishery in the South Atlantic is managed through a variety of measures to achieve OY. These measures include restrictions on the total harvest, recreational and commercial allocations, recreational and commercial ACLs, and accountability measures (AMS).

The black sea bass stock in the South Atlantic was assessed through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process in 2003 (SEDAR 2). SEDAR 2 determined that the South Atlantic black sea bass stock was overfished and undergoing overfishing. In 2006, the Council implemented a 10-year rebuilding plan for black sea bass that included measures

to end overfishing. The black sea bass stock was reassessed in 2011 (SEDAR 25) and determined to no longer be overfished or undergoing overfishing, but was not fully rebuilt. In 2013, the SEDAR 25 Update assessment determined that the black sea bass stock is now rebuilt. The SEDAR 25 Update assessment indicates that the black sea bass ACLs can be increased without jeopardizing the health of the population. The Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 25 Update assessment in April 2013, and determined that the assessment was based on the best scientific information available and recommended new acceptable biological catch (ABC) levels for 2013, 2014, and 2015. These ABCs, which decrease over time, are higher than the current ABC. The Council approved the new ABCs at its May 2013 Council meeting.

In Amendment 18A to the FMP (77 FR 32408, June 1, 2012), the Council established an OY formula of  $ABC = OY = ACL$ , using values from SEDAR 25 (2011) and the SSC's ABC recommendation at that time. Regulatory Amendment 19 proposes to change the formula to  $ACL = OY$ . For 3 consecutive fishing years beginning in 2013-2014 (fishing years 2013-2014, 2014-2015, and 2015-2016), the Council decided to set the ACL value equal to the 2015-2016 fishing year ABC value, which is 1,814,000 lb (822,817 kg). Thus, the stock ACLs for the 2013-2014 and 2014-2015

fishing years would be set below their respective fishing year's ABC, and the stock ACL for the 2015-2016 fishing year would be equal to the ABC. The Council chose to include a buffer between the higher ABCs and ACL to account for management uncertainty and as a conservative management approach for a stock that was only recently rebuilt. Then, because no ABC recommendation was provided beyond 2015 and the black sea bass biomass is above OY at equilibrium, beginning with the 2016-2017 fishing year the formula would remain at  $ACL = OY$ , but the stock ACL and OY values would be lowered to the yield at 75 percent  $F_{MSY}$ , which equals 1,756,450 lb (796,712 kg), round weight.

The stock ACL would be allocated between the commercial and recreational sectors based on the sector allocations established in Amendment 13C to the FMP (43 percent for the commercial sector and 57 percent for the recreational sector) (71 FR 55096, September 21, 2006). Thus, the commercial ACL would increase from the current 309,000 lb (140,160 kg), gutted weight, 364,620 lb (165,389 kg), round weight, to: 661,034 lb (299,840 kg), gutted weight, 780,020 lb (353,811 kg), round weight for the 2013-2014, 2014-2015, and 2015-2016 fishing years; and 640,063 lb (290,328 kg), gutted weight, 755,274 lb (342,587 kg), round weight, for the 2016-2017 and subsequent fishing years. The recreational ACL would increase from the current 409,000 lb

(185,519 kg), gutted weight; 482,620 lb (218,913 kg), round weight to 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013-2014, 2014-2015, and 2015-2016 fishing years and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2016-2017 and subsequent fishing years.

The black sea bass recreational ACT was set at 357,548 lb (162,181 kg) gutted weight, 421,907 lb (191,374 kg), round weight, in Amendment 18A (75 FR 82280, December 30, 2010). Based upon the results of the SEDAR 25 Update assessment, Regulatory Amendment 19 would increase the recreational ACT to 766,021 lb (347,461 kg), gutted weight, 903,905 lb (410,004 kg), round weight for the 2013-2014, 2014-2015, and 2015-2016 fishing years and to 741,719 lb (336,438 kg), gutted weight, 875,228 (396,997 kg), round weight for the 2016-2017 and subsequent fishing years. Because the ACT would not be used to trigger AMs, it would not be codified in the regulatory text.

Regulatory Amendment 19 and this rule would also establish a prohibition on the use of black sea bass pots from November 1 through April 30, each year. The large whale migration period and the right whale calving season in the South Atlantic extend from approximately November 1 through April 30, each year. Since 2010, black sea bass harvest levels have reached the

commercial ACL, triggering AMs to close the commercial sector. Because these in-season commercial AM closures have occurred prior to November 1, actions to prevent black sea bass pot gear from being in the water during the higher whale concentrations have been unnecessary. However, NMFS has determined that the increase in the commercial ACL proposed in this rule could extend the commercial black sea bass fishing season beyond November 1 and into a time period when a higher concentration of endangered whales are known to migrate through black sea bass fishing grounds.

According to the NMFS List of Fisheries, black sea bass pots are considered to pose an entanglement risk to marine mammals. The South Atlantic black sea bass pot sector is included in the Atlantic mixed species trap/pot fisheries grouping, which is classified as a Category II in the proposed rule for the 2013 List of Fisheries (78 FR 23708, April 22, 2013). Category II means that there is an occasional incidental mortality and serious injury of marine mammals associated with that specific fishing gear type. The seasonal sea bass pot prohibition would be a precautionary measure to prevent interactions between black sea bass pot gear and whales during large whale migrations and during the right whale calving season off the U.S. southeastern coast. During this closure, no person

would be allowed to harvest or possess black sea bass in or from the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ before November 1, and may not be on board a vessel in the South Atlantic EEZ during this closure.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with Regulatory Amendment 19, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble. A copy of the full analysis is available from the NMFS (see ADDRESSES). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for

this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule.

NMFS expects this proposed rule to directly affect commercial fishermen and for-hire vessel operators in the South Atlantic snapper-grouper fishery. The Small Business Administration has established small entity size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2007 through 2011, an annual average of 240 vessels with valid commercial South Atlantic snapper-grouper permits landed at least 1 lb (0.45 kg) of black sea bass. These vessels generated dockside revenues of approximately \$4.0 million (2011 dollars) from all species caught on the same trips as black sea

bass, of which about \$1.0 million (2011 dollars) were attributable to black sea bass. Each vessel, therefore, generated an average of approximately \$17,000 in gross revenues, of which \$4,000 were from black sea bass. Based on revenue information, all commercial vessels affected by the rule can be considered small entities.

From 2007 through 2012, an annual average of 1,855 vessels had a valid South Atlantic Charter/Headboat for Snapper-Grouper permit to operate in the for-hire component of the recreational sector in the snapper-grouper fishery. As of April 23, 2013, 1,485 vessels held South Atlantic Charter/Headboat for Snapper-Grouper permits and about 75 of those are estimated to have operated as headboats in 2013. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) per charter boat are estimated to be \$126,032 for Florida vessels, \$53,443 for Georgia vessels, \$100,823 for South Carolina vessels, and \$101,959 for North Carolina vessels. For headboats, the corresponding estimates are \$209,507 for Florida vessels and \$153,848 for vessels in the other states. For state headboat estimates other than Florida, the headboat sample sizes were small and therefore providing more detailed revenue estimate

information on a state-by-state basis would potentially disclose sensitive financial information and so aggregated economic information is provided. Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

NMFS expects that the proposed rule would directly affect all federally-permitted commercial vessels harvesting black sea bass 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, NMFS determined that the proposed action would affect a substantial number of small entities.

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

The proposed rule would increase the black sea bass stock ACL from its current level of 847,000 lb (384,193 kg), round weight, to 1,814,000 lb (822,817 kg), round weight, for the 2013-2014, 2014-2015, and 2015-2016 fishing years and to 1,756,450 lb (796,713 kg), round weight, for the 2016-2017, and subsequent fishing years. In addition, the proposed rule would annually prohibit the retention, possession, and fishing for

black sea bass using black sea bass pot gear, from November 1 through April 30, each year.

Increasing the black sea bass stock ACL would also increase the commercial and recreational sector ACLs based on the current allocation rate of 43 percent for the commercial sector and 57 percent for the recreational sector. Current NMFS modeling projections suggest that, even with relatively large increases in the commercial ACL, the commercial fishing season for black sea bass would likely close before the end of each fishing year. If the commercial ACL were fully harvested each year, the commercial sector would be expected to generate additional revenues (in 2011 dollars) of about \$939,000 in each of the 2013-2014, 2014-2015, and 2015-2016 fishing years and approximately \$883,000 in the 2016-2017 and subsequent fishing years. For the 2013-2014, 2014-2015, and 2015-2016 fishing years, the net present value of increased revenues to the commercial sector would be approximately \$2.5 million. As a result of relatively large increases in commercial revenues, profits to commercial vessels would likely increase.

The November through April prohibition on the use of black sea bass pots for harvesting black sea bass is intended to prevent interactions between black sea bass pot gear and whales listed under the ESA during large whale migrations and during

the right whale calving season off the southeastern coast. In theory, this prohibition would be expected to negatively affect the revenues and profits of 32 commercial vessels which currently possess black sea bass pot endorsements. Since the 2010-2011 fishing season, however, commercial fishing for black sea bass has closed before November 1 each year. Thus, the November through April prohibition on the use of black sea bass pots would mainly constrain the revenue increases associated with an increased commercial ACL of 32 commercial vessels which possess black sea bass pot endorsements.

However, the seasonal black sea bass pot prohibition would greatly benefit vessels using other gear types, such as vertical lines, because their fishing season would be extended if this rule was implemented. Despite the proposed ACL increases, closures to commercial (and recreational) harvest of black sea bass are still projected to occur as a result of the sectors reaching their respective ACLs during the fishing year. Therefore, revenues forgone by vessels using black sea bass pot would likely be gained by vessels using other gear types. Thus, the black sea bass pot prohibition would mainly have distributional effects within the commercial sector, with the overall industry revenues and likely profits expected to increase.

NMFS modeling projections suggest that even with large ACL increases, the recreational sector for black sea bass would experience fishing closures during the fishing year as a result of the sector reaching the recreational ACL. This closure would likely occur starting in December of each fishing year. Relative to the no action alternative, however, the ACL increases would extend the recreational fishing season each year, allowing for-hire vessels to take more fishing trips. These additional trips would increase total for-hire vessel profits (in 2011 dollars) by approximately \$354,000 each year starting with the 2013-2014 fishing year, of which about \$234,000 would be for headboats and \$120,000 for charter boats. Over the 2013-2014, 2014-2015, and 2015-2016 fishing years, the net present value of these profit increases would be approximately \$930,000, of which \$614,000 would be for headboats and \$316,000 for charter boats.

Additionally, Regulatory Amendment 19 would revise the recreational ACT. The formula for calculating the ACT from the ACL would not change, but the ACT level would increase with increases in the ACL. Up until now, the recreational ACT has been used by the Council and NMFS to monitor recreational harvest and not as a trigger for AMs. The proposed action would not change this, thus the revised ACT would be expected to have

no effects on the revenues and profits of for-hire vessels. If, in the future, the ACT were to be used to trigger AMs, the ACT increase accompanying the proposed ACL increase would reduce the probability of triggering an AM associated with an in-season closure.

The following discussion analyzes the alternatives that were not selected as preferred by the Council.

Four alternatives, including the preferred alternative, were considered for revising the stock ACL for black sea bass. The first alternative, the no action alternative, would retain the current ACL of 847,000 lb (384,193 kg) round weight. In principle, this alternative would have no effects on the revenues and profits of commercial and for-hire vessels. With the developing derby conditions in the commercial and recreational sectors that harvest black sea bass, both the commercial and recreational fishing seasons would continue to shorten over time, eventually adversely affecting the revenues and profits of commercial and for-hire vessels. Moreover, this alternative would result in forgoing the economic benefits expected of the preferred alternative to increase the stock ACL.

The second alternative to increase the stock ACL would increase the ACL from its current level of 847,000 lb (384,193 kg), round weight, to 2,133,000 lb (967,513 kg), round weight,

in the 2103-2014 fishing year, 1,992,000 lb (903,557 kg), round weight, in the 2014-2015 fishing year, and 1,814,000 lb (822,817 kg), round weight, in the 2015-2016 fishing year and beyond. In addition, this alternative would prohibit the use of black sea bass pots for the same dates as the preferred alternative and increase the recreational ACT. This alternative would result in higher revenues and profits for commercial and for-hire vessels than the preferred alternative mainly because it would provide for higher ACLs in the 2013-2014 and 2014-2015 fishing years. Although the effects of this alternative on commercial vessels using black sea bass pots would be the same as those of the preferred alternative, the effects on commercial vessels using other gear types would be different. With the seasonal black sea bass pot prohibition in place, the 2013-2014 and 2014-2015 fishing seasons for users of other gear types would be longer, thus affording them higher revenues and profits than the preferred alternative. A negative consequence of this alternative is its higher likelihood (relative to the preferred alternative) of overfishing the stock over time. As has been experienced in the snapper-grouper fishery, overfishing requires more restrictive regulations with their attendant adverse consequences on the revenues and profits of commercial and for-hire vessels. The revised recreational ACT levels would have no

direct effects on the revenues and profits of for-hire vessels.

The third alternative would increase the ACL from its current level of 847,000 lb (384,193 kg), round weight, to 1,756,450 lb (796,713 kg), round weight, in the 2013-2014 fishing year and beyond. In addition, this alternative would similarly prohibit the seasonal use of black sea bass pots as the preferred alternative and increase the recreational ACT. This alternative would maintain the same ACL starting in the 2013-2014 fishing season but at lower levels in the initial 3 years than the preferred alternative. Thus, this alternative would be expected to result in lower revenues and profits than the preferred alternative. The prohibition on the use of black sea bass pots would extend the overall commercial fishing season but at a shorter duration than what would be expected under the preferred alternative. Revenue and profit increases to vessels using other gear types would be less than those under the preferred alternative. As with the preferred alternative, the revised recreational ACT level would have no direct effects on the revenues and profits of for-hire vessels.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, South Atlantic, Black Sea Bass.

Dated: June 26, 2013

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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

PART 622--FISHERIES OF THE CARIBBEAN, GULF 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 § 622.183, paragraph (b) (5) is added to read as follows:

§ 622.183 Area and seasonal closures.

\* \* \* \* \*

(b) \* \* \*

(5) Seasonal closure of the commercial black sea bass pot component of the snapper-grouper fishery. From November 1 through April 30, each year, the commercial black sea bass pot component of the snapper-grouper fishery is closed. During this closure, no person may harvest or possess black sea bass in or from the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ before November 1, and may not be on board a vessel in the South Atlantic EEZ during this closure.

3. In § 622.190, paragraph (a) (5) is revised to read as follows:

§ 622.190 Quotas.

\* \* \* \* \*

(a) \* \* \*

(5) Black sea bass. (i) For the 2013-2014, 2014-2015, and 2015-2016 fishing years--661,034 lb (299,840 kg), gutted weight;

780,020 lb (353,811 kg), round weight.

(ii) For the 2016-2017 and subsequent fishing years--  
640,063 lb (290,328 kg), gutted weight; 755,274 lb (342,587 kg),  
round weight.

\* \* \* \* \*

4. In § 622.193, paragraph (e)(2) is revised to read as  
follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) Recreational sector. (i) If recreational landings for  
black sea bass, as estimated by the SRD, are projected to reach  
the recreational ACL specified in paragraph (e)(2)(ii) of this  
section then the AA will file a notification with the Office of  
the Federal Register to close the recreational sector for the  
remainder of the fishing year. On and after the effective date  
of such a notification, the bag and possession limit is zero.  
This bag and possession limit applies in the South Atlantic on  
board a vessel for which a valid Federal 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) The recreational ACL for black sea bass is 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013-2014, 2014-2015, and 2015-2016 fishing years and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2016-2017 and subsequent fishing years.

(iii) If recreational landings for black sea bass, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

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