



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131231999-4319-01]

RIN 0648-BD87

Temporary Rule to Establish Separate Annual Catch Limits and Accountability Measures for Blueline Tilefish in the South Atlantic Region

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule to reduce the amount of blueline tilefish that may be harvested in the exclusive economic zone (EEZ) of the South Atlantic by removing the blueline tilefish portion from the deep-water complex annual catch limit (ACL) and establishing separate commercial and recreational ACLs and accountability measures (AMs) for blueline tilefish. At its December 2013 meeting, the South Atlantic Fishery Management Council (Council) requested emergency action regarding blueline tilefish given new stock assessment results that indicate the blueline tilefish stock is overfished and undergoing overfishing in the South Atlantic. This temporary

rule is based upon the best scientific information available, and will be effective for 180 days, unless superseded by subsequent rulemaking. NMFS may extend the rule's effectiveness for an additional 186 days pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of this rulemaking is to reduce overfishing of bluefin tilefish in the South Atlantic.

DATES: This temporary rule is effective [insert date of publication in the FEDERAL REGISTER], through [insert date 180 calendar days after date of publication in the FEDERAL REGISTER]. Comments may be submitted through [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the temporary rule, identified by "NOAA-NMFS-2014-0027", by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0027](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0027), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Rick DeVictor, 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 the documents in support of this temporary rule may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/sg/2014/acceler/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2014/acceler/index.html).

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: [Rick.DeVictor@noaa.gov](mailto:Rick.DeVictor@noaa.gov).

SUPPLEMENTARY INFORMATION: NMFS and the Council manage South Atlantic snapper-grouper species, including blueline tilefish, under the Fishery Management Plan for the Snapper-Grouper

Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

#### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from 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 and to minimize bycatch and bycatch mortality to the extent practicable.

On March 16, 2012, NMFS published a final rule for the Comprehensive ACL Amendment (77 FR 15916) which established a deep-water complex ACL for yellowedge grouper, blueline tilefish, silk snapper, misty grouper, sand tilefish, queen snapper, black snapper, and blackfin snapper. The commercial

ACL for the deep-water complex is 376,469 lb (170,763 kg), round weight, and the recreational ACL for the deep-water complex is 334,556 lb (151,752 kg), round weight, for a total deep-water complex ACL of 711,025 lb (322,516 kg), round weight. Within the deep-water complex commercial ACL, the blueline tilefish portion is 316,098 lb (143,380 kg), round weight, and within deepwater complex recreational ACL, the blueline tilefish portion is 315,243 lb (142,992 kg), round weight. The blueline tilefish portion of the total deep-water complex ACL is 631,341 lb (286,371 kg), round weight.

The blueline tilefish stock in the South Atlantic was assessed through the Southeast, Data, Assessment, and Review (SEDAR) process in 2013. The assessment indicates that the stock is experiencing overfishing and is overfished according to the current definition for the minimum stock size threshold (MSST). NMFS notified the Council of the blueline tilefish stock status on December 6, 2013. The Magnuson-Stevens Act specifies that measures to end overfishing and rebuild the stock must be implemented within 2 years of such notification.

At its December 2013 meeting, the Council initiated the development of Amendment 32 to the FMP to address this issue. The Council and NMFS, through actions in Amendment 32, plan to develop and propose management actions that would end

overfishing immediately and rebuild the blueline tilefish stock. However, Amendment 32 and associated rulemaking is not likely to be completed until 2015.

Therefore, at its December 2013 meeting, the Council requested emergency action to begin in 2014 to reduce overfishing of blueline tilefish while permanent management measures and regulations are being developed through Amendment 32. The need for this emergency action is to minimize adverse biological effects to the blueline tilefish stock and adverse socio-economic effects to fishermen and fishing communities that utilize the blueline tilefish portion of the snapper-grouper fishery. Although the actions in this temporary rule, if implemented, would likely have adverse, socio-economic effects beginning in 2014, the Council and NMFS have determined that the short-term effects would be justified to minimize long-term reductions in harvest that may be required if the current levels of unsustainable harvest continue to reduce the biomass of the blueline tilefish stock. The blueline tilefish landings in 2012 of 477,126 lb (216,421 kg), round weight, were much greater than the maximum sustainable yield (MSY) at equilibrium (226,500 lb (102,739 kg), round weight), as determined by the SEDAR 32 stock assessment. Continued exploitation at levels similar to the 2012 landings would negatively affect the health of the blueline

tilefish stock by allowing overfishing to continue.

#### Need for This Temporary Rule; Emergency Action

The "Policy Guidelines for the Use of Emergency Rules" (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists.

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

NMFS is promulgating these emergency regulations under the authority of the Magnuson-Stevens Act, consistent with these three criteria. To address the first criterion, the recently discovered circumstance is the new stock assessment (SEDAR 32) results indicating that the blueline tilefish stock in the South Atlantic is experiencing overfishing and is overfished according to the current definition for the MSST.

To address the second criterion, the measures in this temporary rule are necessary to reduce the current level of

overfishing of blueline tilefish in the South Atlantic EEZ while permanent measures are being developed, in order to address the serious conservation concern. If this temporary rule is not implemented, the current rate of fishing mortality would continue to negatively affect the health of the blueline tilefish stock by allowing fishing at unsustainable levels. The actions in the temporary rule are expected to minimize the long-term adverse socio-economic effects from future management measures in Amendment 32 that will be required to end overfishing.

To address the third criterion, NMFS has determined that the immediate benefit of implementing the temporary rule, and thus the immediate minimization of adverse biological effects of significant overharvest and reduction of blueline tilefish biomass outweighs the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process. Continued harvest at levels similar to the 2012 landings would negatively affect the health of the blueline tilefish stock and likely require greater long-term reductions in harvest. This emergency action will minimize adverse biological effects described above and minimize long-term adverse socio-economic effects to fishermen and fishing communities that utilize the



blueline tilefish resource. This temporary rule implements a blueline tilefish total ACL of 224,100 lb (101,650 kg), round weight; in contrast, the current total blueline tilefish portion of the deep-water complex ACL is 631,341 lb (286,371 kg), round weight. This temporary rule also establishes in-season commercial and recreational AMs for blueline tilefish to prevent these catch limits from being exceeded. Commercial and recreational fishing activities are already underway for the 2014 fishing season that began on January 1, 2014. By foregoing prior notice and public comment, NMFS can ensure that the overfishing of blueline tilefish is reduced during this fishing season.

#### Measures Contained in this Temporary Rule

This temporary rule removes the blueline tilefish from the deep-water complex and establishes separate commercial and recreational ACLs and AMs for blueline tilefish in the EEZ of the South Atlantic. The commercial and recreational ACLs for blueline tilefish will be based upon the equilibrium yield at 75 percent of the fishing mortality to achieve MSY and existing sector allocations (50.07 percent commercial and 49.93 percent recreational) that were established in the Comprehensive ACL Amendment. This temporary rule implements a blueline tilefish total (commercial and recreational) ACL of 224,100 lb (101,650

kg), round weight; the current total (commercial and recreational) blueline tilefish portion of the deep-water complex ACL is 631,341 lb (286,371 kg), round weight. The commercial ACL for blueline tilefish in the South Atlantic implemented through this temporary rule is 112,207 lb (50,896 kg), round weight. The recreational ACL for blueline tilefish in the South Atlantic implemented through this temporary rule is 111,893 lb (50,754 kg), round weight. The deep-water complex (composed of yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper) ACL would remain at current levels, except with the current blueline tilefish portion of 631,341 lb (286,371 kg), round weight, removed. Thus, for the deep-water complex without blueline tilefish, the commercial ACL implemented through this temporary rule is 60,371 lb (27,384 kg), round weight, and the recreational ACL is 19,313 lb (8,760 kg), round weight.

This temporary rule establishes in-season AMs for blueline tilefish to prevent these catch limits from being exceeded. If commercial landings for blueline tilefish reach or are projected to reach the commercial ACL, NMFS will file a notification with the Office of the Federal Register to close the commercial sector for blueline tilefish for the remainder of the fishing year. On and after the effective date of such a notification,

all sale or purchase of blueline tilefish would be prohibited and harvest or possession of blueline tilefish in or from the South Atlantic EEZ would be limited to the bag and possession limit. This bag and possession limit applies 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. If recreational landings for blueline tilefish reach or are projected to reach the recreational ACL, NMFS will file a notification with the Office of the Federal Register to close the recreational sector for blueline tilefish for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of blueline tilefish in or from the South Atlantic EEZ would be zero. This bag and possession limit would also 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. This temporary rule does not establish post-season AMs for blueline tilefish as post-season AMs are ineffective for temporary actions as any changes to the regulations can only be in effect for a limited

time.

The current complex-level in-season and post-season commercial and recreational AMs remain in place for the remaining species within the deep-water complex (composed of yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper). If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL, 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 deep-water complex species is prohibited and harvest or possession of these species in or from the South Atlantic EEZ would be limited to the bag and possession limit. This bag and possession limit would 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. Additionally, if commercial landings for the deep-water complex exceed the ACL, and at least one of the species in the deep-water 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. For the recreational sector, if recreational landings for the deep-water complex exceed the recreational ACL then during the following fishing year, recreational landings would be monitored for a persistence in increased landings and, if necessary, NMFS would 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.

#### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is based upon the best scientific information available, is necessary for the conservation and management of the blueline tilefish component of the snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws, subject to further consideration after public comment.

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

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B). Providing prior notice and opportunity for public comment on this action would be contrary to the public interest. The blueline tilefish stock in the South Atlantic was assessed through SEDAR 32 in 2013. The assessment indicates that the stock is overfished and is undergoing overfishing. NMFS is implementing this emergency action to reduce overfishing of blueline tilefish while permanent management measures and regulations are being developed. The reduced ACLs for blueline tilefish and in-season AMs must be implemented immediately to minimize adverse biological effects to the blueline tilefish stock and long-term adverse socio-economic effects to fishermen and fishing communities that utilize the blueline tilefish portion of the snapper-grouper fishery. Continued harvest at levels similar to the 2012 landings would negatively affect the health of the blueline tilefish stock. More severe long-term reductions in harvest may be required if emergency action is not taken and the unsustainable harvest continues to reduce the blueline tilefish biomass. The fishing season opened January 1, 2014. In order to have an impact on reducing overfishing of blueline tilefish during the current fishing season, the new commercial and

recreational ACLs and AMs for blueline tilefish must become effective immediately.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Blueline tilefish, Deep-water complex, Emergency action, Fisheries, Fishing, South Atlantic.

Dated: April 11, 2014

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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, 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 § 622.193, paragraph (h) is suspended and paragraphs (z) and (aa) are added to read as follows:

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

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(z) Deep-water complex (including yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper)--(1) Commercial sector--(i) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 60,371 lb (27,384 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 deep-water complex species is prohibited and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies 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 commercial landings exceed the ACL, and at least one of the species in the deep-water 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 deep-water complex, as estimated by the SRD, exceed the recreational ACL of 19,313 lb (8,760 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. However, the length of the recreational season will also 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.

(aa) Blueline tilefish--(1) Commercial sector. If

commercial landings for the blueline tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 112,207 lb (50,896 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. On and after the effective date of such a notification, all sale or purchase of blueline tilefish is prohibited and harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies 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.

(2) Recreational sector. If recreational landings of blueline tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 111,893 lb (50,754 kg), round weight, then the AA will file a notification with the Office of the Federal Register to close the recreational sector for blueline tilefish for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of blueline tilefish in or from the South Atlantic EEZ is zero. This bag and possession limit also

applies 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.

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