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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 1710319998630-02]**

**RIN 0648-BH39**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Snapper-Grouper Fishery of the South Atlantic Region; Amendment  
43**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS hereby issues regulations to implement management measures described in Amendment 43 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises red snapper commercial and recreational annual catch limits (ACLs) and allows for the harvest of red snapper in South Atlantic Federal waters. Additionally, this final rule serves to provide notice of the red snapper commercial season opening date and the opening and closing dates for the recreational season in the South Atlantic for the 2018 fishing year. The purpose of this final rule is to minimize adverse socio-economic effects to

fishermen and fishing communities that utilize red snapper as part of the snapper-grouper fishery, while preventing overfishing from occurring and continuing to rebuild the red snapper stock.

**DATES:** This final rule is effective [*insert date of publication in the **FEDERAL REGISTER***]. The 2018 commercial red snapper season opens at 12:01 a.m., local time, [*insert date of publication in the **FEDERAL REGISTER***]. The 2018 recreational red snapper season opens at 12:01 a.m., local time, on August 10, 2018, and closes at 12:01 a.m., local time, on August 13, 2018; then reopens at 12:01 a.m., local time, on August 17, 2018, and closes at 12:01 a.m., local time, on August 20, 2018.

**ADDRESSES:** Electronic copies of Amendment 43 may be obtained from *www.regulations.gov* or the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov*. Amendment 43 includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act (RFA) analysis, and fishery impact statement.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *frank.helies@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes red snapper, along with other snapper-grouper species. The FMP was prepared by the Council and is implemented by NMFS through

regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 16, 2018, NMFS published a notification of availability for Amendment 43 and requested public comment (83 FR 16282). On May 17, 2018, NMFS published a proposed rule for Amendment 43 and requested public comment (83 FR 22938). On July 13, 2018, the Secretary of Commerce (Secretary) approved Amendment 43 under section 304(a)(3) of the Magnuson-Stevens Act. The proposed rule and Amendment 43 outline the rationale for the actions contained in this final rule. Unless noted, all weights described in this final rule are in round weight. A summary of the management measure described in Amendment 43 and implemented by this final rule is provided below.

### **Background**

Harvest of red snapper from South Atlantic Federal waters was prohibited in 2010 through a temporary interim rule and then through Amendment 17A to the FMP when the stock was determined to be overfished and undergoing overfishing (Southeast Data, Assessment, and Review (SEDAR) 15, 2009) (74 FR 63673, December 4, 2009; 75 FR 76874, December 9, 2010). Amendment 17A also implemented a 35-year red snapper rebuilding plan that began in 2010, and set the red snapper stock ACL at zero. In 2013, Amendment 28 to the FMP established a process that allowed red

snapper harvest (ACL greater than zero) if total removals (landings plus dead discards) were less than the acceptable biological catch (ABC) in the previous fishing year (78 FR 44461, July 24, 2013). Using the process established through Amendment 28, limited harvest of red snapper was allowed in 2012, 2013, and 2014. However, because the estimated total removals of red snapper exceeded the ABC in 2014 and 2015, due to estimates of red snapper discards that were incidentally harvested as bycatch while targeting other species, there was no allowable harvest in 2015 and 2016. Although the ABC was exceeded in 2016, NMFS allowed limited commercial and recreational harvest of red snapper in 2017 by a temporary rule through emergency action pursuant to the Magnuson-Stevens Act (82 FR 50839, November 2, 2017) as a result of new scientific information regarding improvements in the red snapper stock.

#### *Status of the Stock*

The most recent stock assessment for South Atlantic red snapper, SEDAR 41 (2017), was completed in 2016 and subsequently revised in 2017. SEDAR 41 (2017) evaluated data through 2014 and determined the red snapper stock was overfished and that overfishing was occurring. The stock assessment indicated that overfishing was occurring because the estimated fishing mortality based on the average over the last three years of the assessment represented in the model (2012-2014) exceeded the

maximum fishing mortality threshold. Though limited red snapper harvest was allowed in 2012-2014, a large majority of the estimated fishing mortality was attributed to very large and uncertain dead discard estimates when fishermen were targeting red snapper and species that co-occur with red snapper, such as vermilion snapper, gag, red grouper, black sea bass, gray triggerfish, greater amberjack, and scamp. The Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 41 (2017) stock assessment and indicated the estimate of recreational discards was the greatest source of uncertainty in the stock assessment. The assessment indicated that discards of red snapper increased over time due to changes in minimum landing size to 20 inches (51 cm) in 1992, increases in abundance of young fish from above-average year classes in some recent years, the introduction of the moratorium in 2010 and 2011, and the small commercial catch limits and recreational bag limits in the mini-seasons for 2012 onward. Most of the catch is now discarded, the number of discards is dependent upon fisher recall, and these estimates are expanded based on small sample size; thus, the quality of total fishery removals estimates is poor and uncertain, which will impact estimation of stock size and fishing mortality.

In May 2016, the Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 41 (2017) and had an extensive

discussion of the uncertainties associated with the assessment. The SSC stated that the assessment was based on the best scientific information available, but noted the assessment findings were highly uncertain regarding to what extent overfishing was occurring (*i.e.*, the actual numerical value of the current fishing mortality estimate), and regarding the measures of discards. The SSC indicated that the most significant sources of uncertainty in the assessment include: the stock-recruitment relationship, natural mortality at age, the age structure of the unfished population, the composition and magnitude of recreational discards (where dead discards greatly outnumbered the landings during the years 2012 through 2014), and potential changes in catch per unit effort (CPUE). The SSC developed its ABC recommendations based on SEDAR 41, and the total ABC recommendation for 2018 is 53,000 red snapper.

The projections of yield streams used in SEDAR 41 (2017) included both landings and dead discards, which were added to obtain an estimate of the total removals. The SSC's 53,000 fish ABC recommendation is based on the sum of landed fish (18,000) and dead discarded fish (35,000). Accounting for fishery closures in 2015 and 2016, in January 2017 the Council requested that the NMFS Southeast Fishery Science Center (SEFSC) provide red snapper projections under the assumption that all fish caught are subsequently discarded, believing that such

projections would be more informative for management. The SEFSC advised the Council in February 2017 that the requested projections were not appropriate for management use because uncertainty in the assessment was already large, and the uncertainty would increase with a more complete evaluation of the effect of the upcoming changes to Marine Recreational Information Program (MRIP).

Additionally, in their February 2017 response, the SEFSC advised the Council that the uncertainty in the stock assessment inhibits the ability to set an ABC that can be effectively monitored. The SEFSC further stated in an April 2017 letter to the Council, that the use of an ABC based primarily on fishery discards for monitoring the effectiveness of management action is likely ineffective due to the high level of uncertainty in measures of discards and the change in the effort estimation methodology that will be implemented in the MRIP survey. NMFS has determined that, given the extreme uncertainty associated with the red snapper recreational discard estimates, relying on those discard estimates for the management of red snapper is not appropriate, and the division of the SSC's ABC recommendation into landed and discarded fish is unwarranted.

The results of SEDAR 41 (2017) using data through 2014, indicated that the red snapper stock was still overfished, but was rebuilding in accordance with the rebuilding plan. NMFS sent

the Council a letter on March 3, 2017, noting these results and the SEFSC's concerns regarding the substantial uncertainty in the assessment, and advising the Council that sufficient steps had been taken to address overfishing of red snapper while continuing to rebuild the stock through harvest prohibitions in 2015 and 2016.

This determination is supported by a significant increase in stock biomass since 2010 to levels not seen since the 1970's, and the increasing abundance of older age classes (SEDAR 41 2017). Additional support for the determination comes from fishery-independent information collected through the Southeast Reef Fish Survey (SERFS) program, and the East Coast Fisheries Independent Monitoring study conducted by the Florida Fish and Wildlife Conservation Commission (FWCC). According to the SERFS, the relative abundance (CPUE) of red snapper has increased since 2009, reaching the highest level observed in the entire time series (1990-2017) in 2017. Final information presented at the June 2018 Council meeting documented that red snapper had reached its highest level of abundance in 2017 since the time series began in 1990. In addition, the SERFS program notified the Council at the December 2017 meeting that red snapper relative abundance, as measured through fishery-independent monitoring, increased 18 percent from 2016 to 2017. Information presented to the Council at their June 2018 meeting revealed



that red snapper, which was once rare in SERFS samples and ranked less than 15 in abundance in the past, is now the 8th most abundant species taken by the fishery-independent survey.

According to the results of FWCC's study, CPUE for red snapper for hook gear (surveyed in 2012, 2014, 2016, and 2017) and the standardized index of abundance (surveyed from 2014-2017) was highest in 2017. The FWCC data also showed a greater number of large red snapper and a broader range of ages in recent years, which suggests rebuilding progress of the red snapper stock. The increase in relative abundance of red snapper, as indicated by the fishery-independent SERFS and FWCC CPUE indices, has taken place despite landings during the limited seasons in 2012-2014, and despite the large number of estimated red snapper dead discards during the harvest restrictions implemented for red snapper since 2010.

As a result of the new scientific information regarding the red snapper stock, NMFS allowed limited harvest of red snapper beginning November 2, 2017, by a final temporary rule through emergency action (82 FR 50839, November 2, 2017). The amount of harvest allowed in the temporary rule was equivalent to the amount of observed landings in the 2014 fishing season, and this final rule allows for the same amount of harvest annually beginning in 2018. NMFS has determined that allowing the same amount of harvest as harvest that occurred in 2014 is unlikely

to result in overfishing or to change the red snapper rebuilding time period. NMFS has determined that Amendment 43 is based on the best scientific information available. Additionally, the ACL implemented in Amendment 43 is less than the total ABC of 53,000 fish for 2018 recommended by the SSC from SEDAR 41 in accordance with the Magnuson-Stevens Act and the National Standard 1 Guidelines. See 16 U.S.C. 1852(h)(6), and 50 CFR 600.310(f)(4)(i).

#### **Management Measure Contained in this Final Rule**

Based on the actions in Amendment 28, the FMP currently contains total ABCs for red snapper that represent the sum of one component for landings and another for dead discards. By changing the process for determining the ACL for red snapper established in Amendment 28, this final rule implements management measures concerning the commercial and recreational harvest, beginning in 2018. Limited commercial and recreational harvest of red snapper would be allowed by implementing a total ACL of 42,510 fish, based on the landings observed during the limited red snapper season in 2014. This ACL is less than the SSC's most recent total ABC recommendation for 2018 of 53,000 red snapper, and is less than the 79,000 fish landings component of the 135,000 fish total ABC projection for 2018 in Amendment 28. Based on the current sector allocation ratio developed by the Council for red snapper of 28.07 percent commercial and

71.93 percent recreational, the total ACL is separated into a commercial ACL of 124,815 lb (56,615 kg), round weight, and a recreational ACL of 29,656 fish. The commercial sector's ACL is set in pounds of fish because the commercial sector reports landings in weight. Therefore, weight is a more accurate representation of commercial landings. In this final rule, for the commercial sector, one red snapper is equivalent to 9.71 lb (4.40 kg). ACLs for the recreational sector are specified in numbers of fish, because the Council determined that numbers of fish are a more reliable estimate for that sector than specifying the ACL in weight of fish. Because surveys that estimate recreational landings collect information on numbers of fish and convert those numbers to weights using biological samples that are sometimes limited, the Council believes that there can be uncertainty in estimates of recreational landings by weight.

#### **Additional Changes to Codified Text not in Amendment 43**

To implement the limits on red snapper harvest described in Amendment 43, this final rule not only amends the existing regulations to make the changes to the ACLs previously described, but also makes other minor modifications to the existing regulations. Thus, the regulatory text of this final rule implements several management measures in Amendment 43 that function as accountability measures (AMs) to constrain red

snapper harvest to these ACLs. Specifically, new language in the regulatory text sets limits on commercial and recreational red snapper seasons by providing that recreational harvest begins on the second Friday in July, and that the recreational season consists of weekends only (Friday, Saturday, and Sunday). Under Amendment 43 and this final rule's regulatory text, the length of the recreational fishing season serves as the AM for the recreational sector. The length of the recreational red snapper season is projected based on catch rate estimates from previous years, and the projected fishing season end-date will be announced each year in the **Federal Register** before the start of the season.

Under Amendment 43 and the final rule's regulatory text, the commercial season will begin each year on the second Monday in July. If commercial landings reach or are projected to reach the commercial ACL, then the commercial AM would close the sector for the remainder of that current fishing year. NMFS will monitor commercial landings in-season, and if commercial landings reach or are projected to reach the commercial ACL, then NMFS will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the fishing year. In 2018, given the timing of implementation for this final rule, the commercial and recreational fishing seasons will not be able to open exactly on

these dates in July as described, and therefore this final rule also announces the applicable 2018 commercial and recreational seasons, which are as close to the July dates as possible.

In addition to setting sector ACLs and describing AMs for commercial and recreational harvest, this final rule revises the temporal application of the current commercial trip limit of 75 lb (34 kg), gutted weight, and the recreational bag limit of 1 fish per person per day during the open seasons for red snapper. In an effort to decrease regulatory discards (fish returned to the water because they are below the minimum size limit), no size limits are implemented for either sector through this final rule.

NMFS notes that current regulations contain a severe weather provision with respect to modifying the commercial and recreational sector season dates (50 CFR 622.183(b)(5)(ii)). The Regional Administrator (RA) has the authority to modify the season opening and closing dates if severe weather conditions exist. The RA would determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if NMFS determines the commercial or recreational ACLs were not harvested and a reopening of either or both sectors in the current fishing year would be possible, the RA would file a

notification to that effect with the Office of the Federal Register, and include in that notification an announcement of any change in the red snapper commercial and recreational fishing seasons. The regulatory text of this final rule does not alter this existing authority.

### **2018 Commercial and Recreational Fishing Season Dates**

In addition to the measure to change the process for determining red snapper harvest and the associated modifications to existing regulations, for the 2018 fishing year only, this final rule serves to announce the red snapper commercial season opening date and the recreational season opening and closing dates for this current fishing year. Amendment 43 and this final rule describe the specific timing for these seasons to have the commercial season begin each year on the second Monday in July and the recreational season to begin on the second Friday in July. Given the timing required for rulemaking and implementation of this final rule, the sector seasonal opening dates in July described in Amendment 43 will not be met. Therefore, NMFS, in consultation with the Council, sets a later 2018 season opening date in this final rule for each sector to begin their allowable harvest.

Accordingly, the 2018 commercial red snapper season opens at 12:01 a.m., [*insert date of publication in the **FEDERAL REGISTER***]. The 2018 recreational red snapper season opens at

12:01 a.m., local time, on August 10, 2018, and closes at 12:01 a.m., local time, on August 13, 2018; then reopens at 12:01 a.m., local time, on August 17, 2018, and closes at 12:01 a.m., local time, on August 20, 2018. The commercial sector will close for the remainder of the fishing year if commercial landings reach or are projected to reach the commercial ACL. On or after the effective date of a commercial closure notification, all sale or purchase of red snapper is prohibited and harvest or possession of red snapper is limited to the bag and possession limits if recreational harvest is still allowed. This bag and possession limit and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested or possessed, *i.e.*, in state or Federal waters. On and after the effective date of a recreational closure notification, the bag and possession limits for red snapper are zero.

In 2019, and subsequent fishing years, NMFS expects the commercial and recreational fishing seasons to open in July as described in Amendment 43.

### **Comments and Responses**

A total of 2,415 comments from commercial fishermen, recreational fishermen (including both private and charter

vessel/headboat operators), commercial and recreational fishing associations, non-governmental organizations, and the general public were received during the public comment period on the notice of availability and proposed rule for Amendment 43. Of these comments, 2,240 were identical form letters that supported the approval and rapid implementation of Amendment 43; stating that the red snapper stock has increased in abundance over the last several years at a faster rate than predicted by the rebuilding plan, and that a limited harvest would provide access and opportunity for anglers and much needed data for future stock assessments. The majority of the other comments were also in favor of allowing a limited harvest of red snapper in 2018 and beyond. NMFS acknowledges the comments in favor of all or part of the actions in Amendment 43 and the proposed rule, and agrees with them. Specific favorable comments supported the ability to have Federal commercial and recreational seasons, the ability to have these seasons open in July, and the use of the commercial and recreational management measures in Amendment 43. The comments against the action included concern that allowing limited harvest would negatively impact the rebuilding progress and increase the risk to the stock. Comments that were beyond the scope of Amendment 43 and the proposed rule are not responded to in this final rule. In this final rule, no changes were made in response to public comment on Amendment 43 or the



proposed rule. Comments that specifically relate to the action contained in Amendment 43 and the proposed rule, as well as NMFS' respective responses, are summarized below.

*Comment 1:* The science supporting Amendment 43 is flawed. The red snapper stock in the South Atlantic is abundant and is neither overfished, nor undergoing overfishing.

*Response:* The most recent stock assessment (SEDAR 41 2017), using data through 2014, indicated that the South Atlantic red snapper stock was overfished and overfishing was occurring but that the stock was rebuilding. Despite the overfishing and overfished determinations, SEDAR 41 indicated substantial increases in stock abundance and recruitment, as well as total biomass and spawning biomass. Additional support for the determination that the stock is rebuilding comes from fishery-independent information collected through the SERFS program, and through the East Coast Fisheries Independent Monitoring study conducted by the FWCC. Therefore, NMFS determined that sufficient steps had been taken through the harvest prohibitions in 2015 and 2016 to address the overfishing, and that the red snapper stock was rebuilding in accordance with the rebuilding plan.

NMFS, the Council, and the Council's SSC have all acknowledged the uncertainties in the most recent red snapper stock assessment. The SSC indicated that the most significant

sources of uncertainty in the assessment include: the stock-recruitment relationship, natural mortality at age, the age structure of the unfished population, the composition and magnitude of recreational discards (where dead discards greatly outnumbered the landings during the years 2012 through 2014), and potential changes in CPUE. Despite the uncertainties, the Council's SSC stated that the assessment was based on the best scientific information available, and recommended an ABC to the Council.

*Comment 2:* NMFS should not allow limited harvest of red snapper to occur because the stock is overfished and is in a 35 year rebuilding plan that began in 2010. Allowing directed harvest will negatively impact the rebuilding progress and increases the risk to the stock. Amendment 43 authorizes an amount of landings that is greater than the amounts that resulted in overfishing in the past.

*Response:* NMFS disagrees, and has determined that allowing harvest equivalent to the 2014 landings (42,510 fish) will not result in overfishing or negatively impede the stock's rebuilding progress. The total ACL is less than the ABC (53,000 fish) recommended by the SSC for 2018, and SEDAR 41 (2017), using data through 2014, indicated that the stock was rebuilding in accordance with the rebuilding plan despite the limited harvest allowed in 2012 through 2014. Additional information, as

reported to the Council after the completion of the stock assessment, supports the findings that stock abundance is increasing. The recent fishery-independent information collected through the SERFS program indicated that relative abundance, represented by CPUE, of red snapper had increased since 2009, reaching the highest observed in the entire time series (1990-2017) in 2017. Additionally, fishery-independent information collected by the FWCC showed that CPUE for red snapper (as surveyed in 2012, 2014, 2016, and 2017) and the standardized index of abundance (as surveyed from 2014-2017) was highest in 2017. The FWCC data also showed more larger sized red snapper and a broader range of ages, which suggests rebuilding progress of the red snapper stock.

*Comment 3:* SEDAR 41 fails to determine the levels of overfishing and discards. Because NMFS has determined that the data collected are inconclusive, allowing fishing of red snapper is risky. In addition, Amendment 43 does not explain how the SSC determined the division of landed and discarded fish.

*Response:* SEDAR 41 (2017) evaluated data through 2014 from multiple different sources and determined the red snapper stock was overfished and that overfishing was occurring; however, the stock is rebuilding. The stock assessment results concluded that overfishing was occurring because the estimated fishing mortality based on the average over the last three years of the

assessment represented in the model (2012-2014) exceeded the maximum fishing mortality threshold. Though limited red snapper harvest was allowed in 2012-2014, a large majority of the estimated fishing mortality was attributed to very large and uncertain dead discard estimates when fishermen were targeting red snapper and species that co-occur with red snapper. The SSC determined that the assessment findings were highly uncertain regarding the extent of overfishing, particularly due to the composition and magnitude of recreational discards, where dead discards greatly outnumbered the landings during the years 2012 through 2014. Thus, NMFS agrees that uncertainty exists in the stock assessment and stock determinations, as discussed in the responses to *Comments 1* and *2*. However, the increase in relative abundance of red snapper as indicated by the SEDAR 41 and fishery-independent CPUE indices, has taken place despite landings during the limited seasons in 2012-2014 and despite the large number of estimated red snapper dead discards during the closures implemented for red snapper since 2010. NMFS has determined that restricting harvest to the amount of harvest that occurred in 2014 will allow the population to continue to rebuild as scheduled.

The SSC provides an ABC recommendation based on catch projections from a stock assessment. The Council's SSC total ABC recommendation for 2018 is 53,000 red snapper, which is the sum

of landed fish (18,000) and dead discarded fish (35,000). However, NMFS has determined that relying on those dead discard estimates for the management of red snapper is not appropriate. NMFS has determined that the discard estimates should be regarded as unreliable for management action due to the extreme uncertainty of the estimates, coupled with the fishery-independent evidence of substantial gains in stock abundance and rebuilding.

*Comment 4:* The red snapper stock is overly abundant resulting in red snapper negatively impacting reef communities and therefore the proposed regulations in Amendment 43 would be overly restrictive. Recreational fishermen suggested a number of alternative management measures be implemented. These include a higher recreational ACL, a 40-120 day or year-round season similar to the recreational red snapper season in the Gulf of Mexico (Gulf), and a larger recreational bag limit of two to four fish per person or six to 12 fish per vessel per day.

*Response:* A limited fishing season for red snapper and a conservative recreational bag limit are necessary management measures to constrain the harvest to the recreational ACL. A larger bag limit (e.g., two to four fish per person per day) would likely result in an even shorter fishing season as recreational effort would then be increased and the recreational ACL would be reached sooner than under current management

measures as described in this final rule. The Council and NMFS determined that the current regulations, including a one fish per person per day recreational bag limit, would allow a sustainable level of harvest consistent with the rebuilding plan for red snapper in the South Atlantic. The red snapper stock in the Gulf is larger than the South Atlantic stock, and, the Gulf of Mexico Fishery Management Council's SSC recommended a much higher ABC for the Gulf stock of red snapper than what is recommended for the South Atlantic red snapper stock. This allowed for a longer fishing season and higher catch levels for red snapper in the Gulf than for red snapper in the South Atlantic.

*Comment 5:* Amendment 43 proposes to give more red snapper to the commercial sector and not enough to the recreational sector.

*Response:* NMFS disagrees that Amendment 43 changes the sector allocations to favor the commercial sector. Amendment 43 and this final rule implement sector ACLs based on the Council's previously approved allocations for red snapper of 71.93 percent recreational and 28.07 percent commercial. The Council determined those allocations through the Comprehensive ACL Amendment to the FMP, and the allocations were based on a combination of long-term and recent catch history (77 FR 15916, March 16, 2012). Therefore, the ACLs implemented in this final

rule maintain the same sector allocations as were previously implemented, and the Council did not examine alternatives to the sector allocations in Amendment 43.

*Comment 6:* Commercial harvest should be reduced and/or there should be no commercial season, as the economic benefit on a per fish basis caught by the recreational sector far surpasses that generated by the commercial sector.

*Response:* NMFS disagrees that Amendment 43 should only allow for a recreational season and either prohibit or proportionally reduce the commercial season. National Standard 4 of the Magnuson-Stevens Act requires NMFS to ensure that allocations are fair and equitable to all fishermen, are reasonably calculated to promote conservation, and are carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share. As described in the response to *Comment 5*, the Council established allocations for red snapper using a formula that balanced long-term catch history with recent catch history, rather than estimates of economic value. This approach was determined as the most fair and equitable way to allocate fishery resources by the Council and follows the principles of the National Standard 4 and its guidelines.

Although surveys that examine recreational fisher willingness to pay, as well as recreational trip expenditures

and associated economic impacts estimates, may suggest that recreational harvest of red snapper generates greater economic benefits than commercial harvest, the matter of setting sector allocation is complex and involves the consideration of many economic, social, and ecological factors. Additionally, National Standard 5 of the Magnuson-Stevens Act states that no management measure shall have economic allocation as its sole purpose. The Council continues to examine and receive input on fisheries allocation decisions, but allocations are outside the scope of this final rule.

*Comment 7:* The limited red snapper season should not open in July as described in Amendment 43. A suggestion was to open in May so as not to be in the middle of the red snapper spawning season that could lead to higher discards and related mortality. Opening in May would also coincide with the opening of the shallow-water grouper fishing season. Comments also supported opening in September or October, instead of July, so that fishermen do not have to travel far offshore to harvest red snapper.

*Response:* The Council and NMFS determined the July start dates through Amendment 28 to the FMP and did not change those dates in Amendment 43. Amendment 28 included alternatives that examined season start dates for both sectors in July, August, and September. The Council selected the July start dates as the



preferred alternative to decrease the chances of inclement weather events affecting the season, thus promoting safety at sea and increasing the chance of small vessels participating in the fishery. During past seasonal openings that occurred in September, November, and December, NMFS received complaints from fishermen, particularly those with smaller vessels, that inclement weather minimized fishing opportunities during the limited red snapper fishing season. Additionally, the Council determined during the development of Amendment 28, that season start dates after September 1 would prevent the entire ACL from being harvested and constrain the fair and equitable access to red snapper harvest among fishermen in all southeastern Atlantic states.

The red snapper spawning season in the South Atlantic extends from May to October, peaking in July through September. NMFS acknowledges that allowing limited harvest as proposed in Amendment 43 could result in catch and discards of some spawning red snapper. However, Amendment 43 allows for only a limited red snapper harvest and current estimates of recreational discards are highly uncertain. Therefore, the limited harvest of red snapper may include some spawning fish as a result of Amendment 43 and this final rule, but it is not expected to affect the rebuilding of the stock.

*Comment 8:* The commercial sector's season will open prior

to the recreational sector opening, so commercial fishermen will be allowed to fish every day while the recreational sector will be allowed to fish only on weekends. The recreational fishing seasons should occur on all days of the week, not just weekends, because many work on weekends. The 3-day weekend fishing events create a dangerous situation for boaters by forcing them to go out of inlets at the same time and regardless of weather conditions.

*Response:* The season structure for limited red snapper seasons was implemented through Amendment 28, and the Council did not consider modifications in Amendment 43. The Council and NMFS have determined that the commercial and recreational sectors will have different start dates and different season lengths for the limited red snapper harvest as a result of differences in the sectors, much of which was discussed and determined in Amendment 28. The recreational seasons will occur on the weekends only (Friday through Sunday) to provide the overall benefits of the recreational season to the greatest number of participants. As discussed in Amendment 28, the majority of recreational fishermen fish on the weekends, and weekend-only seasons would provide the majority of recreational fishermen access to the resource when they are not working. In contrast, most commercial fishermen fish throughout the week; therefore, the Council and NMFS determined that openings

consisting of all 7 days of the week provides the most fishing opportunities for commercial fishermen.

Additionally, the start dates of the commercial and recreational sectors will not align as a result of how the respective ACLs will be harvested. The commercial sector is expected to need the maximum amount of time during these limited fishing seasons to reach the commercial ACL, and so their season opening will occur as soon as practicable. The recreational sector will harvest its ACL much more rapidly, and so their overall days of harvest will be more limited, and, as previously described, will consist of weekends only.

NMFS has no specific information that the recreational weekend-only seasons creates a unique safety issue. As described in Amendment 43, the actions in this final rule are not expected to change the way the snapper-grouper fishery is prosecuted and is not expected to result in additional adverse impacts to safety at sea beyond the *status quo*.

Additionally, the Council and NMFS have taken action to mitigate the adverse effects to fishermen from fishing in inclement weather. As described in this final rule, the Regional Administrator has the authority to modify the season opening and closing dates if severe weather conditions exist.

*Comment 9:* Not setting a minimum size limit during the limited harvest for red snapper could increase regulatory

discards through high-grading (only retaining larger-sized fish). A 16-inch (41-cm) or 20-inch (51-cm) minimum size limit would reduce high-grading and ensure more female red snapper reach maturity. Also, implementing slot size limits (allowing a fish to be kept only if it falls within the size range) could preserve the breeding stock (e.g., 16 to 20 inches (41-51 cm) or 15 to 22 inches (38-56 cm)).

*Response:* The removal of minimum size limits for red snapper was implemented through Amendment 28, and the Council did not consider modifications in Amendment 43. Because a large portion of released red snapper do not survive the trauma of capture, the Council and NMFS decided that not having a minimum size limit is likely to reduce dead regulatory discards. Not having a minimum size limit should also have a positive effect on the breeding population because red snapper release mortality is high and red snapper begin spawning at a young age (as young as 1-year old fish) and at small sizes. However, NMFS acknowledges that the net effect of not setting a minimum size limit on the number of regulatory discards is unknown. A fisherman may high-grade their catch regardless of whether a minimum size limit is in effect for red snapper. The Council and NMFS determined that by not setting a minimum size limit and allowing a fisherman to keep the first fish caught, regardless of its size, should both enhance protection to the breeding

stock and decrease regulatory discards because the fish will not have to be returned to the water.

*Comment 10:* A commercial trip limit of 75-lb (34-kg) per trip per day is too low to be profitable. A trip limit of 200-250 lb (91-113 kg) would be more reasonable.

*Response:* The Council and NMFS implemented the 75-lb (34-kg) commercial trip limit through Amendment 28, and the Council did not consider modifications in Amendment 43. During the development of Amendment 28, the Council considered commercial trip limits between 25 and 100-lb (11-45 kg), gutted weight. The Council concluded that a 75-lb (34-kg) trip limit would promote full harvest of the commercial ACL and help achieve the optimum yield for red snapper. In Amendment 43 the Council determined that changes to the commercial sector are likely to have minimal impact on the overall bycatch. The low trip limit of 75-lb (34-kg) for red snapper would likely prevent trips that solely target red snapper. Instead, red snapper would be caught on trips targeting other species and the incidental catch of red snapper would be retained. The commercial sector would have little incentive to high-grade since the trip limit is established based on a weight limit. As a result of the small trip limit and no minimum size limit, commercial harvest of red snapper is expected to be primarily a "bycatch allowance" while targeting other snapper-grouper species, and therefore the

potential for high-grading is expected to be minimal.

In 2013 and 2014, during which time the fishery was open and the 75-lb commercial trip limit was in effect, the commercial ACL was fully harvested. However, as commercial trip limits increase, the rate at which the commercial ACL is harvested also increases. Higher trip limits, such as those of 200-250 lb (91-113 kg), and the corresponding higher rate of harvest, could result in a shorter commercial season and would likely lead to a race-to-fish (derby) situation.

*Comment 11:* Specifying the commercial ACL in round weight does not make sense as the commercial trip limit is measured in gutted weight.

*Response:* SEDAR 41 provided commercial red snapper landings in pounds whole weight (round weight), and the Council specified the commercial ACL in pounds round weight in Amendment 43. Commercial fishermen report their catch per trip in gutted weight. As a result of the travel distance from the commercial fishing grounds to the dock, commercial fishermen eviscerate fish to preserve the quality of the product. In addition, law enforcement checks the gutted weight of fish landed against regulations specific to a commercial trip, and they would otherwise not be able to identify an accurate weight determination if round weight were used for trip limits. For commercial ACL tracking, the amount of fish caught per weight in

gutted weight is converted by a factor of 1.10 to that of a fish in round weight. By this means, the fish weights are accounted for and tracked to be consistent with what is needed both at the dock and for management purposes, and therefore having weights described in both gutted and round weight is not an issue for management of red snapper.

*Comment 12:* Data collection plans for red snapper, particularly for recreational landings and discards, should be specified prior to any established fishing season.

*Response:* Data collection programs are currently in place to obtain information during the limited red snapper seasons. Commercial landings are tracked through dealer reports on a weekly basis. Landings and discards from charter vessels are monitored through the survey of charter vessels by the MRIP. Headboats currently submit an electronic fishing report for each trip at weekly intervals, or at intervals shorter than a week if notified by the Director of the SEFSC. Additionally, an intensive sampling program will be implemented by all South Atlantic states for 2018 and for the limited red snapper recreational fishing seasons in subsequent years. The goal of the sampling program is to capture fishery-dependent charter vessel and private angler data during the recreational red snapper season. During development of Amendment 43, state agency personnel from North Carolina, South Carolina, Georgia, and

Florida pledged similar participation to that implemented during the 2017 season for any subsequently implemented fishing seasons. These data collection elements were successfully utilized during previous red snapper limited fishing seasons, most recently in 2017.

*Comment 13:* The use of descending devices to reduce discard mortality of released red snapper should be required.

*Response:* The Council is currently exploring strategies to reduce discards and discard mortality of red snapper and other snapper-grouper species in Regulatory Amendment 29 to the FMP, including an action to require descending devices and/or venting tools onboard a vessel targeting snapper-grouper species. The required use of descending devices for red snapper was not included by the Council as a measure in Amendment 43. At this time, the use of descending devices is not required, but snapper-grouper fishers may use them on a voluntary basis.

### **Classification**

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 43, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. NMFS expects this final rule would have economic benefits because it would allow for commercial and recreational harvest of red snapper that would



not otherwise be expected to occur.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. None of the public comments that were received specifically addressed the certification. Public comments relating to socio-economic implications and potential impacts on small businesses are addressed in the responses to *Comment 6* and *Comment 10* in the **Comments and Responses** section of the preamble of this final rule. None of these comments presented new information that would affect the determination.

NMFS notes that this final rule will set the opening dates for the 2018 commercial and recreational red snapper seasons and the closing date for the recreational sector (see **DATES** section). Because the 2018 commercial season will begin later than the opening date described in Amendment 43 and the proposed rule (*i.e.* later than the second Monday in July), the economic benefits associated with aggregate commercial harvest of red

snapper may be lower in the 2018 fishing year than what was estimated in Amendment 43. In subsequent years, economic benefits would be expected to be consistent with the estimates contained in Amendment 43. However, even if economic benefits may be lower than predicted in 2018 due to the later opening date for the 2018 commercial red snapper season, economic benefits would still accrue. Therefore, this component of the final rule does not affect the previous determination that this action is not expected to have any adverse direct economic effects on any small entities.

Because NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis was not required and none was prepared.

The AA finds good cause to waive the 30-day delay in effectiveness of the actions under 5 U.S.C. 553(d) (3) because it is contrary to the public interest. NOAA's National Hurricane Center indicates that the peak of the hurricane season for the Atlantic Basin (the Atlantic Ocean, Caribbean Sea, and Gulf) is from mid-August to late October. The Council selected the July start dates as the preferred alternative to avoid the peak of the hurricane season, and thus to decrease the chances of inclement weather events affecting the red snapper fishing

season, thereby promoting safety at sea and increasing the chance of small vessels participating in the fishery. Amendment 43 indicates that the commercial sector will open on the second Monday in July and close when its ACL is projected to be met, or at 11:59 pm on December 31, 2018, if the commercial ACL is not met before this date. Amendment 43 also provides that the opening and closing dates for the recreational season will be specified before it begins and will be on weekends only, beginning on the second Friday in July. In 2018, given the timing of the implementation for this final rule, the commercial and recreational fishing seasons will not be able to open exactly on these dates in July as described; however, waiving the delay in the effective dates would allow NMFS to open the fishery as close as practicable to these dates.

Safety at sea is of particular concern for smaller vessels that might be used by the recreational sector to target red snapper during abbreviated recreational fishing seasons. Implementing the start of the 2018 recreational season as soon as practicable maximizes the possibility of avoiding the periods more likely to coincide with severe tropical activity that could endanger recreational vessels. In addition, implementing this final rule upon publication ensures the expected result of revenue increases to commercial vessels and benefit increases to recreational anglers, in addition to providing opportunity to

for-hire vessels in booking additional trips that could increase their revenues and profits. If this rule is implemented upon the date of publication, fishermen will be able to keep a limited number of red snapper in 2018, that they otherwise would be required to discard. The recreational season opening begins approximately 2 weeks after the rule publishes, with publication of this final rule serving as advance notice of the 2018 season opening, while also allowing the recreational sector to prepare for their upcoming harvest. Implementing this final rule as soon as practicable in 2018 allows for a greater opportunity for the commercial sector to reach its ACL in the 2018 fishing year, given the commercial trip limit. In contrast, delaying the implementation of this rulemaking would reduce the effectiveness of Amendment 43 in the 2018 fishing year. The harvest allowed in this final rule for 2018 and in subsequent fishing years is not expected to result in overfishing or to impede rebuilding of the stock.

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

Fisheries, Fishing, Red snapper, South Atlantic.

Dated: July 23, 2018.

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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 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 § 622.181, remove and reserve paragraph (b) (2) and add paragraph (c) (2) to read as follows:

**§ 622.181 Prohibited and limited-harvest species.**

\* \* \* \* \*

(c) \* \* \*

(2) *Red snapper.* Red snapper may only be harvested or

possessed in or from the South Atlantic EEZ during the commercial and recreational seasons as specified in §§ 622.183(b)(5) and 622.193(y). Any red snapper caught in the South Atlantic EEZ during a time other than the specified commercial or recreational seasons specified in § 622.193(y) must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the prohibition on the harvest or possession of red snapper applies in the South Atlantic, regardless of where such fish are harvested or possessed, *i.e.*, in state or Federal waters.

3. In § 622.183, revise paragraph (b)(5)(i) to read as follows:

**§ 622.183 Area and seasonal closures.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) The commercial and recreational sectors for red snapper are closed (*i.e.*, red snapper may not be harvested or possessed, or sold or purchased) in or from the South Atlantic EEZ, except as specified in § 622.193(y). Each year, NMFS will announce the season opening dates in the **Federal Register**. The commercial season will begin on the second Monday in July, unless otherwise

specified. The recreational season, which consists of weekends only (Fridays, Saturdays, and Sundays) begins on the second Friday in July, unless otherwise specified. NMFS will project the length of the recreational fishing season and announce the recreational fishing season end date in the **Federal Register**. See § 622.193(y), for establishing the end date of the commercial fishing season.

\* \* \* \* \*

4. In § 622.187, revise paragraph (b) (9) to read as follows:

**§ 622.187 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(9) *Red snapper*--1.

\* \* \* \* \*

5. In § 622.191, revise paragraph (a) (9) to read as follows:

**§ 622.191 Commercial trip limits.**

\* \* \* \* \*

(a) \* \* \*

(9) *Red snapper*. Until the commercial ACL specified in § 622.193(y) (1) is reached, 75 lb (34 kg), gutted weight.

\* \* \* \* \*

6. In § 622.193, revise paragraph (y) to read as follows:

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

\* \* \* \* \*

(y) *Red snapper*--(1) *Commercial sector*. The commercial ACL for red snapper is 124,815 lb (56,615 kg), round weight. See § 622.183(b) (5) for details on the commercial fishing season. NMFS will monitor commercial landings during the season, and if commercial landings, 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 red snapper for the remainder of the year. On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited and harvest or possession of red snapper is limited to the recreational bag and possession limits and only during such time as harvest by the recreational sector is allowed as described in § 622.183(b) (5). This bag and possession limit and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested or possessed, *i.e.*, in state or Federal waters.

(2) *Recreational sector*. The recreational ACL for red snapper is 29,656 fish. The AA will file a notification with the



Office of the Federal Register to announce the length of the recreational fishing season for the current fishing year. The length of the recreational fishing season for red snapper serves as the in-season accountability measure. See § 622.183(b)(5) for details on the recreational fishing season. On and after the effective date of the recreational closure notification, the bag and possession limits for red snapper are zero.

\* \* \* \* \*

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