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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160225143-6583-02]

RIN 0648-BF61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 25

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Regulatory Amendment 25 for the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 25) as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the commercial and recreational annual catch limits (ACLs), the commercial trip limit, and the recreational bag limit for blueline tilefish. Additionally, this final rule revises the black sea bass recreational bag limit and the commercial and recreational fishing years for yellowtail snapper. The purpose of this final rule for blueline tilefish is to increase the optimum yield (OY) and ACLs based on a revised acceptable biological catch (ABC) recommendation from the Council's Scientific and Statistical Committee (SSC). The purpose of this final rule is also to achieve OY for black sea bass, and adjust the fishing year for yellowtail snapper to better protect these species and allow for increased economic benefits to fishers.

DATES: This rule is effective August 12, 2016, except for the amendments to § 622.187(b)(2), § 622.191(a)(10), and § 622.193(z) that are effective July 13, 2016.

ADDRESSES: Electronic copies of Regulatory Amendment 25, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review may be obtained from www.regulations.gov or the Southeast Regional Office (SERO) Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sf/2015/reg_am25/index.html.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic Region is managed under the FMP and includes blueline tilefish, black sea bass, and yellowtail snapper. 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 June 1, 2016, NMFS published a proposed rule for Regulatory Amendment 25 and requested public comment (81 FR 34944). The proposed rule and Regulatory Amendment 25 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Regulatory Amendment 25 and this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule revises the commercial and recreational ACLs, commercial trip limit, and recreational bag limit for blueline tilefish; revises the recreational bag limit for black sea bass; and revises the fishing year for the yellowtail snapper commercial and recreational sectors. All ABC and ACL weights in this final rule are expressed in round weight.

Blueline Tilefish ACLs

This final rule revises the commercial and recreational ACLs for blueline tilefish. The current commercial ACLs are 26,766 lb (12,141 kg) for 2016, 35,785 lb (16,232 kg) for 2017, and 44,048 lb (19,980 kg) for 2018 and subsequent fishing years. The current recreational ACLs are 26,691 lb (12,107 kg) for 2016, 35,685 lb (16,186 kg) for 2017, and 43,925 lb (19,924 kg) for 2018 and subsequent fishing years. These ACLs were implemented through the final rule to implement Amendment 32 to the FMP (80 FR 16583, March 30, 2015). This final rule increases both the commercial and recreational ACLs for blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. The commercial ACL will be set at 87,521 lb (39,699 kg) and the recreational ACL will be set at 87,277 lb (39,588 kg).

In Regulatory Amendment 25, the Council is revising the blueline tilefish total ACL (combined commercial and recreational ACL) based on a new ABC recommendation from the Council's SSC. The SSC provided their blueline tilefish ABC recommendation to set the

ABC at the equilibrium yield at 75 percent of the fishing mortality that produces the maximum sustainable yield (224,100 lb (101,650 kg)). The Council accepted the SSC's ABC recommendation and determined that this revised ABC is sufficient to prevent the overfishing of blueline tilefish.

The Council is also revising the total ACL to increase the buffer between the blueline tilefish ABC and ACL from 2 percent to 22 percent. The increase in the buffer is to account for management uncertainty, such as increased blueline tilefish landings north of the Council's area of jurisdiction. In Amendment 32, the Council set the total blueline tilefish ACL for the South Atlantic at 98 percent of the recommended ABC for the entire Atlantic region to account for management uncertainty because the stock assessment was coast-wide and the Council was aware that landings of blueline tilefish occurred north of North Carolina. In Regulatory Amendment 25, the Council set the total ACL at 78 percent of the ABC. This decision is based on a comparison of the landings between the South Atlantic and Greater Atlantic Regions (Maine through Virginia), which indicate that 22 percent of the landings from 2011–2014 are from the Greater Atlantic Region.

Blueline Tilefish Commercial Trip Limit

The current commercial trip limit for blueline tilefish is 100 lb (45 kg), gutted weight; 112 lb (51 kg), round weight, and was implemented in Amendment 32. The Council selected that trip limit as a way to slow the commercial harvest of blueline tilefish, potentially lengthen the commercial fishing season, and reduce the risk of the commercial ACL being exceeded. This final rule increases the blueline tilefish commercial trip limit to 300 lb (136 kg) gutted weight; 336 lb (152 kg), round weight. The Council decided that an appropriate response to the increase in ABC and total ACL is to increase the commercial trip limit. The increase in the commercial trip limit will increase the socioeconomic benefits to commercial fishermen. In addition, the increase in the commercial trip limit is not expected to result in an in-season closure of blueline tilefish.

Blueline Tilefish and Black Sea Bass Recreational Bag Limits

This final rule revises the recreational bag limits for both blueline tilefish and black sea bass. The current blueline tilefish bag limit is one fish per vessel per day for the months of May through August and is part of the aggregate bag limit for grouper and tilefish. There is no recreational retention of blueline

tilefish during the rest of the fishing year. This bag limit was implemented in Amendment 32. In conjunction with the increase in the recreational ACL in Regulatory Amendment 25, this final rule increases the recreational bag limit to three fish per person per day for the months of May through August and the bag limit remains part of the aggregate bag limit for grouper and tilefish. There will continue to be no recreational retention of blueline tilefish during the months of January through April and September through December, each year.

The current bag limit for black sea bass is five fish per person per day and was implemented through the final rule for Regulatory Amendment 9 to the FMP (76 FR 34892, June 15, 2011). This final rule increases the recreational bag limit for black sea bass to seven fish per person per day. The Council decided to increase the bag limit to help achieve OY because the recreational ACL has not been met in recent years. Additionally, increasing the daily bag limit to seven fish per person per day is not expected to result in exceeding the recreational ACL or require an in-season closure of the recreational sector.

Yellowtail Snapper Fishing Year

The current fishing year for the yellowtail snapper commercial and recreational sectors in the South Atlantic is January 1 through December 31. The in-season accountability measure for the commercial sector is to close yellowtail snapper when the commercial ACL is met or projected to be met.

This final rule revises the fishing year for both the commercial and recreational sectors to be August 1 through July 31, each year. Changing the start of the fishing year to August 1 will benefit both sectors because it will help ensure that harvest is allowed during the winter months when yellowtail snapper obtain a higher price per pound commercially and during peak tourist season in south Florida, where the majority of recreational yellowtail snapper harvest occurs. Additionally, if an in-season closure for the commercial sector were to occur as a result of the ACL being met, that such a closure would likely occur later in the fishing year. With a fishing year start date of August 1, any such closure would likely coincide with the yellowtail snapper peak spawning period of May through July, thereby possibly providing additional biological benefits to the stock.

Comments and Responses

NMFS received 23 comment submissions from individuals on the proposed rule and Regulatory Amendment 25. Some of the comments were outside the scope of the proposed rule and Regulatory Amendment 25, and 11 comments agreed with the actions contained in Regulatory Amendment 25. These comments are not addressed in this final rule. The comments that relate to one or more of the management actions in the proposed rule and Regulatory Amendment 25 are summarized and responded to below.

Comment 1: The recreational bag limit for blueline tilefish should be seven fish per person per day during May through October.

Response: NMFS disagrees. The Council selected their preferred alternative of a recreational bag limit of three fish per person per day during May through August, and no harvest and retention for the remainder of the year to ensure the fishing season remains open. The accountability measure for the recreational sector is to prohibit harvest if the recreational ACL is met. A greater bag limit and longer season would increase both the rate and time period that blueline tilefish are caught and increases the likelihood that the recreational ACL would be met and an in-season closure would occur. Additionally, because blueline tilefish and snowy grouper co-occur and are frequently caught together, the Council chose to maintain the current May through August recreational fishing season for these two species to reduce regulatory discards and associated release mortality.

Comment 2: Several commenters did not agree with the proposed increase in the black sea bass bag limit from 5 to 7 fish per person per day, and suggested maintaining the current bag limit, or increasing the bag limit to 6 or 10 fish per person per day. One commenter stated that a bag limit of six fish per person per day would allow for increased harvest of black sea bass without meeting the recreational ACL, rather than a seven fish bag limit, which could result in a seasonal closure.

Response: NMFS disagrees. In 2011, Regulatory Amendment 9 to the FMP reduced the recreational bag limit for black sea bass from 15 to 5 fish per person per day to reduce the rate of harvest and extend the length of the recreational fishing season (76 FR 34892, June 15, 2011). Additionally, in 2013, Regulatory Amendment 19 increased the recreational ACL for black sea bass from 482,620 lb (218,913 kg), to 1,033,980 lb (469,005 kg), in response to

the Southeast Data, Assessment, and Review (SEDAR) 25 Update Assessment, which indicated the stock was rebuilt, was not undergoing overfishing, and was not overfished (78 FR 58249, September 23, 2013). The recreational ACL has not been met in recent years under a bag limit of five fish. The Council determined that an increase in the recreational bag limit to seven black sea bass per person per day is appropriate, and is expected to allow the recreational season to remain open year-round.

Comment 3: Changing the fishing year start date for yellowtail snapper from January 1 to August 1 for the commercial and recreational sectors will negatively impact commercial and recreational fishermen.

Response: NMFS disagrees. At their December 2015 meeting, the Council recognized that a change in the fishing year start date for the commercial sector, if implemented, would not reduce the probability of another commercial in-season closure due to the commercial ACL being met (as occurred in 2015). Rather, Council members stated that changing the start date of the fishing year would only shift the time period of when a commercial closure would occur. The Council's intent is to increase the probability that a commercial closure would occur during a time of year that would impact fishermen the least and would benefit the stock the most. The Council chose to begin the yellowtail snapper commercial fishing year on August 1 because this alternative is expected to generate the highest dockside revenue since harvest would be open during the winter months when yellowtail snapper obtain a higher price per pound. Beginning the fishing year in the summer will also likely provide biological benefits to the stock because if the commercial ACL is met, the closure would coincide during the yellowtail snapper spawning season. The Council chose to begin the yellowtail snapper recreational fishing year on August 1 because that should yield the highest recreational average landings and provide the most socio-economic benefits. Although the Council was aware that this alternative could result in a shortened season, limiting recreational harvest in the early summer months, the Council sought to ensure that harvest is open during the peak winter tourist season in south Florida, where the majority of the yellowtail snapper harvest takes place. The August 1 fishing year start date for yellowtail snapper commercial and recreational sectors would also promote consistency in regulations between

sectors. Additionally, at their April 2016 meeting, the Gulf of Mexico Fishery Management Council approved a measure to begin the yellowtail snapper fishing year in the Gulf of Mexico on August 1 for the commercial and recreational sectors, compatible with the South Atlantic measures implemented through this final rule.

Comment 4: A yellowtail snapper closure for the commercial and recreational sectors during the summer months will negatively affect business.

Response: NMFS agrees that a yellowtail snapper closure during any time of the fishing year may negatively affect a business. However, the yellowtail snapper fishing year change in this final rule is intended to lessen the economic hardships associated with an in-season closure. The commercial ACL for yellowtail snapper was met in October 2015, and an in-season accountability measure to close the commercial sector through December 31, 2015, was implemented (80 FR 65970, October 28, 2015). The Council and NMFS expect that commercial landings in future years will be similar to those in 2015, making another in-season commercial closure likely to occur. However, changing the fishing year to August 1 through July 31 provides the benefit of allowing harvest during the winter months when yellowtail snapper obtain a higher price per pound.

Additionally, recreational landings of yellowtail snapper tend to increase in the spring and remain high during the summer months. Based on landings from 2010–2015, it is unlikely that the recreational sector ACL would be met during the August 1 through July 31 fishing year. However, prohibiting harvest during the late spring to early summer months after the recreational ACL is met coincides with the yellowtail snapper spawning season, biologically benefiting the stock.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is consistent with Regulatory Amendment 25, 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.

The Magnuson-Stevens Act provides the statutory basis for this rule. The proposed rule and the preamble to this final rule provide a statement of the need for and objectives of 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 final rule.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. Comments and responses on the general economic effects of the proposed alternatives, or economic effects that fall outside the scope of the Regulatory Flexibility Act, are addressed in the Comments and Responses section. No changes were made in the final rule in response to such comments.

The factual basis for the certification published in the proposed rule determined that certain commercial fishing businesses would be directly affected by the proposed rule and concluded that all such businesses were small. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's previous standard of \$20.5 million in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194. NMFS has determined that the new size standard does not affect its decision to certify this regulatory action. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

Three provisions in this final rule are exempt from the requirement to delay the effectiveness of a final rule by 30 days after publication in the **Federal Register**, under 5 U.S.C. 553(d)(1). Specifically, the following provisions relieve restrictions on the regulated community: The increased blueline tilefish recreational bag limit set forth at § 622.187(b)(2), the increased blueline tilefish commercial trip limit set forth at § 622.191(a)(10), and the increased blueline tilefish commercial and recreational catch limits set forth at § 622.193(z). NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the delay in the effective date for the measures pertaining to blueline tilefish in this rule, because these measures

relieve restrictions by increasing ACLs and harvest limits for the commercial and recreational sectors for blueline tilefish in the South Atlantic EEZ. As described in Regulatory Amendment 25, increases in the blueline tilefish recreational bag limit, the commercial trip limit, and the sector ACLs are intended to be used in combination to achieve OY for the stock. Delaying implementation of these measures for blueline tilefish could result in snapper-grouper fishermen not having the opportunity to achieve OY from this stock, because the sectors would have insufficient time to harvest the ACL increases before the fishing year's end. Even though this final rule will increase the commercial trip limit and recreational bag limit, NMFS does not expect increased commercial and recreational harvest to result in in-season closures for blueline tilefish. This final rule does not change the period of allowable recreational harvest for blueline tilefish, and the recreational sector closes on September 1, 2016 (50 CFR 622.183(b)(7)). Additionally, for the reasons stated above, not waiving the 30-day delay of effectiveness for these blueline tilefish provisions is unnecessary and contrary to the public interest as a delay in implementation may negatively impact fishers and minimize the purpose of this final rule. Therefore, a delay in effectiveness would diminish the social and economic benefits for deep-water snapper-grouper fishermen this final rule provides, which is part of the purpose of the rule itself. Finally, this final rule creates no new duties, obligations, or requirements for the regulated community that would necessitate delaying this rule's effectiveness to allow them to come into compliance with it. Thus, the measures applicable to blueline tilefish in this final rule are effective upon publication.

List of Subjects in 50 CFR Part 622

Black sea bass, Blueline tilefish, Commercial, Fisheries, Fishing, Recreational, South Atlantic, Yellowtail snapper.

Dated: July 7, 2016.

Eileen Sobeck,

*Assistant Administrator for Fisheries,
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 § 622.7, add paragraph (f) to read as follows:

§ 622.7 Fishing years.

* * * * *

(f) *South Atlantic yellowtail snapper*—August 1 through July 31.

■ 3. In § 622.187:

■ A. Revise paragraph (b)(2)(iii);

■ B. Remove and reserve paragraph (b)(2)(iv); and

■ C. Revise paragraph (b)(7).

The revisions read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(2) * * *

(iii) No more than one fish may be a golden tilefish; and

* * * * *

(7) *Black sea bass*—7.

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■ 4. In § 622.191, revise paragraph (a)(10) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(10) *Blueline tilefish*. Until the ACL specified in § 622.193(z)(1)(i) is reached or projected to be reached, 300 lb (136 kg), gutted weight; 336 lb (152 kg), round weight. See § 622.193(z)(1)(i) for the limitations regarding blueline tilefish after the commercial ACL is reached.

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■ 5. In § 622.193, revise paragraph (z) to read as follows:

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

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(z) *Blueline tilefish*—(1) *Commercial sector*. (i) If commercial landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 87,521 lb (39,699 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 limits. These bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section, is exceeded, and blueline tilefish 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 commercial ACL for that following year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector*. (i) If recreational landings for blueline tilefish, as estimated by the SRD, are

projected to reach the recreational ACL of 87,277 lb (39,588 kg), round weight, 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, unless the RA determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits are zero.

(ii) If recreational landings for blueline tilefish, exceed the applicable recreational ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section is exceeded, and blueline tilefish 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, to reduce the length of the recreational fishing season in the following fishing year to ensure recreational landings do not exceed the recreational ACL the following fishing year. When NMFS reduces the length of the following recreational fishing season and closes the recreational sector, the following closure provisions apply: The bag and possession limits for blueline tilefish in or from the South Atlantic EEZ are zero. Additionally, the recreational ACL will be reduced by the amount of the recreational ACL overage in the prior fishing year. The fishing season and recreational ACL will not be reduced if the RA determines, using the best scientific information available, that no reduction is necessary.

(3) The combined commercial and recreational sector ACL (total ACL) is 174,798 lb (79,287 kg), round weight.

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