

before the applicability date of this section, beginning on the first day the section applies, the waiting period can no longer apply to the individual if it would exceed 90 days with respect to the individual.

(ii) This paragraph (h)(2) is illustrated by the following example:

*Example.* (i) *Facts.* A group health plan is a calendar year plan. Prior to January 1, 2014, the plan provides that full-time employees are eligible for coverage after a 6-month waiting period. Employee A begins work as a full-time employee on October 1, 2013.

(ii) *Conclusion.* In this *Example 1*, the first day of A's waiting period is October 1, 2013 because that is the first day A is otherwise eligible to enroll under the plan's substantive eligibility provisions, but for the waiting period. Beginning January 1, 2014, the plan may not apply a waiting period that exceeds 90 days. Accordingly, A must be given the opportunity to elect coverage that begins no later than January 1, 2014 (which is 93 days after A's start date) because otherwise, on January 1, 2014, the plan would be applying a waiting period that exceeds 90 days. The plan is not required to make coverage effective before January 1, 2014 under the rules of this section.

■ 39. Section 147.136 is amended by adding a sentence to the end of the introductory text of paragraph (d) and revising paragraph (d)(1)(i) to read as follows:

**§ 147.136 Internal claims and appeals and external review processes.**

\* \* \* \* \*

(d) \* \* \* A Multi State Plan or MSP, as defined by 45 CFR 800.20, must provide an effective Federal external review process in accordance with this paragraph (d).

(1) \* \* \*

(i) *In general.* Subject to the suspension provision in paragraph (d)(1)(ii) of this section and except to the extent provided otherwise by the Secretary in guidance, the Federal external review process established pursuant to this paragraph (d) applies, at a minimum, to any adverse benefit determination or final adverse benefit determination (as defined in paragraphs (a)(2)(i) and (a)(2)(v) of this section), except that a denial, reduction, termination, or a failure to provide payment for a benefit based on a determination that a participant or beneficiary fails to meet the requirements for eligibility under the terms of a group health plan is not eligible for the Federal external review process under this paragraph (d).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 120815345-3223-01]

RIN 0648-BC41

#### Snapper-Grouper Fishery off the Southern Atlantic States; Snapper-Grouper Management Measures

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement a regulatory amendment (Regulatory Amendment 13) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, this rule would revise the annual catch limits (ACLs) (including sector ACLs) for 37 species in the snapper-grouper fishery management unit (FMU). The intent of this rule is to ensure that the ACLs are based on the best scientific information available, and to prevent unnecessary negative socio-economic impacts to participants in the snapper-grouper fishery and fishing community that could occur if the ACLs are not revised, in accordance with the provisions set forth in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before April 22, 2013.

**ADDRESSES:** You may submit comments on this document, identified by "NOAA-NMFS-2012-0245", by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0245](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0245), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Nikhil Mehta, 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 documents supporting this proposed rule including an environmental assessment, initial regulatory flexibility analysis (IRFA), regulatory impact review, and fishery impact statement may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Nikhil Mehta, telephone: 727-824-5305, or email: [Nikhil.Mehta@noaa.gov](mailto:Nikhil.Mehta@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic is managed under the FMP and includes the 37 snapper-grouper species addressed in Regulatory Amendment 13 and this proposed rule. These 37 snapper-grouper species do not have stock assessments; their acceptable biological catch estimates (ABCs) are greater than zero; and their ABCs were specified using a formula established in the Comprehensive ACL Amendment. Species in the FMU with stock assessments and species with an ABC equal to zero are not addressed in Regulatory Amendment 13. However, they will be considered in future amendments. The FMP was prepared by the Council and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

#### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing of federally managed fish stocks, to the extent practicable. This mandate is 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. National Standard 2 of the Magnuson-Stevens Act states that the conservation and management measures of fishery management plans and any regulations promulgated to implement any such plan shall be based upon the best scientific information available.

To address this mandate of the Magnuson-Stevens Act, NMFS published the final rule to implement the Comprehensive ACL Amendment on March 16, 2012 (77 FR 15916). That final rule established ACLs (including sector-specific ACL allocations) and accountability measures (AMs) for select species in the snapper-grouper FMU. Additionally, the Comprehensive ACL Amendment established ABCs and annual catch targets (ACTs) for these select species in the snapper-grouper FMU. These ABCs and ACTs are not codified in the regulatory text. Recreational catch estimates in the Comprehensive ACL Amendment were determined by using data generated by the Marine Recreational Fisheries Statistics Survey (MRFSS), which was the best scientific information available at that time.

The MRFSS is made up of an integrated system of surveys, each targeted toward particular segments of the fishing community (one for for-hire vessels, one for anglers pursuing highly migratory species, and one for all other anglers). It usually takes a couple of months to compile information from both surveys, perform quality control, and tabulate the results from each 2-month wave of data. As a result, in most places, total estimates of catch and effort are produced on an annual basis. These annual estimates are then used by NMFS and the Council to make informed decisions about the health and sustainability of the fishery and how many fish can be harvested the following year.

Since the implementation of the Comprehensive ACL Amendment on April 16, 2012, there have been substantial improvements in the data collection and catch estimation methodologies that are used to generate the data for the computation of ABCs and recreational and commercial ACLs and ACTs. NMFS no longer uses the MRFSS and now estimates landings using the Marine Recreational Information Program (MRIP).

The MRIP collects data on a more frequent basis and provides more accurate recreational catch estimates by accounting for potential biases such as possible differences in catch rates at high-activity and low-activity fishing sites, as well as variation in fishing effort throughout the day. As described in Regulatory Amendment 13, the NMFS Office of Science and Technology released MRIP data from 2004–2011. MRFSS data from 2004–2011 were compared with MRIP data (2004–2011) and ratio estimators were generated. These ratio estimators were used to recalibrate MRFSS data from 1986–2003

to MRIP data (from 1986–2003). These calculations provided a complete MRIP data set from 1986–2011. To determine the ABCs for these species in the Comprehensive ACL Amendment, the Council's SSC used data from 1999–2008 for 36 out of the 37 species (1986–2008 for blueline tilefish). The same years of MRIP data were used to determine revised ABC values for the 37 species in Regulatory Amendment 13. The revised ABC values also include updated commercial and for-hire landings data. Using those revised ABC values, the same procedures used in the Comprehensive ACL Amendment for calculating ACL and ACT values were also used in Regulatory Amendment 13.

The revisions are necessary because if the ABC, ACL, and ACT values are not updated with the new MRIP estimates, ACLs would be set using MRFSS data while the landings being used to track the ACLs would be estimated using MRIP data. This would result in a disconnect in how ACLs are calculated versus how they are monitored. The changes in data impact the allocations to the commercial and recreational sectors because the formula used to establish the allocations remains unchanged from what was implemented previously in the Comprehensive ACL Amendment.

Using MRIP values to estimate recreational landings, and using updated headboat and commercial landings, ensures that the ABCs, ACLs, and ACTs are based on the best scientific information available in accordance with National Standard 2 of the Magnuson-Stevens Act.

#### **Management Measures Contained in This Proposed Rule**

This proposed rule would revise ACLs for the following species and species complexes: deep-water complex species (yellowedge grouper, blueline tilefish, silk snapper, misty grouper, sand tilefish, queen snapper, black snapper, and blackfin snapper); shallow-water groupers (red hind, rock hind, yellowmouth grouper, yellowfin grouper, coney, and graysby); snappers (gray snapper, lane snapper, cubera snapper, dog snapper, and mahogany snapper), jacks (almaco jack, banded rudderfish, and lesser amberjack), grunts (white grunt, sailor's choice, tomtate, and margate); porgies (jolthead porgy, knobbed porgy, saucereye porgy, scup, and whitebone porgy); Atlantic spadefish; blue runner; bar jack; gray triggerfish; scamp; and hogfish. The ACLs are used to monitor landings throughout a fishing season. The potential disconnect between how the ACLs are calculated and how they are

monitored is important because the ACLs trigger the AMs that were established in the Comprehensive ACL Amendment.

The AMs for the commercial sector for the species and species complexes in this proposed rule specify that if the commercial ACL for a species or species complex is reached or projected to be reached during a fishing year, the sector will close for the remainder of that fishing year for that species or species complex. If a complex is closed, sale and purchase of any species in that complex is prohibited. If a species, or a single member of a species complex, is designated as overfished and the commercial ACL is exceeded, then during the following fishing year the commercial sector ACL would be reduced by the amount of the commercial ACL overage in the prior fishing year.

For the recreational sector, the AMs for the species and species complexes are as follows: if the recreational ACL is exceeded for a species or species complex in a fishing year, then during the next fishing year the NMFS Regional Administrator monitors the recreational landings for a persistence in increased landings, and using the best scientific information available, reduces the length of the recreational fishing season as necessary to ensure the recreational landings do not exceed the recreational ACL.

This proposed rule would ensure that the methodology used to calculate the ACLs is consistent with the methodology used to monitor landings and determine when it is necessary to trigger the established AMs.

#### **Additional Measures Contained in Regulatory Amendment 13**

In addition to the ACL revisions in this proposed rule, Regulatory Amendment 13 would revise the ABCs, and ACTs for the 37 un-assessed species in the snapper-grouper FMU, using the improved data methods as previously described.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, (AA) has determined that this proposed rule is consistent with Regulatory Amendment 13, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified

to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this rule and Regulatory Amendment 13 is to revise the ABCs, ACLs (including sector ACLs) and ACTs implemented by the Comprehensive ACL Amendment with improved data. The revisions are necessary because if the ABCs, ACLs (including sector ACLs), and ACTs are not updated using the new data, there could be a disconnect between the ACLs and the landings used to determine if ACLs are met and AMs are triggered. The Magnuson-Stevens Act provides the statutory basis for the proposed action.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The rule would apply directly to licensed commercial fishermen in the Finfish Fishing Industry (NAICS 114111) that harvest six stock complexes and six individual stocks of the South Atlantic snapper-grouper fishery. An estimated 890 to 944 small businesses in the Finfish Fishing Industry may be affected.

This proposed rule would not establish any new reporting or record-keeping requirements. If the measures contained in this proposed rule are implemented, they are expected to increase the lengths of commercial fishing seasons for the deep-water and porgies stock complexes and collectively increase annual landings by 33,821 lb (15,341 kg) and \$78,259. These proposed measures are also expected to decrease the lengths of commercial fishing seasons for the jacks complex, blue runner and gray triggerfish, and collectively decrease annual landings by 46,527 lb (21,104 kg) and \$74,520. The collective net change to small businesses in the Finfish Fishing Industry would be a loss of annual landings of 12,706 lb (5,763 kg), but a gain of \$3,739 because the deep-water and porgies stock complexes are more valued species. With an estimated 890 to 944 small businesses potentially affected, the average annual gain per small business would be \$3.96 to \$4.20.

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

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 15, 2013.

**Alan D. Risenhoover,**

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

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

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, 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 § 622.49, the first sentence of paragraphs (b)(8)(i)(A), (b)(8)(ii), (b)(9)(i)(A), (b)(9)(ii), (b)(10)(i)(A), (b)(10)(ii), (b)(12)(i)(A), (b)(12)(ii), (b)(13)(i)(A), (b)(13)(ii), (b)(16)(i)(A), (b)(16)(ii), (b)(17)(i)(A), (b)(17)(ii), (b)(19)(i)(A), (b)(19)(ii), (b)(20)(i)(A), (b)(20)(ii), (b)(21)(i)(A), (b)(21)(ii), (b)(23)(i)(A), (b)(23)(ii), (b)(24)(i)(A), and (b)(24)(ii) are revised, to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(8) \* \* \*

(i) \* \* \*

(A) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 376,469 lb (170,763 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for the deep-water complex, as estimated by the SRD, exceed the recreational ACL of 334,556 lb (151,752 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. \* \* \*

(9) \* \* \*

(i) \* \* \*

(A) If commercial landings for scamp, as estimated by the SRD, reach or are projected to reach the commercial ACL of 333,100 lb (151,092 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for scamp, as estimated by the SRD, exceed the recreational ACL of 176,688 lb (80,144 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. \* \* \*

(10) \* \* \*

(i) \* \* \*

(A) If commercial landings for other SASWG, as estimated by the SRD, reach or are projected to reach the commercial ACL of 49,776 lb (22,578 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for other SASWG, as estimated by the SRD, exceed the recreational ACL of 46,656 lb (21,163 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. \* \* \*

\* \* \* \* \*

(12) \* \* \*

(i) \* \* \*

(A) If commercial landings for lesser amberjack, almaco jack, and banded rudderfish, combined, as estimated by the SRD, reach or are projected to reach their combined commercial ACL of 189,422 lb (85,920 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for the complex (lesser amberjack, almaco jack, and banded rudderfish), combined, as estimated by the SRD, exceed the recreational ACL of 267,799 lb (121,472 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. \* \* \*

(13) \* \* \*

(i) \* \* \*

(A) If commercial landings for bar jack, as estimated by the SRD, reach or are projected to reach the commercial ACL of 5,265 lb (2,388 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for bar jack, as estimated by the SRD, exceed the recreational ACL of 19,515 lb (8,852 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. \* \* \*

\* \* \* \* \*

(16) \* \* \*

(i) \* \* \*

(A) If commercial landings combined for this other snappers complex, as estimated by the SRD, reach or are projected to reach the combined complex commercial ACL of 215,662 lb (97,823 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If the combined recreational landings for this snappers complex, as estimated by the SRD, exceed the recreational ACL of 728,577 lb (330,477 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 for this complex in the following fishing year. \* \* \*

(17) \* \* \*

(i) \* \* \*

(A) If commercial landings for gray triggerfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 272,880 lb (123,776

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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for gray triggerfish, as estimated by the SRD, exceed the recreational ACL of 353,638 lb (160,407 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. \* \* \*

\* \* \* \* \*

(19) \* \* \*

(i) \* \* \*

(A) If commercial landings for blue runner, as estimated by the SRD, reach or are projected to reach the commercial ACL of 177,506 lb (80,515 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for blue runner, as estimated by the SRD, exceed the recreational ACL of 948,223 lb (430,107 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. \* \* \*

\* \* \* \* \*

(20) \* \* \*

(i) \* \* \*

(A) If commercial landings for Atlantic spadefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 35,108 lb (15,925 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for Atlantic spadefish, as estimated by the SRD, exceed the recreational ACL of 154,352 lb (70,013 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. \* \* \*

(21) \* \* \*

(i) \* \* \*

(A) If commercial landings for hogfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 49,469 lb (22,439 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for hogfish, as estimated by the SRD, exceed the recreational ACL of 85,355 lb (38,716 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. \* \* \*

\* \* \* \* \*

(23) \* \* \*

(i) \* \* \*

(A) If commercial landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 36,348 lb (16,487 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. \* \* \*

\* \* \* \* \*

(ii) \* \* \* If recreational landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, exceed the recreational ACL of 106,914 lb (48,495 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 for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(24) \* \* \*

(i) \* \* \*

(A) If commercial landings for white grunt, sailor's choice, tomtate, and

margate, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 218,539 lb (99,128 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. \* \* \*

(ii) \* \* \* If recreational landings for white grunt, sailor's choice, tomtate, and margate, as estimated by the SRD, exceed the recreational ACL of 588,113 lb (266,764 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 for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

[FR Doc. 2013-06417 Filed 3-20-13; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 130215145-3145-01]

RIN 0648-BD01

#### Control Date for Qualifying Landings History in the Western Gulf of Alaska Trawl Groundfish Fisheries

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

**ACTION:** Advance notice of proposed rulemaking (ANPR); control date.

**SUMMARY:** At the request of the North Pacific Fishery Management Council (Council), this notice announces a control date of March 1, 2013, that may be used as a reference for future management actions applicable to, but not limited to, qualifying landings and permit history for an allocation-based management or catch share program in the Western Gulf of Alaska (GOA) trawl groundfish fisheries. This notice is intended to discourage speculative entry into the fisheries while the Council considers whether and how allocations of fishing privileges should be developed under a future management program. The Council selected the control date based on previous fishing

activity in the Western GOA groundfish fisheries, in which the majority of the fishery has concluded by March 1 each year. This notice is publishing close to the control date of March 1, 2013, and so will not either prompt speculation in advance of its publication, or disadvantage any fishers regarding their fishing activity after the control date, but before publication. This notice is also intended to promote awareness of possible rulemaking and provide notice to the public that any accumulation of landings history in the Western GOA trawl groundfish fisheries occurring after the control date may not be credited for purposes of making any allocation under a future management program.

**DATES:** March 1, 2013, shall be known as the control date for the Western GOA trawl groundfish fisheries and may be used as a reference for allocations in a future management program that is consistent with the Council's objectives and applicable Federal laws.

#### FOR FURTHER INFORMATION CONTACT:

Rachel Baker: 907-586-7228 or [rachel.baker@noaa.gov](mailto:rachel.baker@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This advance notice of proposed rulemaking would apply to owners and operators of catcher vessels and catcher/processors participating in Federal fisheries prosecuted with trawl gear in the Western Reporting Area of the GOA. The Western Reporting Area, defined at § 679.2 and shown in Figure 3 to 50 CFR part 679, includes the Western Regulatory Area (Statistical Area 610).

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits for groundfish species to sustainably manage the groundfish fisheries in the GOA. To achieve these objectives, NMFS requires vessel operators participating in GOA groundfish fisheries to comply with various restrictions, such as fishery closures, to maintain catch within specified total allowable catch limits. The GOA groundfish fishery restrictions also include prohibited species catch (PSC) limits for species that are generally required to be discarded when

harvested. When harvest of a PSC species reaches the specified PSC limit for that fishery, NMFS closes directed fishing for the target groundfish species, even if the total allowable catch limit for that species has not been harvested.

The Council and NMFS have long sought to control the amount of fishing in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the license limitation program (LLP), which limits access to the groundfish, crab, and scallop fisheries in the Bering Sea and Aleutian Islands and the GOA. The LLP is intended to limit entry into federally managed fisheries. For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific provisions in the LLP (October 1, 1998; 63 FR 52642).

Over the past few years, the Council has recommended amendments to the FMP to reduce the use of PSC in the GOA fisheries. Under Amendment 93 to the FMP, the Council recommended, and NMFS approved, Chinook PSC limits in the GOA pollock (*Theragra chalcogramma*) trawl fisheries (77 FR 42629, July 20, 2012). In June 2012, the Council recommended an FMP amendment to reduce Pacific halibut (*Hippoglossus stenolepis*) PSC limits for the trawl and longline fisheries in the Central GOA and Western GOA. This series of actions reflects the Council's commitment to reduce PSC in the GOA fisheries. Participants in these fisheries have raised concerns that the current limited access management system creates a substantial disincentive for participants to take actions to reduce PSC usage, particularly if those actions could reduce target catch rates. Additionally, any participants who choose not to take actions to reduce PSC usage stand to gain additional target catch by continuing to harvest groundfish at a higher catch rate, at the expense of any vessels engaged in PSC avoidance. In February 2013, the Council unanimously adopted a purpose and need statement, and goals and objectives, to support the development of a management system that would remove this disincentive to reduce PSC usage in Western GOA trawl groundfish fisheries.

The Council intends to develop a management program that would replace the current limited access