INITIAL REGULATORY FLEXIBILITY ANALYSIS

Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA does not contain any decision criteria; instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the FMP or amendment (including framework management measures and other regulatory actions). The RFA is also intended to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct a regulatory flexibility analysis for each proposed rule. The regulatory flexibility analysis is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. In addition to analyses conducted for the Regulatory Impact Review (RIR), the regulatory flexibility analysis provides: 1) A statement of the reasons for the agency's action; 2) a succinct statement of the proposed rule's objectives and legal basis; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; 5) an identification, to the extent practical, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and 6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact on small entities.

Additional information on the description of affected entities may be found in **Chapter 3.3,** and additional information on the expected economic effects of the proposed action may be found in **Sections 4.1.2, 4.2.2,** and **4.3.2**.

Statement of the Need for, Objectives of, and Legal Basis for the Rule

The purpose and need, issues, problems, and objectives of this amendment are presented in **Chapter 1**. The purpose of this amendment is to adjust the annual catch limit (ACL) and

optimum yield (OY) for golden tilefish. This adjustment is needed to account for the recent stock assessment values based on data through 2010.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended, provides the statutory basis for the proposed rule.

Identification of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict with the Proposed Rule

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

Description and Estimate of the Number of Small Entities to Which the Proposed Rule will Apply

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

A total of 142 vessels using hook and line gear and 38 vessels using longline gear landed golden tilefish in any one year during 2005-2010. Vessels using hook and line landed an annual average of about 27,000 lb gw of golden tilefish and 220,000 lb gw of other snapper grouper species. Gross revenues of these vessels averaged annually at $76,000 (2010 dollars) from golden tilefish and $567,000 (2010 dollars) from other snapper grouper species. For 2005-2010, vessels using longline landed an annual average of about 298,000 lb gw of golden tilefish and 153,000 lb gw of other snapper grouper species. Their revenues for this period averaged annually at $802,000 from golden tilefish and $286,000 from other snapper grouper species. On average, vessels using hook and line depended on other snapper grouper species for a majority of their revenues while vessels using longline depended on golden tilefish as their major source of revenues. Obviously, some vessels using hook and line could be expected to be more dependent on golden tilefish as a major source of revenues. In the same vein, some vessels using longline could be more dependent on other snapper grouper species as a major source of revenues. These vessels, using hook and line or longline, are assumed to comprise the universe of commercial vessels directly affected by actions in this regulatory amendment, including the ACL alternatives. It is possible that, with the proposed ACL increase, other commercial vessels may enter or re-enter the golden tilefish portion of the snapper grouper fishery, but it is not reasonably possible to determine how many vessels would do so.

Based on revenue information, all commercial vessels affected by the proposed action can be considered small entities.

From 2005-2010, an annual average of 1,985 vessels had valid permits to operate in the snapper-grouper for-hire sector, of which 85 are estimated to have operated as headboats. The for-hire fleet consists of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (2010 dollars) is estimated to range from approximately $62,000-$84,000 for Florida vessels, $73,000-$89,000 for North Carolina vessels, $68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South Carolina vessels. For headboats, the corresponding revenue estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the proposed action can be considered small entities.

Some fleet activity, i.e., multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors to an unknown extent, and all vessels are considered as independent entities in this analysis.

Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

The proposed rule would not introduce any changes to current reporting, record-keeping, and other compliance requirements.

Substantial Number of Small Entities Criterion

The proposed rule is expected to directly affect all federally permitted commercial vessels harvesting golden tilefish and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, the proposed action would affect a substantial number of small entities.

Significant Economic Impact Criterion

The outcome of 'significant economic impact' can be ascertained by examining two issues: disproportionality and profitability.

<u>Disproportionality</u>: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities that are expected to be affected by the proposed rule are considered small entities, so the issue of disproportional effects on small versus large entities does not arise in the present case.

Profitability: Do the regulations significantly reduce profit for a substantial number of small entities?

Given the current commercial AM, the proposed ACL increase would result in revenue increases to the commercial vessels. It is also expected that such revenue increases would lead to profit increases, although the magnitude of profit increases cannot be estimated based on available information.

The proposed ACL increase would not be enough to compensate for the expected overages in the recreational sector. Hence, under the proposed in-season and post-season AM for the recreational sector, the for-hire sector may be expected to experience profit reductions even under the proposed ACL increase. The magnitude of such profit reduction cannot be estimated based on available information.

Because the commercial sector is by far the more dominant sector in the harvest of golden tilefish, receiving 97 percent of the combined ACL, it is likely that the profit increases to the commercial sector would outweigh the profit decreases to the for-hire sector. There is then a good possibility that the proposed ACL increase would yield positive net profit to small entities engaged in the golden tilefish segment of the snapper grouper fishery.

Description of Significant Alternatives

Five alternatives, including the preferred alternative, were considered for revising the ACL and OY for golden tilefish. The first alternative, the no action alternative, would maintain the existing ACL which is equal to OY and OY equal to 75 percent of the fishing mortality at MSY. This is not a viable alternative because, based on updated biomass information, it would result in an ACL that is greater than the ABC recommended by the Council's SSC. The second alternative would set the ACL equal to OY and OY equal to ABC. Due to its larger ACL, this alternative would result in larger short-term revenue and profit increases to commercial vessels than the preferred alternative. For the same reason, it would also result in better fishing opportunities and possibly higher profits to for-hire vessels than the preferred alternative. However, this alternative poses some risks, largely absent in the preferred alternative, of pushing the stock to an overfished level--fishery managers can overshoot the equilibrium biomass target which could result in the population biomass dropping below both target and limit levels. In addition, this alternative provides for declining ACLs over time which would tend to invite controversy especially when the stock is abundant and not overfished. On the other hand, the preferred alternative would provide for more stable harvest levels over time that, although lower than those of the second alternative, would still be substantially higher than current levels. The third alternative would set the ACL equal to 90 percent of the ABC and the latter equal to OY. The fourth alternative would set the ACL equal to 80 percent of the ABC and the latter equal to OY. These two other alternatives would provide for lower ACLs than the preferred alternative, and thus lower economic benefits as well.

Four alternatives, including the preferred alternative, were considered for revising the recreational AMs for golden tilefish. The first alternative, the no action alternative, is a post-

season AM and employs a three-year averaging method for determining ACL overages. Without an in-season AM, this alternative would not be as effective as the preferred alternative in preventing overages in the recreational sector. In addition, given relatively large recreational harvests in recent years, the three-year averaging method for determining ACL overages could potentially trigger the application of AM even if no overages occurred in the current year. This would result in short-term reductions in profits as well as potentially delay the benefits that would accrue from increasing the sector's ACL. The second alternative would specify a recreational sector AM trigger and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector AM trigger, thus possibly limiting adverse effects on the profits of small entities. However, it would not provide for a measurable index in addressing the overages in the recreational sector. The third alternative would specify a recreational sector in-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector in-season AM. This sub-alternative would likely result in higher profits to small entities than the preferred sub-alternative. However, it would not address the overages in the recreational sector that would eventually result in more restrictive regulations and larger reductions in the profits of small entities. The fourth alternative would specify a recreational sector post-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would specify a recreational sector post-season AM in terms of paybacks for the prior year's overages if golden tilefish were overfished. This sub-alternative would likely result in larger profit reductions to small entities than the preferred sub-alternative. Moreover, this sub-alternative would be unnecessary because golden tilefish is not overfished.

In this regulatory amendment, the Council considered four alternatives for a commercial sector ACT for which the no action alternative is the preferred alternative. The other alternatives would set a commercial ACT equal to 90 percent, 75 percent, or 50 percent of ABC. Given that the intent of the Council is to close the commercial harvest and prohibit the sale of golden tilefish if the ACT is met or projected to be met, these other alternatives would likely result in larger profit reductions to small entities than the preferred alternative.