

APPENDIX L

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 RIR, the regulatory flexibility analysis provides: 1) A statement of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for the proposed rule; 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 of the proposed rule 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 **Chapter 4**.

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

The purpose and need, issues, problems, and objectives of the proposed rule are presented in **Chapter 1.0**. The general purpose of this amendment is to develop a rebuilding plan to end overfishing and rebuild the spawning stock of red grouper through the implementation of a rebuilding schedule, rebuilding strategy and acceptable biological catch (ABC), commercial/recreational allocation, annual catch limits (ACL) and optimum yield (OY), annual

catch targets (ACTs) for the commercial and recreational sectors, and accountability measures (AMs) for the commercial and recreational sectors. This amendment would also define maximum sustainable yield (MSY) and minimum stock size threshold (MSST). 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. Previous amendments, whether already implemented or in the process of being implemented, have been considered in designing the various actions in this amendment.

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

This proposed action is expected to directly affect commercial fishers and for-hire operators. The SBA has 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 it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2005-2009, an annual average of 892 vessels with valid permits to operate in the commercial snapper grouper fishery landed snapper grouper, generating dockside revenues of approximately \$13.817 million (2009 dollars). Each vessel, therefore, generated an average of approximately \$15,500 in gross revenues from snapper grouper. Gross dockside revenues by area were distributed as follows: \$4.196 million in North Carolina, \$3.612 million in South Carolina, \$3.219 million in Georgia/East Florida, and \$2.790 in the west coast of Florida. Vessels that operate in the snapper grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

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

From 2005-2009, an annual average of 2,018 vessels had valid permits to operate in the snapper grouper for-hire fishery, of which 82 are estimated to have operated as headboats. The for-hire fleet is comprised 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 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 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 but its extent is unknown, and all vessels are treated as independent entities in this analysis. A recent commenter on this amendment indicated he owns 12 snapper grouper commercial permits. For this fleet to reach the \$4 million threshold, each permitted vessel would have to generate yearly receipts of approximately \$333,000. It is not known whether or not this is the case, but it appears such amount is too high given the above noted average gross revenues per vessel.

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 action would not introduce any changes to reporting, record-keeping, and other compliance requirements which are currently required.

Substantial Number of Small Entities Criterion

The proposed action is expected to directly affect all Federally permitted commercial 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, it is determined that the proposed action will affect a substantial number of small entities.

Significant Economic Impact Criterion

The outcome of ‘significant economic impact’ can be ascertained by examining two issues: disproportionally and profitability.

Disproportionally: 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?

Redefining MSY and MSST and establishing a rebuilding schedule for red grouper would not alter the current harvest or use of the resource and thus would not affect the profitability of small entities.

Defining a rebuilding schedule as the maximum time to rebuild the stock to biomass at MSY would add flexibility in designing management measures that would have the least short-term effects on the profitability of small entities.

Given the preferred alternatives for all other actions in this amendment, the proposed action on the rebuilding strategy and ACL would result in an increase in commercial vessel profits of \$990,000 over the first 7 years of the rebuilding schedule with an additional \$310,000 generated in years 8 through 10 assuming a discount rate of 7%. The corresponding effects on the for-hire vessels would also be an increase in profits but the magnitude cannot be estimated with available information.

To the extent that the proposed action for the commercial/recreational allocation of total ACL would maintain the baseline landings distribution of red grouper between the two sectors, no profit changes to the commercial or for-hire vessels may be expected to occur as a direct result of the proposed action.

The proposed action for ACL/OY would provide the largest ACL/OY for red grouper, so that this proposed action may be expected to increase the profits of the commercial and for-hire vessels. The proposed action eliminating the aggregate black grouper, red grouper, and gag quota would tend to ensure profit increases from the largest ACL/OY alternative for red grouper would be realized.

The proposed action on ACT may be expected to reduce the profits of for-hire vessels should the ACT be used to trigger AMs but the magnitude of such reduction cannot be estimated with available information. There is no proposed ACT for the commercial sector.

The proposed AM for the commercial sector is expected to reduce the profits of commercial vessels especially that the most recent landings information suggests the ACL would likely be exceeded in the near future.

In principle, the proposed AM for the recreational sector is expected to reduce the profits of for-hire vessels. However, the most recent recreational harvest of red grouper is well below the proposed ACL for the recreational sector, suggesting the proposed AM has a low probability of being triggered in the near future. In effect then, the proposed AM for the recreational sector may be expected to have a low likelihood of affecting the profits of for-hire vessels in the near future.

Description of Significant Alternatives

Two alternatives, including the preferred alternative, were considered for the re-definition of MSY. The first alternative, the no action alternative, would retain the definition of MSY which would not be in accordance with the conclusions of the latest stock assessment. This alternative, like the preferred alternative, would not directly affect the profitability of small entities.

Five alternatives, including the preferred alternative, were considered for the redefinition of MSST. The first alternative, the no action alternative, would retain the definition of MSST as

equal to natural mortality (M) times the biomass at MSY . The second alternative would set SST equal to 50 percent of biomass at MSY . The third alternative would set $MSST$ equal to 85 percent of biomass at MSY . The fourth alternative would set $MSST$ as the minimum stock size at which rebuilding to MSY would be expected to occur within 10 years at the minimum fishing mortality threshold level. All these alternatives, like the preferred alternative, would not directly affect the profitability of small entities.

Five alternatives, including the preferred alternative, were considered for the rebuilding schedule. The first alternative, the no action alternative, would not implement a rebuilding schedule. This alternative would not comply with Magnuson Act requirement to rebuild an overfished red grouper stock. The second, third, and fourth alternatives would establish a rebuilding period of 3 years (shortest), 7 years, and 8 years, respectively. These other alternatives would provide for a shorter rebuilding timeframe than the preferred alternative, and thus may be expected to afford lesser flexibility in designing management measures that would minimize the economic effects on the profits of small entities.

Six alternatives, including the preferred alternative, were considered for the rebuilding strategy and acceptable biological catch (ABC). The first alternative, the no action alternative, would not establish a rebuilding strategy for red grouper. Although the rebuilding strategy is currently specified ($F_{45\%SPR}$), the ABC , ACL , and OY levels are not explicitly stated. The specification of targets and limits is a crucial component of any management program involving natural resources. Without the designation of these components, regulations may not be sufficient to prevent overfishing and rebuild the stock. The second alternative would define a rebuilding strategy that sets ABC equal to the yield at $F_{REBUILD}$, which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 10 years. This alternative would provide the best profitability scenario for the commercial and for-hire vessels over the entire rebuilding timeframe. However, it would allow a higher fishing mortality rate than what would be appropriate if the stock was not overfished. Both this alternative and the preferred alternative would maintain catches at a similar level to what they have been in recent years, but the preferred alternative is more consistent with fishing at a level that would produce OY . The third alternative would define a rebuilding strategy that sets ABC equal to the yield at 65 percent of F_{MSY} . This alternative would likely result in lower profits to small entities than the preferred alternative, because it would require more restrictive management measures. The fourth alternative would define a rebuilding strategy that sets ABC equal to the yield at $F_{REBUILD}$, which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 7 years. This alternative would likely result in lower profits to small entities than the preferred alternative, because it would require more restrictive management measures. The fifth alternative would define a rebuilding strategy that sets ABC equal to the yield at $F_{REBUILD}$, which is a fishing mortality rate that would have a 70 percent probability of rebuilding success to biomass at MSY in 8 years. This alternative would likely result in lower profits to small entities than the preferred alternative, because it would require more restrictive management measures.

Two alternatives were considered for sector allocation, with one alternative being the no action alternative which would not establish sector allocation and the second would establish sector allocation. The no action alternative would not allow specification of sector ACL and

corresponding AM, such that both sectors would be accountable for any ACL overages even if there is only one offending sector. Under the second alternative, five subalternatives including the preferred subalternative were considered. The first subalternative would establish a 52 percent commercial and 48 percent recreational allocation; the second subalternative, 54 percent commercial and 46 percent recreational allocation; the third subalternative, 49 percent commercial and 51 percent recreational allocation; and, the fourth subalternative, 41 percent commercial and 59 percent recreational allocation. All these alternatives, including the preferred alternative, would base the allocation ratio solely on sectoral distribution of landings. No economic valuation was considered due to the absence of sufficient information. In terms of effects on the profits of small entities, the general nature of the various allocation alternatives is to favor one sector over another. The higher the allocation to one sector, the higher would be the profit potential to that sector and the lower would be the profit potential to the other sector. Among the alternatives, the preferred alternative was found to have neutral effects on profits on both the commercial and for-hire vessels, because the resulting allocation would be the same as the historical sectoral distribution of landings used as the baseline landings distribution.

Six alternatives, including the three preferred alternatives, were considered for ACL and OY. The first alternative, the no action alternative, would not establish a specific ACL for red grouper. This alternative would not afford specific management actions to specifically address the overfished/overfishing status of the red grouper stock. The second alternative would specify an ACL for red grouper equal to OY and OY equal to 90 percent of ABC. This alternative would result in lower profit potential to small entities than the preferred alternative. The third alternative would specify an ACL for red grouper equal to OY and OY equal to 80 percent of ABC. This alternative would result in lower profit potential to small entities than the preferred alternative.

Three alternatives, including the preferred alternative, were considered for the commercial sector ACT. The first and second alternatives would set the commercial ACT equal to 90 percent and 80 percent of commercial ACL, respectively. If ACTs were used to trigger AM applications, these two alternatives would result in lower profits to small entities than the preferred alternative.

Four alternatives, including the preferred alternative, were considered for the recreational ACT. The first alternative, the no action alternative, would not specify a recreational ACT for red grouper. This alternative would not allow consideration of management uncertainty which is deemed high in the recreational sector. Without consideration of management uncertainty, the probability of exceeding the ACL would be relatively high, increasing the probability of implementing more stringent management measures. The second and third alternatives would specify a recreational ACT equal to 85 percent and 75 percent of the recreational ACL, respectively. The second alternative would likely result in the same effects on the short-run profits of small entities as the preferred alternative. The third alternative would likely result in lower profits to small entities than the preferred alternative.

Three alternatives, including the two preferred alternatives, were considered for the commercial AM. The only alternative to the preferred alternatives is the no action alternative, which would not specify a commercial AM for red grouper. This alternative would retain the current commercial AM specified for the group of species consisting of red grouper, black grouper, and

gag. This particular AM could be either more or less restrictive than the preferred AM alternatives specified for red grouper, but it would not allow implementing management measures that would specifically address the overfished/overfishing condition of the red grouper stock. In addition, the current AM for the aggregate species of red grouper, black grouper, and gag does not provide for post-season AM. The lack of post-season AM under the no action alternative would result in higher short-term profits to small entities than the preferred alternative, but there is an expectation that the long-term profit environment would be better under the preferred alternatives. It should also be noted that a separate ACL/AM for black grouper is proposed under the Comprehensive ACL Amendment, negating the need for the aggregate species ACL/AM.

Four alternatives were considered for the recreational AM. The first alternative is the no action alternative which would not set a specific recreational AM for red grouper. This alternative would retain the current recreational AM specified for the group of species consisting of red grouper, black grouper, and gag. This particular AM could be either more or less restrictive than the preferred AM alternatives specified for red grouper, but it would not allow implementing management measures that would specifically address the overfished/overfishing condition of the red grouper stock. It should also be noted that a separate ACL/AM for black grouper is proposed under the Comprehensive ACL Amendment, negating the need for the aggregate species ACL/AM.

The second alternative would specify a recreational AM trigger and includes five subalternatives, including the preferred subalternative. The first subalternative would not specify a recreational AM trigger. This subalternative would likely result in higher profits to small entities than the preferred subalternative. However, it would not allow specifically addressing the overfished/overfishing condition for red grouper. The second subalternative specifies that AM would be triggered if the mean recreational landings for the past three years exceed the recreational ACL. The profit environment for small entities under this subalternative may be lower or higher than that of the preferred subalternative, depending on whether the trend in landings is upward or downward. The third subalternative specifies that AM would be triggered if the modified mean (highest and lowest landings dropped) landings for the past five years exceed the recreational ACL. This subalternative has about the same nature of effects on profitability as the second subalternative, although the magnitude may be lower. The fourth subalternative specifies that AM would be triggered if the lower bound of the 90 percent confidence interval estimate of the MRFSS landings' population mean plus headboat landings is greater than the recreational ACL. This subalternative has about the same nature of effects on profitability as the first subalternative, but the magnitude could be lower or higher.

The third alternative for a recreational AM would specify a recreational in-season AM and includes two subalternatives, of which one is the preferred subalternative. The only subalternative to the preferred alternative is the no action alternative which would not specify a recreational in-season AM. This alternative would result in higher short-term profits to small entities, but it would not allow specifically addressing the overfished/overfishing condition for red grouper.

The fourth alternative for a recreational AM would specify a recreational post-season AM if the current year's recreational ACL is exceeded, and includes seven subalternatives, of which one is the preferred subalternative. The first subalternative would not specify a recreational post-season AM. This subalternative would result in higher short-term profits to small entities than the preferred alternative, although the expectation is for long-term profitability to be better under the preferred subalternative. The second subalternative would compare the recreational ACL with the 2011 landings for 2011, with the mean 2011 and 2012 landings for 2012, and mean landings of the most recent three years for 2013 and beyond for triggering a post-season AM. This subalternative may or may not have the same nature of effects on profitability as the preferred alternative, depending on the specific AM measure that would be implemented. The third subalternative specifies monitoring the following year's landings for persistence in increased landings, with the Regional Administrator taking management actions as necessary. This subalternative would likely result in lower adverse effects on short-term profits than the preferred alternative, although the actual effects would depend on the type of restrictions that would be imposed by the RA. The fourth subalternative specifies monitoring the following year's landings for persistence in increased landings, with the Regional Administrator publishing a notice to reduce the recreational fishing season as necessary. This subalternative would likely result in less adverse effects on short-term profits than the preferred subalternative to the extent that post-season AM may not be imposed depending on how persistent the upward trend in landings would be. If a post-season AM were necessary, this subalternative could still result in higher profits than the preferred alternative since it would set a specific closure date, allowing for-hire vessels to make the necessary changes in their operations. The fifth subalternative specifies monitoring the following year's landings for persistence in increased landings, with the Regional Administrator publishing a notice to reduce the recreational bag limit as necessary. This subalternative would likely result in less adverse effects on short-term profits than the preferred subalternative to the extent that post-season AM may not be imposed depending on how persistent the upward trend in landings would be. If a post-season AM were necessary, this subalternative could still result in higher profits than the preferred alternative since it would allow for-hire vessels to operate year round, although at lower bag limits. The sixth subalternative specifies that the Regional Administrator publish a notice to reduce the following year's recreational fishing season to ensure landings do not exceed the following fishing season's recreational ACL. There is a good possibility that this subalternative would result in the same fishing season length as the preferred alternative, although some other measures, like bag limit reduction, may be employed under the preferred alternative to effect a longer season that would provide more fishing opportunities. Whichever of these two subalternatives can provide for more fishing opportunities may be considered better than the other from the standpoint of profits to small entities.