DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-3; Notice 4]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: On October 8, 1991, NHTSA published in the **Federal Register** a final rule that amended requirements for the performance of trailer pneumatic brake systems in the event of pneumatic system failure. (56 FR 50666) It has come to the agency's attention that the docket number in the heading of that notice is incorrect. This notice corrects the docket number to read "[Docket No. 90-3, Notice 3]"; the October 8, 1991 notice had read "[Docket No. 90-3, Notice 2]." Because of the corrective nature and insignificant impact of this notice, NHTSA is making this amendment effective upon its publication.

EFFECTIVE DATE: This correction to the October 8, 1991 notice is effective October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Shaw, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2992).

Issued on: October 25, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 910657-1244]

RIN 0648-AD58

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Snapper-Grouper fishery of the South Atlantic Region (FMP). This final rule (1) adds spadefish, lesser amberjack, and banded rudderfish to the management unit; (2) requires a Federal permit to harvest fish in the snapper-grouper fishery in the exclusive economic zone (EEZ) in excess bag limits, to fish for tilefish in the EEZ, or to use a sea bass trap in the EEZ; (3) requires reports of catch and/or effort from fishermen and dealers; (4) establishes minimum size limits for many of the species in the fishery; (5) requires fish in the snapper-grouper fishery to be off-loaded with head and fins intact, with a limited exception for greater amberjack; (6) establishes a presumption that a wreckfish possessed shoreward of the outer boundary of the EEZ was harvested from the EEZ; (7) requires that wreckfish be off-loaded only between 8 a.m. and 4:30 p.m. and that 24-hour notice be given of an off-loading; (8) prohibits the harvest of Nassau grouper in the EEZ; (9) limits the harvest of greater amberjack and mutton snapper during their spawning seasons; (10) prohibits the use of fish traps in the EEZ and the use of sea bass traps in the EEZ south of Cape Canaveral, Florida; (11) in the EEZ north of Cape Canaveral, limits the harvest by sea bass traps to sea basses plus bag-limit amounts for other species; (12) prohibits the use of entanglement nets (gillnets, trammel nets, etc.) in a directed fishery for fish in the snapper-grouper fishery; (13) prohibits bottom longlining for wreckfish in the EEZ; (14) prohibits the use of longlines for fish in the snapper-grouper fishery in the EEZ in water with a charted depth of less than 50 fathoms (91.5 meters); (15) establishes bag and possession limits for many species in the fishery; (16) removes Federal regulations for the Little River Reef special management zone (SMZ); (17) prohibits the use of powerheads within the SMZs off South Carolina; and (18) establishes a framework procedure for establishing or modifying certain management measures. The intended effects of this rule are to prevent overfishing of the snapper-grouper resource; rebuild species that are overfished; collect necessary data for management; provide for a flexible management system that minimizes regulatory delays and rapidly adapts to changes in resource abundance, new information, and changes in fishing patterns; reduce user conflicts; minimize habitat damage; and promote public comprehension of, voluntary compliance with, and enforcement of snapper-grouper management measures.

EFFECTIVE DATES: January 1, 1992, except that §§ 646.4 (b) and (d), 646.7(aa), and 646.22(g)(2) are effective October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-893-3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the FMP prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The backgrounds and rationales for the measures in this final rule are contained in the proposed rule (56 FR 29922, July 1, 1991, corrected by 56 FR 32000 July 12, 1991) and in Amendment 4 to the FMP, the availability of which was announced in the **Federal Register** (56 FR 24773, May 31, 1991), and are not repeated here.

The prohibition of fish traps is a controversial issue. As demonstrated in Amendment 4, as well as in the responses contained in this final rule, the use of fish traps in this fishery presents unique problems which likely are not present in other fisheries. Most fisheries in which traps are used are crustacean fisheries, which target species such as blue crab, stone crab, and spiny lobster. Crustacean Fisheries in the southeast have not suffered from recruitment or growth overfishing. Conversely, most snappers and groupers have experienced growth and recruitment overfishing. Hence, a fundamental biological distinction exists between this and other southeast trap fisheries.

Of particular note is the concentrated use of fish taps in waters off the southern coast of Florida, which coincidentally is an area in which many species of this management unit suffer significant stress. Likewise, other fisheries probably face a less severe rebuilding task; thirteen species of this fishery have been documented as severely overfished, and an additional fourteen species are believed overfished. Some problems associated with the difficulties in enforcing fish trap regulations may be present in other fisheries. However, factors such as strong currents and storms are unique to the south Florida fish trap fishery.

Comments and Responses

Numerous comments on the proposed rule were received, primarily by those who either opposed or supported the prohibition on the use of fish traps. All comments are addressed below.

Prohibition of Fish Traps

Ten trap fishermen representing 13 families submitted the following comments:

Comment: (1) The prohibition of fish traps will put them out of business and cause them to lose their homes and life savings because fish trappers cannot use alternative gear in their fishing area to catch enough reef fish to make a living.

Response: The prohibition of fish traps will have an adverse economic impact upon some trap fishermen. However, most fish trap fishermen already fish in other fisheries, such as spiny lobster and stone crab; thus, loss of income from fish trap catches will be mitigated to the extent that trap fishermen can shift effort to these or alternative fisheries. Also, fish can be captured by alternative gear, such as hook and line.

Comment: (2) Fish trappers cannot easily move to alternative fisheries because there are too many fishermen already and some fisheries, such as spiny lobster, will not admit new fishermen if they have not previously participated in that fishery.

Response: Most, but not all, fish trappers have fished for spiny lobster and stone crab; hence, they can enter other fisheries. NMFS acknowledges that the alternatives are limited and that there likely will be short-term adverse economic impacts on some fish trap fishermen.

Comment: (3) Prohibition of fish traps will have a minimal impact upon the welfare of the resource because the total catch of trap fish is less than 10 percent of the commercial catch and even a smaller portion of the total catch. Also, fish that are not taken by fish traps will most likely be taken by alternative gear; hence, the resource will not benefit. In addition, major components of the trap catch, such a mutton snapper, doctorfish, parrotfish, squirrelfish, goatfish, and wrasses are not overfished; thus, the trap catch is not hurting them.

Response: NMFS believes that with the prohibition of fish traps, and with the other measures, the stocks, especially off south Florida, will be able to recover. Once the stocks have reached a higher level of abundance, the hook-and-line or other gear catch will become equivalent to or exceed the level of the former trap catch. The increased abundance of the resource will contribute to the rebuilding process.

Comment: (4) There is a demand for non-traditional fish, such as doctorfish, parrotfish, and squirrelfish, by ethnic minorities, who cannot afford traditional species, and non-traditional fishes are taken primarily by traps; hence, prohibition of fish traps will deny poor people access to fresh fish.

Response: Because non-traditional species are lumped into an "unclassified" fish category in fishery statistics, the supply and demand for non-traditional species is unknown, thus, NMFS cannot estimate the potential loss of non-traditional fish to consumers.

Comment: (5) Fish traps are already restricted to a narrow area south of Miami seaward of 100 feet. This restriction has eliminated the conflict with other user groups and minimizes damage to reef habitat because most reefs are located within 100 feet of water.

Response: The ban on fish traps will lessen the conflict among user groups in Florida and will eliminate any habitat damage caused by trap-related activities. Moreover, it will reduce the illegal placement of traps in waters shallower than 100 ft.

Comment: (6) The Council has no evidence that fish traps kill tropical fish, as alleged in Amendment 4.

Response: Because the data base is limited, the catch of tropical fish by fish traps cannot be quantified. However, several scientific articles document that tropical fish are taken by fish traps and the Council received public input that fish traps resulted in injury and death to tropical fish. The prohibition of traps will eliminate that source of mortality.

Comment: (7) The Council has not documented the size of fish recruited to different gear types, and, thus, cannot claim that traps take fish smaller than alternative gear, such as hook and line.

Response: NMFS agrees the Council cited no data to support the Council's contention that fish traps recruit fish smaller than alternative gear, such as hook and line; although, for the nature of the gear type, this is a reasonable conclusion. Notwithstanding the uncertainty of the effect of traps on smaller fish, adequate rationale for the measure exists independently of this point.

Comment: (8) The primary cause of decreased fish abundance in south Florida waters is pollution and excessive coastal development, not fish traps.

Response: NMFS agrees that pollution and coastal development pose a serious threat to south Florida fisheries and must be considered a major factor in the decline of at least some south Florida fisheries, but it does appear that fish traps are an impediment to recovery of overfished species. The prohibition of fish traps will facilitate recovery of overfished stocks.

Comment: (9) Information in the preamble to the proposed rule that fish traps are inexpensive and easily built is inaccurate; in fact, a fish trap is expensive (up to $175) and takes a day to build. Also, few traps are lost and ghost fishing is a minor problem. Further, the industry proposal requiring use of untreated jute for door fasteners would minimize the problem of ghost traps.

Response: NMFS acknowledges that the cost of fish traps varies. However, NMFS has determined that the estimate in the regulatory impact review (RIR) represents an accurate cost of the average trap. Because the data base is limited, the extent of lost traps and associated ghost fishing is not known; however, the best available information indicates trap loss varies from 20 to 100 percent annually. The prohibition will minimize ghost fishing. NMFS agrees that the use of jute fasteners would be an improvement, but concludes such a requirement is difficult to enforce. Enforcement of trap regulations is a problem in Federal waters, independent of enforcement problems extant in state waters. The problem arises in part because of the difficulty in locating and observing the gear. The problem is exacerbated by theft of marked traps, strong currents, and storms, all of which result in lost traps. Also, the fact that Florida cannot enforce its law to exclude fish traps from state waters as long as fish traps are allowed in the EEZ is a consideration.

Comment: (10) The Council is ignoring the consumers of trap caught fish (6,800 consumers sent letters to the Council opposing the ban of fish traps).

Response: The Council is not ignoring consumers of trap-caught fish and believes that despite the wishes of the consumers, the long-term benefits of prohibiting fish traps outweigh any short-term disadvantages.

Comment: (11) The Council failed to consider seriously the industry proposal to regulate the fish trap industry. Trappers are willing to accept more stringent management measures, such as limited access to the fishery, a limit on number of traps, and expulsion from the fishery if convicted of two major violations.

Response: The Council discussed the industry's proposal and, in fact, this was the basis of a motion debated during the Council meeting wherein a two-tiered management system would have been established with the industry proposal (or some modification) applying in the south Florida area and another type of

approach north of this area. The Council concluded that the problems associated with fish traps (e.g., non-selectivity by size and species, non-compliance with escape panels, enforcement problems, inability of mesh sizes to let 20-inch groupers escape, ghost fishing, habitat damage, inconsistency with Florida's coastal zone management plan, incidental harvest of ornamental fish) would continue even under the suggested modifications. The Council believes that the benefits of prohibiting fish traps outweigh the disadvantages; hence, the industry proposal was rejected. NMFS agrees with the Council position.

Comment: (12) Fish trappers provided the Council with two scientific reports that showed that traps were environmentally safe and efficient.

Response: The Council considered all available scientific information, including the reports provided by fish trappers, and concluded that the benefits of prohibiting fish traps outweigh the disadvantages.

Comment: (13) Survivability of released fish from traps is at least comparable and probably exceeds that of hook-caught fish.

Response: NMFS believes that the data base on survivability of released trap-caught fish as compared with hook-caught fish is too weak to draw definitive conclusions.

Comment: (14) Amendment 4 violates national standard 1 because optimum yield from the fishery will not be attained unless fish traps are used.

Response: Presently, optimum yield is not being obtained because of the overfished condition of the snapper-grouper stock. Prohibiting fish traps will help rebuild the stock while allowing an orderly utilization of the resource. Additional measures, such as bag limits, minimum size limits, and restrictions on catch during spawning periods, are also included in Amendment 4 to rebuild the resource and obtain optimum yield.

Comment: (15) Amendment 4 violates national standard 2 because the best available data either was not used or was interpreted incorrectly by the Council.

Response: The Council used the best available scientific data and NMFS believes that the Council's interpretation of the data supports the management measures proposed in Amendment 4; hence, this is consistent with national standard 2.

Comment: (16) Amendment 4 violates national standard 4 because fish traps are allowed in the Gulf; whereas, Amendment 4 will prohibit them in the south Atlantic states.

Response: National standard 4 prohibits discrimination between residents of different states. Since management measures in Amendment 4 apply equally to the residents of all states, this is consistent with national standard 4. The measure is an appropriate response to circumstances existing in the South Atlantic snapper-grouper fishery. Although this prohibition will not preserve the status quo, it will maximize the overall benefits to the fishery; thus, it is consistent with national standard 4.

Comment: (17) Amendment 4 violates national standard 5 because fish traps are efficient gear.

Response: National standard 5 promotes efficiency where practicable; however, efficiency is only one criterion when considering whether or not to permit use of gear. Moreover, because many traps are lost each year—reports indicate a 20 to 100 percent annual loss rate—the overall usefulness of traps may be less than believed because fish killed by ghost fishing are not available to consumers. Efficient gears have been prohibited in a number of fisheries when other factors, such as bycatch, excessive mortality of juveniles, and habitat damage, have been considered; hence, this is consistent with national standard 5.

Comment: (18) Fish trap enforcement is not a major problem. For example, three trappers were stopped 16 times in the past 3 years and were never given a citation. A report from the Florida Marine Patrol, submitted to a fish trapper, stated that there were no records of fish trap violations in that district (unknown district). Another fisherman stated that in a recent year only 0.007 percent of NMFS-reported fishery violations were due to fish traps; only 0.003 percent of Florida-reported fishery violations were due to fish traps. The trappers stated that they are honest and do not constitute a law enforcement problem. Fish trappers reported that at-sea law enforcement was a problem for all EEZ fisheries; thus, fish traps should not be singled out for special attention.

Response: The Council and NMFS believe that law enforcement is significantly hindered because of the inability to locate traps and to inspect their construction, as discussed above. Just because law enforcement cases are very low in a particular district, or overall in south Florida, is not indicative that violations are low. To document a violation, an enforcement officer must catch a fisherman pulling traps in a prohibited area or fishing with illegal gear. The chance of such encounters is limited.

Comment: One thousand six hundred twenty-six fish consumers signed form letters opposing the prohibition of fish traps because of concerns it would adversely affect the availability of fresh, locally caught fish and would cause the price of fish to rise. Also, they stated that they had a right to share the renewable fish resources of this country, and they did not want imported fish.

Response: While the prohibition of fish traps may result in some short-term reduction of availability of locally caught fish, it is likely that at least some of the fish formerly taken by fish traps will be taken by alternative gear. This will moderate the impact of prohibiting fish traps. In the longer term, recovery of these species will provide even greater local availability. Also, it is unlikely that the measure will cause the price of fish to increase substantially because the majority of fish consumed by Americans already is imported.

Comment: Two hundred twenty-eight individuals submitted identical form letters opposing the prohibition of the use of fish traps. The major points of the letter were: (1) There was no research or scientific information to support Amendment 4; thus, the amendment is in violation of national standard 2; (2) the prohibition of use of fish traps would eliminate the livelihood of commercial fishermen; (3) the impact of prohibiting fish traps would not benefit the resource because fish formerly taken by traps would be taken by alternative gear, such as hook and line; and (4) the regulatory impact review (RIR) does not answer the real problem that prohibition of fish traps will create for trap fishermen.

Response: NMFS concludes that the Council used the best available data, that the Council's interpretation of the data support the management measures proposed in Amendment 4, and, thus, Amendment 4 is consistent with national standard 2. NMFS agrees that the prohibition of use of fish traps will have a short-term adverse economic impact upon some trap fishermen. Loss of income to trap fishermen will be mitigated to the extent that trap fishermen can shift to alternative gear or other fisheries. The RIR addresses these impacts, stating that other gear probably will take some of the fish currently caught by fish traps and that additional management measures will assist in rebuilding stressed resources. The RIR also enumerates benefits of banning fish traps that include reducing law enforcement costs, minimizing habitat damage, minimizing ghost fishing by lost or abandoned traps, eliminating mortality and injuries to fish taken by traps, minimizing local depletion of

stocks in waters contiguous to heavily populated areas, and making state and Federal fishery regulations more consistent. Law enforcement problems are associated with fish traps, as is discussed above.

NMFS believes that the overall benefits of banning fish traps, especially the conservation effects and benefits associated with reduced enforcement costs to both Florida and the Federal government, outweigh the negative economic impacts on fishermen using fish traps.

Comment: The North Carolina Division of Marine Fisheries (NCDMF) opposes the ban on the use of fish traps because there is no evidence that fish traps created or will perpetuate overfishing. It stated that fish traps can be controlled through rules that establish mesh sizes, require escape panels, limit the number of traps, and require that traps be tended. The NCDMF stated that fish in fish traps are pulled slower than those taken by hook-and-line gear; hence, mortality of undersized fish taken by traps should be less than that experienced by hook-and-line gear. The NCDMF concluded that prohibition of fish traps may result in eliminating a fishing gear that is efficient, more selective, and has higher potential for survival of released fish.

Response: The Council and NMFS disagree with NCDMF and believe that the use of traps will perpetuate overfishing in this area. NMFS acknowledges that NCDMF makes some theoretically valid arguments. However, when a trap in under water, mesh sizes, escape panels, and number of traps are difficult to verify. Practically, NMFS concludes that it is extremely difficult to enforce fish trap regulations effectively and that this factor outweighs any possible benefits from continued use of fish traps.

Comment: Three commercial fishing organizations and one individual opposed the ban on fish traps. They stated that fish traps were already restricted to a narrow area, were selective in the fish they captured, captured only a minor share of the total reef fish catch, caught species that for the most part were not stressed, that fish caught and released from traps had a high survival rate, and that the prohibition of fish traps would deny fresh fish to consumers. Further, they stated that commercial fishermen had cooperated with Federal biologists to provide data on fish trapping and that the data base used to prohibit fish traps was very weak. They recommended that the Council adopt the industry plan for regulation of fish traps. Also, they stated that habitat degradation and chemical pollution caused by an expanding coastal population and excessive coastal development were depressing reef fish stocks; yet, commercial fish trappers were being blamed for everything.

Response: While the data base on fish traps is limited, as with many southeastern fisheries, the Council and NMFS believe, as discussed earlier, that the overall benefits of prohibiting the use of fish traps will outweigh the adverse economic impacts on fish trap fishermen. Habitat degradation and chemical pollution caused by expanding coastal population and coastal development are problems that cannot be addressed by fishery management measures.

Comment: The U.S. Fish and Wildlife Service, the Center for Marine Conservation, the Florida Marine Fisheries Commission (FMFC), thirty-eight individuals, six commercial fishermen, a charterboat association, seven sports fishing clubs, the Conservation Alliance of St. Lucie County, two state (Georgia and Florida) sports fishing organizations, one commercial fishing organization, and a charter vessel captain, all supported the prohibition of fish traps.

Response: NMFS concurs.

Restrictions on Use of Bottom Longlines

Comment: A vessel owner opposed the prohibition of use of bottom longline gear for snappers and groupers shoreward of the 50-fathom contour because longlines are an efficient gear and are not much different from a group of anglers on a headboat.

Response: The use of bottom longlines shoreward of the 50-fathom contour can result in habitat damage and conflict with other gear types, especially hook and line. NMFS believes that the benefits of reduced habitat damage and reduced conflict among user groups will outweigh the minor loss of efficiency associated with prohibition of the few longlines that are presently being used within 50 fathoms.

Comment: FMFC, two state (Georgia and Florida) sports fishing organizations, six sports fishing clubs, one individual, one charter boat captain, and one charter boat organization supported the prohibition of bottom longlines shoreward of 50 fathoms.

Response: NMFS concurs.

Entanglement Gear

Comment: FMFC, two state (Georgia and Florida) sports fishing organizations, six sports fishing clubs, and two individuals supported the prohibition of entanglement nets in the directed fishery for reef fish.

Response: NMFS concurs.

Size Limits

Comment: NCDMF did not support the commercial 12-inch minimum size limit for vermilion snapper because (1) the vermilion spawning stock ratio (SSR) is 28 percent—NCDMF believes that an SSR of 20 percent is adequate; and (2) the 12-inch minimum size limit will cause an immediate dramatic reduction in snapper landings in North Carolina. NCDMF also did not support the increase in size limits to 20 inches for red grouper and scamp because current stock assessment information indicates that both species are at or above 30 percent SSR and the increased size limit will result in SSRs exceeding 40 percent. The NCDMF recommended a 16-inch size limit for red grouper and scamp.

Response: The Council and NMFS believe that SSRs for reef fish should not be below 30 percent in order to prevent overfishing, which, by definition, occurs when a species has an SSR of less than 30 percent. Although there may be a slight loss of weight in North Carolina vermilion snapper commercial landings in 1992, the loss will be more than compensated for in future years because the yield-per-recruit will be substantially increased with the larger size limit. Also, because the price per pound of larger vermilion snapper exceeds that of smaller fish, fishermen will obtain more money for their catch. The impact on commercial fishermen in 1992 may be moderate because most commercial activity occurs in deeper water where most vermilion snapper exceed 12 inches in length. The Council chose a 20-inch size limit for red grouper in order to facilitate law enforcement and promote compliance with Florida's regulations. Since very few red grouper are caught in North Carolina, the impact of the red grouper size limit will be minimal. There may be a short-term impact on catches of scamp; however, the size limit will substantially increase the yield-per-recruit on scamp. Thus, any loss incurred in 1992 and 1993 will be more than compensated for in future years due to increased yield-per-recruit. Moreover, most scamp are taken in relatively deep water where most fish exceed 20 inches in length; thus, the size limit should have a minimal impact on commercial landings.

Comment: A Georgia sports fishing organization and an individual agreed with recreational size limits provided that commercial quotas are imposed.

Response: The Council and NMFS believe that the recommended size limits are necessary at this time either to rebuild overfished species or to prevent

future overfishing. The Council may impose commercial quotas in the future through the framework procedure should this prove necessary.

Comment: A Florida sports fishing organization supported most minimum size limits in Amendment 4, however, it recommended a 12-inch total length for recreational vermilion snapper, 13-inch total length for commercial vermilion and gray snapper, 12-inch fork length for gray triggerfish, 14-inch total length for mutton snapper; and 36-inch fork length for amberjack for all fishermen. A commercial fisherman also urged the Council to increase the size limit for mutton snapper to 14 inches.

Response: The Council rejected alternative recreational size limits for vermilion snapper, mutton snapper, gray triggerfish, and amberjack because the SSR for these species appears to be adequate. To the maximum extent possible, the Council is standardizing minimum size limits in order to promote compatibility with state regulations and compliance with regulations. If necessary in the future, the Council will address changes in size limits by using the framework procedure.

Comment: One member of the commercial fishing industry opposed the differential size limits between recreational and commercial fishermen. The individual stated that the differential size limit was biased against commercial fishermen.

Response: Many species in the snapper-grouper complex stratify by size and depth with larger fish being distributed further offshore. Also, many larger fish command higher prices than smaller fish. Commercial fishermen have the vessels and equipment to fish further offshore and the value of their catch is increased as fish size increases. Conversely, most recreational fishermen are ill-equipped to fish in deep water; hence, they tend to fish in nearshore waters where fish are smaller. The RIR shows that size limits tend to transfer fish from the recreational to the commercial sector, especially for red porgy, vermilion snapper, gag, scamp, and red snapper. NMFS believes that differential size limits for amberjack and vermilion snapper are justified for the above reasons.

Bag Limits

Comment: NCDMF contended that the ten-fish vermilion snapper bag limit will be unfair to North Carolina fishermen because vermilion snapper are the mainstay of both the commercial and recreational (headboat) fisheries.

Response: NMFS agrees with the Council that the ten-fish bag limit for vermilion snapper is adequate for recreational anglers. Commercial fishermen are required to obtain permits to exceed bag limits. With fairly restrictive size limits in place it will be considerably more difficult to catch ten fish. Further, available catch data indicate that most anglers in the region will be unable to catch ten fish; thus, the impact of the bag limit should be minimal.

Comment: A company that provides headboat services in the Florida Keys opposed including mutton snapper in the aggregate bag limit because mutton snapper are not stressed in the area where the company fishes.

Response: The Council received considerable public input that mutton snapper were under intensive fishing pressure that threatened the biological integrity of the resource. The Council and NMFS believe that a ten-fish aggregate bag limit for snappers is sufficient and necessary to prevent overfishing of mutton snapper. Also, available data indicate that few anglers in the region will be able to catch ten snappers; thus, the impact of the bag limit should be minimal.

Comment: Two state (Georgia and Florida) sports fishing organizations believed that bag limits should be linked to commercial quotas.

Response: NMFS agrees with the Council that commercial quotas are not necessary at this time. Commercial quotas may be imposed in the future through the framework procedure if necessary.

Framework Procedure

Comment: FMFC and NCDMF strongly supported the framework procedure.

Response: NMFS concurs.

Permit Requirements

Comment: Two state (Florida and Georgia) sports fishing organizations opposed the permitting requirements unless they are linked to establishment of commercial quotas.

Response: The Council and NMFS believe that commercial quotas are not necessary at this time. Commercial quotas may be imposed through the framework procedure if necessary.

Comment: A sports fishing club opposed the earned income requirement for permits.

Response: The Council and NMFS believe that an earned income requirement for a permit is necessary to ensure that only those fishermen that are primarily dependent on the fishery for a living are participating in the commercial fishery. Permits also will facilitate the establishment of a limited access regime for the snapper-grouper fishery should that be required.

Comment: FMFC supported permit requirements.

Response: NMFS concurs.

Addition of Species to the Management Unit

Comment: FMFC supported, with reservations, the addition of spadefish, lesser amberjack, and banded rudderfish to the management unit. FMFC emphasized that the addition of these species without Federal management measures should not be interpreted as inhibiting state regulations on the species.

Response: NMFS does not object to more stringent management measures provided that state regulations do not conflict with Federal regulations.

Spawning Restrictions

Comment: A Florida sports fishing organization recommended extending the amberjack spawning restriction to March and May in the future. Similarly, the organization recommended that the sale of mutton snapper be prohibited during the spawning restriction period for mutton snapper.

Response: NMFS shares the commenter's concern that allowance of sale during the spawning restriction could lead to increased harvest even under the bag limit. Nonetheless, NMFS concurs at this time with the Council's expressed intent to allow states to determine whether or not recreationally caught fish may be sold. If the regulations in this rule lead to excessive harvesting during the spawning season, a corrective plan amendment should be initiated.

Comment: A commercial fisherman opposed the spawning restriction for mutton snapper and contended that the resource was healthy.

Response: The Council received extensive public comment urging reduction of fishing pressure on mutton snapper and has chosen limited spawning restrictions to reduce fishing pressure while minimizing adverse impacts on user groups. Additional measures may be imposed through the framework procedure if necessary.

Changes From the Proposed Rule

The word "land" and its verb forms have variations in meaning. To clarify the regulations, this final rule replaces "land" and its verb forms with "off-load" and its verb forms throughout 50 CFR part 646.

To clarify the measurement of fish, the definition of "total length" is revised to specify that the tail may be squeezed

together, and figure 1 is revised to show measurement of total length with the tail squeezed.

The proposed rule required that an application for a vessel permit had to be submitted at least 60 days prior to the date on which the applicant desired to have the permit made effective. This final rule reduces that period to 30 days. Except for brief periods when applications for permits are extremely numerous, NMFS is able to process and issue a permit in significantly less time than 30 days. However, an application at least 30 days before it is needed provides time to clear up discrepancies in its initial submission. A person is encouraged to submit an application well in advance of its required use, particularly if a permit is needed in January 1992. Because of the expected number of applications in this initial requirement for permits in the snapper-grouper fishery, a person applying after December 4, 1991, will not be assured of receiving a permit by January 1, 1992.

This rule clarifies that a fee is charged for each application for a permit, rather than for each permit issued, and for each sea bass trap identification tag issued. NMFS's costs in administering the permit system are incurred for each application, rather than for each permit issued. Further, the amount of the fee would be included on each application form but would not be included in the codified regulations. The Magnuson Act authorizes a level of fees not exceeding the administrative costs in issuing the permits. Such costs are computed at least annually in accordance with the NOAA Finance Handbook. The fees thus calculated are subject to change for a number of reasons, including increases due to Federal pay raises and reductions due to improved efficiency in the permitting system. Reference in the regulations to the NOAA Finance Handbook regarding the computation of fees would preclude the necessity for regulatory amendments when the computations indicate a new level of fees. Currently, a fee of $34 is charged for each application for a vessel permit, $7 for a replacement permit, and $1 for each sea bass trap identification tag.

In § 646.4(d), the references to "fish trap" are corrected to "sea bass trap."

Section 646.4(e) on the issuance of permits is reworded for simplicity and clarity.

A prohibition is added at § 646.7(a) regarding activities for which a vessel permit is required, specifically, fishing for tilefish, using a sea bass trap, or fishing for wreckfish. Although these activities without a permit were proscribed in the proposed rule, no prohibition was included in the prohibitions section.

In addition, other minor changes are made for clarity and consistency of usage.

In the preamble to the proposed rule, NMFS noted that the distinctions between fish traps, sea bass traps, and crustacean traps are primarily in terms of their catch. Comments on appropriate alternate criteria were requested—none were received. Accordingly, the definitions of the various traps are unchanged in this final rule. The Council and NMFS remain interested in alternate criteria, perhaps based on size and construction.

Effective Dates

Longlining for wreckfish is prohibited by emergency rule (56 FR 18742, April 24, 1991, corrected by 56 FR 23619, May 22, 1991) and extension thereof (56 FR 33210, July 19, 1991) through October 16, 1991. In this final rule the prohibition on bottom longlining for wreckfish (§ 646.22(g)(2)) and its corresponding prohibition (§ 646.7(aa)) are effective October 25, 1991.

The Council requested that all other management measures in Amendment 4 become effective January 1, 1992. So that measures that depend on the possession of a permit may be effective at that time, the revised requirements and procedures for vessel permits and fees are effective upon filing of this final rule with the Office of the **Federal Register**. The period between filing and January 1, 1992, will allow sufficient time for owners and operators of vessels in the commercial snapper-grouper fishery to obtain and submit applications and for NMFS to process and issue permits.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), finds for good cause, namely, to provide for timely and effective implementation of necessary conservation measures, that it is contrary to the public interest to delay for 30 days the effective date of §§ 646.4 (b) and (d), 646.7(aa), and 646.22(g)(2).

Endangered Species Impacts

Pursuant to section 7 of the Endangered Species Act of 1973, a biological assessment was prepared for amendment 4, which concluded that neither the directed fishery for snapper-grouper nor implementation of the amendment would adversely affect any populations of endangered or threatened species. The Assistant Administrator concurs with that conclusion.

Classification

The Secretary of Commerce determined that amendment 4 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Council prepared an RIR for amendment 4, which concludes that this will have overall net economic benefits. For some of the management measures, reasonable quantification of net benefits was possible. For other measures, necessary data were not available and costs and benefits could be quantified only in part. Impacts were analyzed qualitatively when data did not allow quantitative analysis. Although many of the management measures in amendment 4 involve significant short-term economic impacts on both recreational and commercial fishermen, cost/benefit tradeoffs in the long term are expected to be mostly favorable. In many cases, the long-term costs associated with not taking action are projected to be higher than costs associated with the management measures.

The Council prepared an initial regulatory flexibility analysis as part of the RIR, which described the effects this rule would have on small business entities. Since the closure of the public comment period on the proposed rule, the Assistant Administrator has prepared a final regulatory flexibility analysis and has determined that this rule will have significant effects on small entities. As with the overall economic effects, the positive long-term impacts are expected to outweigh the negative short-term impacts.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, North Carolina, and South Carolina. Georgia does not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the

Coastal Zone Management Act, and all of the states agreed with the determinations.

This final rule contains three new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. These collections of information have been approved by the Office of Management and Budget and the following OMB control numbers apply: Applications for vessel permits (new)—0648-0205; catch and effort reports from selected, permitted vessels (new)—0648-0016; advance notice of off-loading wreckfish (new)—0648-0016; catch and effort reporting by selected charter vessels (revised)—0648-0016; catch and effort reporting by selected headboats (revised)—0648-0016; and information collected by NMFS port agents from dealers (receipts and prices paid for fish in the snapper-grouper fishery) and from fishermen (fishing vessel inventory) (revised)—0648-0013. The public reporting burdens for these collections of information are estimated to average 15, 10, 3, 18, 10, and 10 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (ATTN: Paperwork Reduction Act Projects 0648-0013, 0648-0016, and 0648-0205).

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.2, the definitions for "Black sea bass trap" and "Commercial fisherman" are removed; in the definition of "Fish in the snapper-grouper fishery", after the last species listed under "Grunts—Haemulidae", a new family, "Spadefishes—Ephippidae", and species are added, and in the listing of "Jacks—Carangidae", add "Lesser amberjack" and its genus and species to follow "Greater amberjack" and add "Banded rudderfish" and its genus and species to follow "Almaco jack"; new definitions for "Charter vessel", "Crustacean trap", "Fork length", "Headboat", and "Sea bass trap" are added in alphabetical order; and the definitions for "Fish trap" and "Total length" are revised to read as follows:

§ 646.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issued under § 646.4(b) is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Crustacean trap means a type of trap historically used in the directed fishery for blue crab, stone crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, and spiny lobster.

Fish in the snapper-grouper fishery means the following species:

* * * * *

Spadefishes—Ephippidae

Spadefish, *Chaetodipterus faber*

* * * * *

Jacks—Carangidae

* * * * *

Lesser amberjack, *Seriola fasciata*

* * * * *

Banded rudderfish, *Seriola zonata*

* * * * *

Fish trap means a trap used for or capable of taking fish, except a sea bass trap or a crustacean trap.

Fork length means the distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 1.)

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat with a permit issued under § 646.4(b) is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Sea bass trap means a trap, other than a crustacean trap, that contains at any time no more than 25 percent, by number, of fish in the snapper-grouper fishery other than bank, rock, and black sea bass.

* * * * *

Total length means the distance from the tip of the head (snout) to the furthermost tip of the tail (caudal fin), excluding any caudal filament. The tail may be squeezed together. (See Figure 1.)

* * * * *

3. Section 646.4 is revised to read as follows:

§ 646.4 Permits and fees.

(a) *Applicability.* (1) To be eligible for exemption from the bag limits specified in § 646.23(b); to engage in a directed fishery for tilefish in the EEZ; to use a sea bass trap in the EEZ north of Cape Canaveral, Florida; or to harvest or possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ, an owner or operator of a vessel must obtain a vessel permit. A vessel with longline gear and more than 200 pounds (90.7 kilograms) of tilefish aboard is considered to be in a directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 pounds of tilefish aboard harvested such tilefish in the EEZ.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, such vessel must adhere to the bag limits when operating as a charter vessel or headboat.

(3) For a vessel owned by a corporation or partnership to be eligible for a vessel permit, the earned income qualification specified in paragraph (b)(2)(ix) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) An owner or operator of a vessel using or possessing a sea bass trap in the EEZ must obtain a vessel permit, a color code, and a trap identification tag from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for a vessel permit.* (1) An application for a vessel permit must be submitted and signed by the owner (in the case of a corporation, a

qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vi) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(vii) If the applicant desires to fish for wreckfish, documentation that wreckfish caught by the vessel were sold during the 12 months preceding the application, or, in lieu thereof, documentation that equipment required specifically for use in the wreckfish fishery was on order or purchased for the vessel during the 12 months preceding the application;

(viii) If a sea bass trap will be used,

(A) The number, dimensions, and estimated cubic volume of the traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine traps for compliance with these regulations;

(ix) A sworn statement by the applicant certifying that, during one of the 3 calendar years preceding the application,

(A) More than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing; or

(B) His or her gross sales of fish were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000; and

(x) Proof of certification, as required by paragraph (b)(3) of this section.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(ix) of this section before a permit is issued.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director in writing within 30 days after any change in the information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section and for each sea bass trap identification tag required under § 646.6(d). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product of service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application or request for sea bass trap identification tags.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(ix) of this section. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 646.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A vessel permit issued under this section is not transferable or assignable. A person purchasing a permitted vessel who desires to fish for fish in the snapper-grouper fishery must apply for a permit in accordance with the provisions of paragraph (b) of this section. The copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, its state registration certificate that accompanies the application must be in the name of the new owner.

(h) *Display.* A permit issued under this section must be carried on board the permitted vessel at all times and such vessel must be identified as provided for in § 646.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

4. In § 646.5, figur · 1 is redesignated as Figure 2 of this part and placed at the end of this part and § 646.5 is revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) *Permitted vessels.* The owner or operator of a vessel for which a permit has been issued under § 646.4(b), and that is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received by the Science and Research Director not later than the 7th day after the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms.

(b) *Charter vessels and headboats.* The owner or operator of a charter vessel or headboat that operates in the EEZ off the South Atlantic states or in adjoining state waters that is selected by the Science and Research Director must maintain a fishing record for each fishing trip, or a portion of such trips as specified by the Science and Research Director, on a form available from the Science and Research Director. These forms must be submitted on a periodic basis, as specified by the Science and Research Director.

(c) *Dealers.* A person who receives fish in the snapper-grouper fishery by way of purchase, barter, or trade that were harvested from the EEZ off the South Atlantic states or from adjoining state waters, and who is selected by the Science and Research Director, must provide information on receipts of such fish and prices paid, by species, to the Science and Research Director at monthly intervals, or more frequently if requested.

(d) *Commercial vessel, charter vessel, and headboat inventory.* A person

described under paragraphs (a) or (b) of this section who was not selected to report must provide the following information when interviewed by the Science and Research Director:

(1) Name and official number of vessel and permit number, if applicable;

(2) Length and tonnage;

(3) Current home port;

(4) Fishing areas by statistical area (see Figure 2);

(5) Ports where fish were off-loaded during the last year;

(6) Type and quantity of gear; and

(7) Number of full- and part-time fishermen or crew members.

(e) *Additional data and inspection.* (1) Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a recreational fisherman, or a dealer is required upon request to make fish in the snapper-grouper fishery, or parts thereof, available for inspection by the Science and Research Director or an authorized officer.

(2) On demand, a fisherman or dealer must make available to an authorized officer all records of off-loadings, purchases, barters, or sales of wreckfish.

5. Sections 646.6 and 646.7 are revised to read as follows:

§ 646.6 Vessel and gear identification.

(a) *Official number.* A vessel for which a permit has been issued under § 646.4(b) must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Color code.* In addition, a vessel for which a permit has been issued under § 646.4(b) to fish with a sea bass trap must display its color code—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In the form of a circle at least 20 inches (60.8 cm) in diameter; and

(3) Permanently affixed to or painted on the vessel.

(c) *Duties of operator.* The operator of each fishing vessel specified in paragraph (a) or (b) of this section must—

(1) Keep the official number and color code clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(d) *Traps.* Each sea bass trap used or possessed in the EEZ must have affixed to it an identification tag provided by the Regional Director that displays the assigned permit number and a number indicating the specific tag number for that trap.

(e) *Buoys.* The use of buoys to identify sea bass traps is not required. Each buoy used to mark sea bass traps must display the designated color code and permit number so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches (5.1 cm) in height and affixed to each buoy.

(f) *Presumption of ownership.* A sea bass trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked or improperly marked sea bass trap or buoy deployed in the EEZ is illegal.

Such trap may be considered abandoned and may be disposed of in any appropriate manner by the Secretary. If an owner of an unmarked or improperly marked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

§ 646.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in a directed fishery for tilefish in the EEZ; use a sea bass trap in the EEZ north of Cape Canaveral, Florida; or harvest or possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ without a vessel permit, as specified in § 646.4(a)(1).

(b) Falsify information specified in § 646.4(b)(2) on an application for a vessel permit.

(c) Fail to display a permit, as specified in § 646.4(h).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 646.5 (a) through (d).

(e) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as specified in § 646.5(e)(1).

(f) Fail to make available records of off-loading purchases, barters, or sales of wreckfish, as specified in § 646.5(e)(2).

(g) Falsify or fail to display and maintain vessel and gear identification, as specified in § 646.6 (a) through (e).

(h) Possess a fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(1).

(i) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(2).

(j) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).

(k) Operate a vessel with fish in the snapper-grouper fishery aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in § 646.21(c) and § 646.23(e).

(l) Possess wreckfish in or from the EEZ in excess of the trip limit, as specified in § 646.21(d)(1).

(m) Transfer wreckfish at sea, as specified in § 646.21(d)(2).

(n) Off-load a wreckfish at a time not authorized or without prior notification, as specified in § 646.21(d)(4).

(o) Harvest or possess a jewfish or Nassau grouper in or from the EEZ or fail to release a jewfish or Nassau grouper taken in the EEZ, as specified in § 646.21 (e) and (f).

(p) During the wreckfish spawning-season closure or after a wreckfish quota closure, harvest or possess wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing, as specified in § 646.21(g) or § 646.24(b).

(q) During the greater amberjack and mutton snapper spawning seasons, exceed the bag limits for those species, as specified in § 646.21 (h) and (i).

(r) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).

(s) Use a fish trap in the EEZ, or use a sea bass trap in the EEZ south of Cape Canaveral, Florida, as specified in § 646.22 (b) and (c)(1).

(t) When using or possessing a sea bass trap north of Cape Canaveral, Florida, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(c)(2).

(u) Use or possess in the EEZ north of Cape Canaveral, Florida, a sea bass trap that does not conform to the requirements for degradable openings and mesh sizes specified in § 646.22(c)(3) and (4).

(v) Pull or tend another person's sea bass trap except as specified in § 646.22(c)(5).

(w) When using or possessing a crustacean trap in the EEZ, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d).

(x) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina, and Cape Canaveral, Florida, as specified in § 646.22(e)(1).

(y) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(e)(2) and (3).

(z) Use an entanglement net to fish for fish in the snapper-grouper fishery in the EEZ; or, aboard a vessel that fishes in the EEZ on a trip with an entanglement net on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(f).

(aa) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit specified in § 646.4(b) on board; or, aboard a vessel with a longline on board that fishes on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit specified in § 646.4(b) on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(g)(1).

(bb) Fish for wreckfish with a bottom longline; or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(g)(2)

(cc) Exceed the bag and possession limits, as specified in § 646.23 (a) through (c).

(dd) Transfer at sea fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f).

(ee) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.26 (b) and (c).

(ff) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

6. In § 646.21, paragraphs (a), (b), and (d) are revised and new paragraphs (f) through (i) are added to read as follows:

§ 646.21 Harvest limitations.

(a) *Minimum sizes.* (1) The following minimum size limits apply for the possession of fish in the snapper-grouper fishery in or from the EEZ:

(i) Black sea bass south of Cape Hatteras, North Carolina (35°15'N. latitude)—8 inches (20.3 centimeters), total length.

(ii) Lane snapper—8 inches (20.3 centimeters), total length.

(iii) Blackfin, cubera, dog, gray, mahogany, mutton, queen, schoolmaster, silk, and yellowtail snappers; and red porgy—12 inches (30.5 centimeters), total length.

(iv) Vermilion snapper—10 inches (25.4 centimeters), total length; or, for a vermilion snapper possessed aboard a vessel for which a permit has been issued under § 646.4(b)—12 inches (30.5 centimeters), total length.

(v) Red snapper and black, gag, red, scamp, yellowfin, and yellowmouth grouper—20 inches (50.8 centimeters), total length.

(vi) Greater amberjack—28 inches (71.1 centimeters), fork length; or, for a greater amberjack possessed aboard a vessel for which a permit has been issued under § 646.4(b)—36 inches (91.4 centimeters), fork length, or, if the head is removed, 28 inches (71.1 centimeters), measured from the center edge at the deheaded end to the fork of the tail. (See Figure 1.)

(2) A fish in the snapper-grouper fishery smaller than the minimum size limits of paragraph (a)(1) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered. In the cases of vermilion snapper and greater amberjack, the minimum size limits specified for such fish possessed aboard a vessel for which a permit has been issued under § 646.4(b) apply to sale, purchase, trade, or barter or attempts thereof.

(b) *Head and fins intact.* (1) Except as specified in paragraph (b)(2) of this section, a fish in the snapper-grouper fishery possessed in or taken from the EEZ must have its head and fins intact through off-loading. Such fish may be eviscerated but must otherwise be maintained in a whole condition.

(2) A greater amberjack possessed aboard or off-loaded from a vessel that has a permit specified in § 646.4(b) on board may be deheaded and eviscerated, but must otherwise be maintained in a whole condition through off-loading.

* * * * *

(d) *Wreckfish limitations.* (1) No vessel on any trip may possess wreckfish in or from the EEZ in excess of 10,000 pounds (4,536 kilograms), whole or eviscerated.

(2) A wreckfish taken in the EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the EEZ, regardless of where the wreckfish was taken.

(3) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the EEZ or in an Atlantic coastal state will be presumed to have been harvested from the EEZ unless accompanied by documentation that it was harvested from other than the EEZ.

(4) A wreckfish may be off-loaded from a fishing vessel only between 8 a.m. and 4:30 p.m., local time, and such off-loading must be preceded by 24-hour notice to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, Florida, telephone (813) 893-3145.

* * * * *

(f) *Nassau grouper prohibition.* A Nassau grouper may not be harvested or possessed in or from the EEZ. A Nassau grouper taken incidentally in the EEZ by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(g) *Wreckfish spawning-season closure.* During the period January 15 through April 15, each year, it is prohibited to: harvest or possess wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. The prohibition on sale, purchase, trade, or barter does not apply to trade in wreckfish that were harvested, off-loaded, and sold, purchased, traded, or bartered prior to January 15 and were held in cold storage by a dealer or processor.

(h) *Greater amberjack spawning-season limit.* During April, each year, south of Cape Canaveral, Florida (28°35.1' N. latitude—due east of the NASA Vehicle Assembly Building), the possession of greater amberjack in or from the EEZ is limited to the bag limit specified in § 646.23(b)(4), regardless of whether or not the vessel from which such amberjack were taken has a vessel permit.

(i) *Mutton snapper spawning-season limit.* During May and June, each year, the possession of mutton snapper in or from the EEZ is limited to the number that may be contained in the aggregate bag limit for snappers specified in § 646.23(b)(2), regardless of whether or not the vessel from which such mutton snapper were taken has a vessel permit.

7. In § 646.22, figure 2 is redesignated as figure 3 of this part and placed at the end of this part; paragraph (c) is redesignated as paragraph (e); paragraph (b) is revised; and new

paragraphs (c), (d), (f), and (g) are added to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(b) *Fish traps.* A fish trap may not be used in the EEZ. A fish trap deployed in the EEZ may be disposed of in any appropriate manner by the Secretary.

(c) *Sea bass traps.*

(1) *South of Cape Canaveral.* A sea bass trap may not be used in the EEZ south of Cape Canaveral, Florida (28°35.1'N. latitude—due east of the NASA Vehicle Assembly Building). A sea bass trap deployed in the EEZ south of Cape Canaveral, Florida, may be disposed of in any appropriate manner by the Secretary.

(2) *North of Cape Canaveral.* A person aboard a vessel that has on board a permit issued under § 646.4(b) who uses or possesses a sea bass trap in the EEZ north of Cape Canaveral, Florida, may not possess in or from the EEZ fish in the snapper-grouper fishery exceeding the following:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species except bank, rock, and black sea bass—zero.

(3) *Openings and degradable fasteners.* A sea bass trap is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior axis of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch (4.8-millimeter) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch (1.6 millimeter) diameter or smaller.

(4) *Mesh sizes.* A sea bass trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see Figure 3):

(i) Two-square-inch (5.08-square-centimeter) minimum open mesh area;

(ii) One-inch (2.5 centimeter) minimum length for shortest side;

(iii) Minimum distance of 1 inch (2.54 centimeters) between parallel sides of rectangular openings, and 1.5 inches (3.81 centimeters) between parallel sides of mesh openings with more than four sides; and

(iv) One-and-nine-tenths-inch (4.83 centimeter) minimum distance for diagonal measurement.

(5) *Tending traps.* A sea bass trap may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

(d) *Crustacean traps.* (1) A person aboard a vessel that has on board a permit issued under § 646.4(b) who uses or possesses a crustacean trap in the EEZ north of Cape Canaveral, Florida, may not possess in or from the EEZ fish in the snapper-grouper fishery exceeding the following:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species except bank, rock, and black sea bass—zero.

(2) A person aboard a vessel that does not have on board a permit issued under § 646.4(b) that uses or possesses a crustacean trap in the EEZ, or aboard a vessel that has on board a permit specified in § 646.4(b) who uses or possesses a crustacean trap in the EEZ south of Cape Canaveral, Florida, may not possess on any trip fish in the snapper-grouper fishery exceeding the following limits:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species—zero.

* * * * *

(f) *Entanglement nets.* (1) An entanglement net, including, but not limited to, a gillnet and a trammel net, may not be used to fish for fish in the snapper-grouper fishery in the EEZ. A person aboard a vessel that fishes in the EEZ on a trip with an entanglement net on board is limited on that trip to:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species in the snapper-grouper fishery—zero.

(2) For the purposes of this paragraph (f), an entanglement net is a flat, unmoored net, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

(g) *Longlines.* (1) *All fish in the snapper-grouper fishery.*

(i) A longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ—

(A) Where the charted depth is less than 50 fathoms (91.5 meters), as shown on the latest editions of NOAA coast charts (1:80,000 scale); or

(B) Without a permit issued under § 646.4(b) on board.

(ii) A person aboard a vessel with a longline on board that fishes on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 meters), or without a permit issued under § 646.4(b) on board, is limited on that trip to:

(A) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(B) All other species in the snapper-grouper fishery—zero.

(iii) For the purpose of this paragraph (g)(1), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(2) *Wreckfish.* A bottom longline may not be used to fish for wreckfish. A person aboard a vessel that has a longline on board may not possess a wreckfish in or from the EEZ. For the purposes of this paragraph (g)(2), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 miles (2.4 kilometers) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

8. Section 646.23 is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) *Applicability.* (1) Bag limits apply to a person who fishes in the EEZ from a vessel—

(i) That does not have on board a permit issued under § 646.4(b); or

(ii) That is operating as a headboat or charter vessel.

(2) Special limitations on possession of fish in the snapper-grouper fishery apply to a person fishing with or possessing a sea bass trap or a crustacean trap in the EEZ. See § 646.22 (c)(2) and (d).

(3) Special limitations on possession of fish in the snapper-grouper fishery apply to a person fishing with or possessing an entanglement net in the EEZ and fishing with or possessing a longline in the EEZ in water with a charted depth of less than 50 fathoms (91.5 meters). See § 646.22 (f)(1) and (g)(1)(ii).

(b) *Bag limits.* Daily bag limits per person are:

(1) Vermilion snapper—10.

(2) Snappers, excluding vermilion—10, of which no more than 2 may be red snapper.

(3) Groupers, excluding jewfish and Nassau grouper—5.

(4) Greater amberjack—3.

(5) Jewfish and Nassau grouper—0.

(c) *Possession limits.* (1) Except as specified in paragraph (c)(2) of this section, a person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any fish in the snapper-grouper fishery in excess of the bag limits specified in paragraph (b) of this section.

(2) Provided the vessel has two licensed operators aboard, as required by the Coast Guard for trips of over 12 hours, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip—

(i) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits; or

(ii) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits.

(d) *Combination of bag limits.* A persons who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to state waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag of possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of fish in the snapper-grouper fishery.* A fish in the snapper-grouper fishery subject to a bag limit specified in paragraph (b) of this section taken in the EEZ by a persons subject to the bag limits, as specified in paragraph (a) of this section, may not be transferred at sea, regardless of where such transfer takes place; and such fish may not be transferred at sea in the EEZ, regardless of where such fish was taken.

9. In § 646.24, paragraph (b) is revised to read as follows:

§ 646.24 Wreckfish quota and closure.

* * * * *

(b) When a quota specified in paragraph (a) of this section is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the **Federal Register**. After the effective date of such notice, until an additional quota is available, it is prohibited to: Harvest or possess wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. The prohibition on sale, purchase, trade, or barter does not apply to trade in wreckfish that were harvested, off-loaded, and sold, purchased, traded, or bartered prior to the effective date of the notice in the **Federal Register** and were held in cold storage by a dealer or processor.

10. Section 646.25 is revised to read as follows:

§ 646.25 Adjustment of management measures.

In accordance with the procedures of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic, the Regional Director may establish or modify for species or species groups in the snapper-grouper fishery the following: maximum sustainable yield, acceptable biological catch, total allowable catch, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, and the time frame for recovery of an overfished species.

11. In § 646.26, paragraph (a)(1) is removed; paragraphs (a)(2) through (a)(22) are redesignated as paragraphs (a)(1) through (a)(21); in paragraph (c)(1) introductory text, the reference to "paragraphs (a) (1) through (19)" is revised to read "paragraphs (a)(1) through (a)(18)"; in paragraph (c)(1)(ii), the parenthetical phrase "(including powerheads)" is removed; in paragraph (c)(2), the reference to "paragraphs (a)(20) and (21)" is revised to read "paragraphs (a)(19) and (a)(20)"; in paragraph (c)(3), the reference to "paragraphs (a)(20) and (a)(22)" is revised to read "paragraphs (a)(19) and (a)(21)"; and a new paragraph (c)(4) is added to read as follows:

§ 646.26 Area limitations.

* * * * *

(c) * * *

(4) In the SMZs specified in paragraphs (a)(1) through (a)(10) of this section, a powerhead may not be used to take a fish in the snapper-grouper fishery. Possession of a powerhead and a mutilated fish in the snapper-grouper fishery in one of the specified SMZs, or after having fished in one of the SMZs, constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.

12. A new figure 1 is added as figure 1 of this part as follows:

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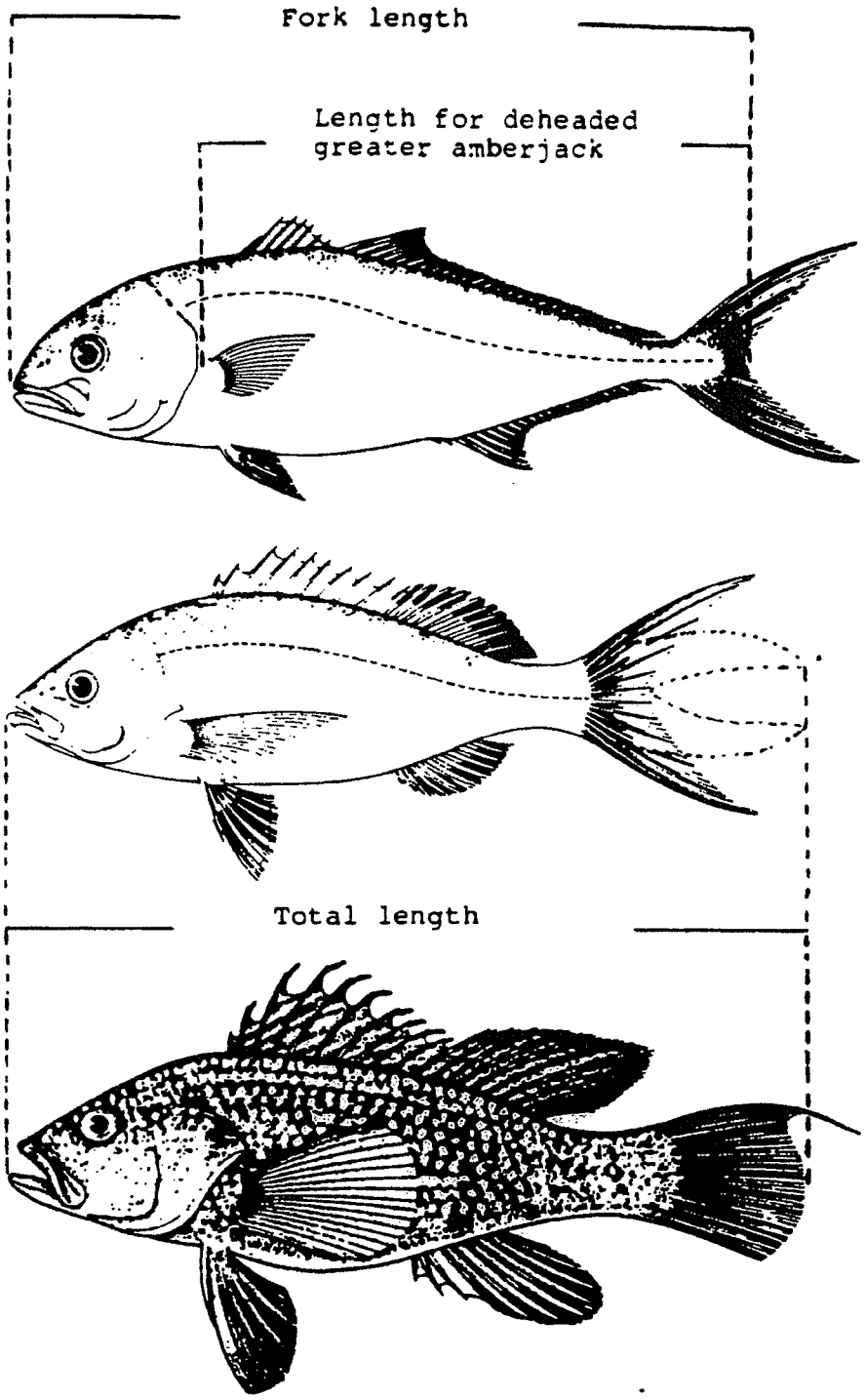

Figure 1. Illustrations of length measurements.

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