

Dated: June 24, 1991.  
**Samuel W. McKee,**  
*Acting Assistant Administrator for Fisheries,*  
*National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

**PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC**

1. The authority citation for part 642 continues to read as follows:

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

**§ 642.21 [Amended]**

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Revised	Added
(a)(1), first sentence	1.36	1.84
(a)(1)(i)	0.94	1.27
(a)(1)(ii)	0.42	0.57
(a)(2), first sentence	3.08	3.90
(b)(1)	2.89	3.91
(b)(2)	5.22	6.60
(c)(1)	2.89	4.90
(c)(2)	3.14	3.50
(d)(1)	2.26	3.70
(d)(2)	1.86	3.50

3. In § 642.28, paragraphs (a)(1), (a)(3)(i), (a)(3)(ii) introductory text, and (b) are revised to read as follows:

**§ 642.28 Bag and possession limits.**

(a) . . . (1) *Bag limits.* A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit specified in § 642.4(a)(1) and an allocation specified in § 642.21(a) or (c), or possessing the purse seine incidental catch allowance specified in § 642.24(d), is limited to the following:

(i) *King mackerel Gulf migratory group.*—(A) *Eastern area.* Possessing two king mackerel per person per day

(B) *Central and western areas.* (1) Possessing three king mackerel per person per day, excluding the operator and crew, or possessing two king mackerel per person per day, including the operator and crew, whichever is the greater, when fishing from a charter vessel.

(2) Possessing two king mackerel per person per day when fishing from other vessels.

(ii) *King mackerel Atlantic migratory group.* Possessing five king mackerel per person per day.

(iii) *Spanish mackerel Gulf migratory group.*—(A) *Eastern area.* Possessing five Spanish mackerel per person per day.

(B) *Central area.* possessing ten Spanish mackerel per person per day.

(C) *Western area.* possessing three Spanish mackerel per person per day.

(iv) *Spanish mackerel Atlantic migratory group.*—(A) *Northern area.* Possessing ten Spanish mackerel per person per day.

(B) *Southern area.* possessing five Spanish mackerel per person per day.

(3) . . . (i) For the purpose of paragraph (a)(1)(iv) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraphs (a)(1)(i) and (a)(1)(iii) of this section,

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ of the Gulf of Mexico and the Atlantic Ocean south of the Virginia/North Carolina border is two fish per person, regardless of the number of trips or duration of a trip and without regard to whether or not the cobia are taken aboard a vessel with a commercial permit.

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**50 CFR Part 646**

[Docket No. 910657-1157]

RIN 0648-AD58

**Snapper-Grouper Fishery of the South Atlantic**

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

**ACTION:** Proposed rule.

**SUMMARY:** NOAA issues this proposed rule to implement Amendment 4 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would (1) add spadefish, lesser amberjack, and banded rudderfish to the management unit; (2) require a Federal permit to harvest fish in the snapper-grouper fishery in the exclusive economic zone (EEZ) in excess of the proposed bag limits, to fish for tilefish in the EEZ, or to use a sea bass trap in the EEZ; (3) require reports of catch and/or effort from fishermen and dealers; (4) establish minimum size limits for many of the species in the fishery; (5) require fish in the snapper-grouper fishery to be landed with head and fins intact, with a limited exception for greater amberjack; (6) establish a presumption that a

wreckfish possessed shoreward of the outer boundary of the EEZ was harvested from the EEZ; (7) require that wreckfish be landed only between 8 a.m. and 4:30 p.m. and that 24-hour notice be given of a landing; (8) prohibit the harvest of Nassau grouper in the EEZ; (9) limit the harvest of greater amberjack and mutton snapper during their spawning seasons; (10) prohibit 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, limit the harvest by sea bass traps to sea basses plus the proposed bag-limit amounts for other species; (12) prohibit the use of entanglement nets (gillnets, trammel nets, etc.) in a directed fishery for fish in the snapper-grouper fishery; (13) prohibit bottom longlining for wreckfish in the EEZ; (14) prohibit 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) establish bag and possession limits for many species in the fishery; (16) remove Federal regulations for the Little River Reef special management zone (SMZ); (17) prohibit the use of powerheads within the SMZs off South Carolina; and (18) establish 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; 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; minimize habitat damage; and promote public comprehension of, voluntary compliance with, and enforcement of snapper-grouper management measures.

**DATE:** Written comments must be received on or before August 15, 1991.

**ADDRESSES:** Comments on the proposed rule should be sent to Peter J. Eldridge, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington DC 20503. (Attention: Desk Officer for NOAA).

Requests for copies of Amendment 4 which includes a regulatory impact review/initial regulatory flexibility analysis/environmental assessment.

should be sent to the South Atlantic Fishery Management Council, Southpark Building, suite 306, One Southpark Circle, Charleston, SC 29407-4000.

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).

#### Background

In general, total landings, mean size of fish captured, and nominal catch per trip have declined substantially in the commercial snapper-grouper fishery. The commercial sector has shifted offshore and changed target species as traditional species have become less abundant. In addition, the commercial fishery, developed with relatively inefficient hook-and-line gear, has changed to more efficient longline and trap gear in order to catch enough fish to operate profitably. Spawning stock ratios (SSRs) derived from commercial samples show that gray snapper, vermilion snapper, red snapper, red grouper in south Florida, snowy grouper, and warsaw grouper are stressed. The SSRs for a number of species in the commercial sector are above levels defining overfishing.

Recreational total catches and catch rates for traditional snapper-grouper species such as red snapper, vermilion snapper, and several of the groupers have declined substantially during the 1980s, especially for the east coast of Florida. In Florida, declines may have begun as early as the 1960s; however, data are not available for that period. The average size of vermilion snappers, black sea bass, and groupers is quite small in recreational catches. The small average size of recreationally caught fish is explained, in part, because some species stratify in size by depth. Another equally or more important factor is that total inshore fishing pressure is so high that fish are not allowed to grow to optimum size before capture. As soon as fish reach legal size they are caught. This is a classic example of growth overfishing. SSRs derived from recreational catches of black sea bass, vermilion snapper, red porgy, red snapper, gag, scamp, red grouper, greater amberjack, snowy grouper, and speckled hind show that these species are overfished and require management.

Presently, 23 species are in a documented state of overfishing. Fifteen

other species are thought to be overfished. Recreational fishing pressure likely will continue to increase as the coastal population continues to grow in the South Atlantic states. The virtual absence of larger fish in nearshore waters as well as the shifting of target species by both recreational and commercial sectors are other indicators that many, especially the traditionally highly prized species (red snapper, gag, scamp, etc.) are under intense fishing pressure and require more conservative management.

In addition to the serious problem of overfishing, the Council is also concerned about the lack of current and accurate biological, statistical, social, and economic information (including number of participants in the fishery) needed to best manage the fishery; the intense competition among recreational, part-time, and full-time commercial users of the snapper-grouper resource, and among commercial users employing different gears (hook and-line, traps, entanglement nets, longlines, and powerheads); habitat degradation and destruction by some types of fishing gear and the effect of poor water quality on fish stocks and associated habitat; and inconsistent state and Federal regulations, which complicate enforcement, create public confusion, and hinder voluntary compliance.

Amendment 4 is intended to reduce fishing mortality on overfished species; prevent overfishing of other species; provide for the collection of necessary data for management; promote orderly utilization of the resource; provide a flexible management system; minimize habitat damage; and promote public comprehension of, voluntary compliance with, and enforcement of the management measures.

#### PROPOSED MANAGEMENT MEASURES

##### *Additions to the Management Unit*

Spadefish, lesser amberjack, and banded rudderfish would be added to the species listed as "fish in the snapper-grouper fishery," that is, fish in the management unit. Neither minimum size limits nor bag limits for these added species would be implemented at this time, but data would be collected on the added species. NOAA is concerned that greater amberjack may be misidentified as lesser amberjack, almaco jack, or banded rudderfish. The addition of lesser amberjack and banded rudderfish will ensure that all of the look-alike jacks are included in the management unit and will allow timely addition, by the framework procedure, of any

management measures that may become necessary.

##### *Permits and Fees*

To distinguish between the commercial and recreational fisheries, *i.e.* applicability of the bag limits, and to provide a sampling framework for data collections, a Federal permit would be required. To obtain a vessel permit, an owner or operator must document that in any one of the 3 calendar years preceding the application, at least 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing, or his or her gross sales of fish were more than \$20,000. For a vessel owned by a corporation or partnership to be eligible for a vessel permit, the earned income qualification must be met by an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator. A vessel permit issued upon the qualification of an operator would be valid only when that person is the operator of the vessel.

A qualifying owner or operator of a charter vessel or headboat could obtain a permit. However, a charter vessel or headboat would have to adhere to the bag limits when carrying a passenger who fishes for a fee or when there are more than three persons on board, including operator and crew.

A fee would be charged for each permit and trap identification tag issued. The fee would be the amount calculated in accordance with NOAA directives for the administrative costs of processing applications/permits (currently \$23) and the cost of obtaining the tag (currently \$1).

##### *Data Collection*

The owners or operators of permitted vessels, charter vessels, and headboats whose vessels were selected by the Science and Research Director, Southeast Fisheries Science Center, would be required to report catch and effort data. In addition, selected dealers would be required to report receipts of fish from fishing vessels and/or make records of receipt available to an authorized officer. Additional data would be collected by designees of the Science and Research Director and by authorized officers; and fishermen, including recreational fishermen, would be required, upon request, to make snapper-grouper species, or parts thereof, available for inspection. Data collected via these means are necessary for effective conservation and management of fish in the snapper-grouper fishery.

### Minimum Sizes

This proposed rule would establish minimum size limits for many of the species in the fishery. The specific minimum size limits, alone or combined with bag limits, are calculated to rebuild those stocks that are overfished and to provide SSRs that would arrest or prevent overfishing and would be compatible, to the extent possible, with minimum size limits in adjoining state or Federal waters.

### Heads and Fins Attached

All fish in the snapper-grouper fishery, except greater amberjacks taken in the commercial fishery, possessed in or taken from the EEZ would be required to have head and fins intact through landing. Such fish may be eviscerated, but must otherwise be maintained in a whole condition. An amberjack possessed aboard or landed from a vessel that has a permit may be deheaded and eviscerated, but must otherwise be maintained in a whole condition. These requirements would increase enforceability of minimum size limits and no-retention provisions and allow more accurate data collection. It is the Council's intent that the preparation for immediate consumption of legally caught and possessed fish aboard the vessel from which they were caught is not prohibited.

### Wreckfish Provisions

This proposed rule would (1) establish a presumption that a wreckfish possessed shoreward of the outer boundary of the EEZ was harvested from the EEZ unless accompanied by documentation that it was harvested from other than the EEZ; (2) prohibit off-loading of wreckfish except from 8 a.m. to 4:30 p.m.; (3) require 24-hour prior notice of off-loading to the NMFS Law Enforcement Office; and (4) require all records of landings and purchases of wreckfish to be made available to an authorized officer. These measures are required to enforce the existing wreckfish trip limits and to monitor the wreckfish quotas. Suitable documentation to show that wreckfish came from other than the EEZ would include the markings required for interstate shipments of fish or wildlife by 50 CFR part 248, the name and home port of the vessel harvesting the wreckfish, the port and date of landing from the harvesting vessel, and a statement signed by the dealer attesting that the wreckfish were harvested from other than the EEZ.

### Nassau Grouper

Nassau grouper catches have been very low—the commercial catch decreased from 3,000 pounds (1,362 kilograms) in 1986 to 0 in 1987, 451 pounds (205 kilograms) in 1988, and 515 pounds (234 kilograms) in 1989. The Council believes that the abundance of Nassau grouper, for reasons undetermined, is severely reduced in continental U.S. waters and that the species may be verging on threatened or endangered status; thus, a complete ban on retention of Nassau grouper is proposed.

### Greater Amberjack and Mutton Snapper Spawning Season Limits

The possession or landing of greater amberjack in excess of the bag limit in or from the EEZ south of Cape Canaveral, Florida, would be prohibited during April, the peak month of spawning. This measure would not preclude commercial fishing south of Cape Canaveral during April as long as the harvest did not exceed the bag limit. The council is concerned about the high catch rates from spawning aggregations. Amberjack are densely aggregated and very aggressive during the spawning period, making them especially vulnerable to fishing. The spawning season limitations provide additional biological protection above that provided by the proposed bag and size limits. The only known areas of spawning are south of Cape Canaveral. Since the commercial fishery currently is not constrained by a quota, a commercial limitation during the spawning period would help prevent an excessive harvest from occurring. It is the Council's intent that, under the proposed prohibition, greater amberjack caught legally under the bag limit during the April spawning closure could be sold if in conformance with state law and the commercial size limit.

The possession or landing of mutton snapper in excess of that allowed within the snapper aggregate bag limit in or from the EEZ would be prohibited during May and June, the peak months of spawning. This measure would not preclude commercial fishing during these months as long as the harvest did not exceed the bag limits. As stated above, the Council is concerned about the high catch rates from spawning aggregations. Although mutton snapper are not overfished according to the SSR, members of the commercial industry are concerned about the status of mutton snapper and believe that a spawning closure would be beneficial. It is the Council's intent that mutton snapper caught under the bag limit in May and

June may be sold in conformance with state law and the commercial size limit. Mutton snapper, like greater amberjack, are especially vulnerable during their spawning season because they are densely aggregated and aggressive. Because the commercial fishery is not constrained by a quota, catches and fishing mortality could increase dramatically if vessels not subject to the bag limit target these aggregations.

### Fish Traps

This proposed rule would prohibit the use of fish traps in the EEZ off the south Atlantic states and the use of sea bass traps south of Cape Canaveral, Florida. North of Cape Canaveral, a permit would be required to use a sea bass trap in the EEZ and the catch from sea bass traps would be limited to the bag-limit amounts for fish in the snapper-grouper fishery that have a bag limit and zero for all other snapper-grouper species except sea basses. Crustacean traps (blue crab, stone crab, and spiny lobster traps) used in the EEZ would be limited to the bag-limit amounts for fish in the snapper-grouper fishery that have a bag limit and zero for all other snapper-grouper species. However, a person fishing from a vessel that has on board a permit for the snapper-grouper fishery who uses a crustacean trap in the EEZ north of Cape Canaveral would have the same limits as a person using a sea bass trap north of Cape Canaveral, i.e., bag-limit amounts for fish in the snapper-grouper fishery that have a bag limit and zero for all other snapper-grouper species except sea basses.

In this proposed rule, the distinctions between fish traps, sea bass traps, and crustacean traps are primarily in terms of their catch. NOAA and the Council would prefer to make these differentiations based primarily on trap size and construction differences. Suitable criteria are being investigated. Comments on appropriate criteria are specifically requested.

Fish traps have been used in south Florida on a limited basis since 1919, but their use expanded during the late 1970's. Traps are inexpensively and easily constructed, and require little skill to fish, although the most successful fishing does depend on skill in locating productive fishing grounds. Traps can be fished unattended and catch a variety of species that may not be caught by other gear. Traps allow economic exploitation of low density fish stocks and permit fishing where other gear cannot be operated profitably. Also, traps can be fished in coralline regions where use of trawls and other nets are precluded or

restricted by the presence of hermatypic corals (Munro, 1973).

Because of theft, gear failure, storms, and loss of gear associated with larger vessels cutting buoy lines or dragging traps, many traps are lost annually. Losses of traps are reported to vary between 20 and 83 percent, with Dade County fishermen reporting losses as high as 100 percent annually. Lost traps may continue to fish for some time, causing death to trapped fish. Also, fishermen may damage corals while attempting to retrieve lost gear. Further, it is believed that traps moved by storms damage habitat, although the extent of potential damage is unknown. There is evidence that the use of grappling hooks to retrieve traps can result in damage to coralline areas.

Because of increasing consumer demand for non-traditional food fish, such as squirrelfish, spadefish, angelfish, goatfish, acanthurids, and others, the catch and sale of these species is increasing. Since many of these species have not been identified in commercial landings statistics, it has not been possible to document trends in landings of these species. The Council believes that the use of traps results in an unnecessary kill of tropical fish. Florida prohibited the harvest of tropical fish on March 1, 1991. The Council believes that allowing the use of fish traps in the EEZ would make it difficult or impossible to enforce that prohibition.

There is a bycatch of fish in traps and some fish are injured during the trapping process. Reports indicate that as many as 20 percent of trapped fish may sustain injuries (Sutherland and Harper, 1983) and a number of authors have reported mortalities ranging from 2 to 7.5 percent (Bohnsack, in press; Sutherland and Harper, 1983; Munro, 1974; Munro, Reeson, and Gaut, 1971). Prohibition of the use of fish traps would eliminate this source of injury and mortality.

The Council believes that traps are non-selective by size because red groupers recruit to the hook-and-line fishery at around 19 inches (48 cm) and to the trap fishery at around 11 inches (28 cm). The Council assumes that mesh sizes required to allow escape of groupers less than the 20-inch (50.8 cm) size limit would result in a *de facto* prohibition on use of fish traps.

It is currently difficult to enforce the prohibition of use of fish traps in Florida waters because traps can be used in the EEZ. Fish traps are fished unattended and are seldom, if ever, returned to land where they can be inspected by law enforcement officers. A Florida Marine Patrol officer in Key West, Florida, stated that 95 percent of the traps he has seized in areas closed to trap fishing

were constructed illegally. The Council has concluded that at-sea enforcement required to monitor effectively and ensure compliance with existing fish trap regulations does not and will not exist. The Council believes that the lack of at-sea enforcement supports a ban on the use of fish traps, other than those used for sea basses, in the EEZ.

Because of the overfished condition of many species in south Florida waters caused by the combined fishing pressure of all users, serious user conflicts exist. The Council believes that the use of fish traps will continue to result in conflict. Also, the Council believes that the continued use of fish traps will allow a small group of fishermen to remove a disproportionate share of the available fish, thus precluding their use by other user groups. The Council also contends that the continued use of fish traps will not allow overfished species to be restored to acceptable levels of abundance.

Prohibiting the use of fish traps in the EEZ would be consistent with Florida's Coastal Zone Management Plan. The Council has concluded that a total prohibition on the use of fish traps for species other than sea basses is the most effective alternative to address problems in the fishery and to achieve the FMP's objectives.

The black sea bass trap fishery is primarily a winter fishery conducted offshore of the Carolinas when the shrimp fishery is closed. The main gear is reinforced blue crab traps. Trap loss is minimal because most fishermen either tend the trap continuously or bring them to shore when not fishing. Habitat damage is minimal because black sea bass traps are small, tended, and few in number. Tropical fish are absent from Carolina waters during the winter; hence, black sea bass traps have no impact on these species. Also, the species assemblage and depth distribution of snappers and groupers in Carolina waters are markedly different than those found in south Florida. Hence, the bycatch of snappers and groupers is minimal in the black sea bass fishery because black sea bass, generally, are found inshore of most snappers and groupers, especially in the winter. Black sea bass traps do not constitute a law enforcement problem because states north of Florida do not prohibit the use of fish traps. For these reasons, the proposed rule would allow the use of black sea bass traps to continue in the traditional Carolinas winter fishery.

#### Entanglement Nets

This proposed rule would prohibit the use of entanglement nets (including, but

not limited to, gillnets and trammel nets) in the directed fishery for fish in the snapper-grouper fishery. The possession of fish in the snapper-grouper fishery aboard a vessel with an entanglement net aboard would be limited to the bag-limit amounts for species subject to a bag limit and to zero for other species.

Catch of snapper-grouper species by entanglement nets during 1988 was 1,398 pounds (635 kilograms) from North Carolina through Georgia (less than 1 percent of the North Carolina through Georgia catch) and 253,739 pounds (115,198 kilograms) from the Florida east coast (6 percent of Florida east coast catches). Much of the Florida landings are from a directed stab net fishery for gray snapper that operates in the EEZ. The Gulf of Mexico Fishery Management Council and Florida have prohibited entanglement nets in the directed fishery for the capture of reef fish. However, entanglement nets used for other species (mackerel) may have a bycatch of reef fish equal to prescribed bag limits. This proposed measure tracks Florida's regulations in its limits of species with and without bag limits. Florida prohibited entanglement nets because it is an inappropriate gear to use on live bottom. Some of the reef fish are not necessarily found on live bottom; however, many are, and fishermen use stab nets to catch gray (mangrove) snapper on the live-bottom areas. The proposed rule would prohibit entanglement nets in order to address the problem of intense competition among users and to prevent habitat degradation from nets becoming tangled in reef and live-bottom material. The Council concluded that entanglement nets are not an appropriate gear for the snapper-grouper fishery. The proposed prohibition would prevent use and expansion in North Carolina through Florida's east coast.

#### Bottom Longlining for Wreckfish

Bottom longlining for wreckfish was prohibited by emergency rule effective April 18, 1991, through July 18, 1991 (56 FR 18742, April 24, 1991). It is expected that the effectiveness of the emergency rule will be extended for an additional 90 days, through October 16, 1991. The Council included the prohibition in Amendment 4 to continue it on an indefinite basis. The full rationale for this prohibition is included in the emergency rule and is not repeated here.

#### Longlining for Snapper-Grouper in Water Less than 50 Fathoms

This proposed rule would prohibit the use of longline gear in a directed fishery for fish in the snapper-grouper fishery in

the EEZ in water with a charted depth of less than 50 fathoms (91.4 meters). The Council is concerned about the use of bottom longline gear targeting species in the snapper-grouper fishery in live-bottom areas. Habitat damage and intense competition among users are problems that arise when this gear is used shoreward of 50 fathoms (91.4 meters) where significant live bottom occurs and where competition with hook-and-line vessels occurs. The Council concluded that this gear is appropriate for use in the deep water snowy grouper/tilefish fishery where much of the bottom is mud with sparse live-bottom areas. Allowing use of this gear deeper than 50 fathoms (91.4 meters) would preserve the traditional fishery that takes place in deeper water and would keep longlines out of the live-bottom habitat.

#### *Bag and Possession Limits*

This rule proposes daily bag limits (1) for vermillion snapper—ten; (2) for all other snappers—ten, of which no more than two may be red snapper; (3) for groupers, excluding jewfish and Nassau grouper—five; (4) for greater amberjack—three; and (5) for jewfish and Nassau grouper—zero. These specific and aggregate bag limits are calculated to provide protection from overfishing; and, in combination with minimum size limits, assist in achieving the SSR levels. To the extent possible, the bag limits are compatible with state limits and with limits applicable to reef fish from the Gulf of Mexico EEZ.

Possession would be limited to 1 day's bag limit except (1) for persons aboard charter vessels and headboats, who may have no more than 2 days' bag limits when the fishing trip spans more than 24 hours; and (2) for persons aboard headboats, who may have no more than 3 days' bag limits when the fishing trip spans more than 48 hours and fishing occurred on at least 3 days.

#### *Little River Reef Special Management Zone*

This rule proposes to delete the Little River Reef SMZ because it is no longer in the EEZ. Construction of a jetty has extended the waters of South Carolina to include Little River Reef.

#### *Powerheads within SMZs off South Carolina*

This proposed rule would prohibit the use of powerheads/bang sticks to take fish in the snapper-grouper fishery within the SMZs off South Carolina. This prohibition was requested by the South Carolina Wildlife and Marine Resources Department to prevent localized overfishing and to maximize

the benefits for which the SMZs off South Carolina were created.

#### *Framework Procedure for Management Measures*

Amendment 4 would establish a framework procedure for establishing or adjusting specified management measures for species or species groups in the snapper-grouper fishery. The Council would appoint an assessment group (Group) that would assess annually the condition of selected snapper-grouper species in the management unit and review available economic and sociological assessments. The Group would present a report of its assessment and recommendations to the Council. The Council would consider the report and recommendations of the Group and hold public hearings at a time and place of the Council's choosing to discuss the Group's report. Prior to taking final action, the Council could convene the Advisory Panel and the Scientific and Statistical Committee to provide advice. After receiving public input, the Council would determine any necessary changes.

If the Council concluded that changes were needed, the Council would recommend them, in writing, to the Director, Southeast Region, NMFS (Regional Director). The Council's recommendations would be accompanied by the Group's report, relevant background material, draft regulations, a regulatory impact review, and public comments. This report would be submitted each year at least 60 days prior to the desired implementation date. The Regional Director would review the Council's recommendations, supporting rationale, public comments, and other relevant information. If the Regional Director concludes that the Council's recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director would recommend that the Secretary of Commerce (Secretary) publish proposed and final rules in the Federal Register of any changes prior to the appropriate fishing season. If the Regional Director rejected the recommendations, he or she would provide written reasons to the Council for the rejection, and existing regulations would remain in effect pending any subsequent action.

Appropriate management measures that may be implemented or adjusted by the Secretary under this framework procedure would be:

1. Specification or adjustment of maximum sustainable yield.

2. Specification or adjustment of acceptable biological catch (ABC) or an ABC range.

3. Setting or adjusting total allowable catch (TAC), quotas (including zero quotas), trip limits, bag limits (including zero bag limits), minimum sizes, gear restrictions (ranging from modifying current regulations to a complete prohibition), and season/area closures (including spawning closures). A TAC for wreckfish could not exceed 8 million pounds (3.632 million kilograms). The fishing year and spawning closure for wreckfish could not be adjusted by more than 1 month.

4. Implementing or modifying the timeframe for recovery of an overfished species.

This procedure would allow for regular stock assessments and provide for timely adjustments to the management program to prevent overfishing and/or rebuild a stock if overfished. It is the Council's intent that all species in the management unit receive periodic assessments. Further, it is the Council's intent that the Regional Director may close, by notice in the Federal Register, the fishery for any species or species group, *i.e.*, prohibit commercial landings and reduce the bag limit to zero, when a quota for such species or species group established under this framework procedure has been reached or is projected to be reached.

#### *Additional Measures in Amendment 4*

In addition to the above management measures, Amendment 4 would revise the lists of problems in the snapper-grouper fishery and objectives of the FMP; define overfishing, and establish a rebuilding plan for those species currently overfished; and authorize the Regional Director, in consultation with the Council, to designate special research zones where fishing may either be prohibited or permitted on a controlled basis. Additional information and rationale for these measures, as well as for the measures contained in this proposed rule, are contained in Amendment 4, the availability of which was announced in the Federal Register (56 FR 24773, May 31, 1991).

#### *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 amendments would adversely affect any populations of endangered or threatened

species. The Regional Director concurs with that conclusion.

#### Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 4, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) for Amendment 4, which concludes that this rule, if adopted, would 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 expected to be higher than costs associated with the proposed measures.

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which describes the effects this rule, if adopted, would have on small business entities. Based on the IRFA, the Assistant Administrator has initially determined that this rule, if adopted, would 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. A copy of the RIR/IRFA is available upon request (see ADDRESSES).

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA is available upon request (see ADDRESSES) and comments on it are requested.

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

This proposed rule contains three new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The new requirements are (1) applications for vessel permits; (2) catch and effort reports from selected, permitted vessels; and (3) advance notice of landing wreckfish. The public reporting burdens for these collections of information are estimated to average 15, 10, and 3 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. Revisions to the existing requirements are (1) catch and effort reporting by selected charter vessels; (2) catch and effort reporting by selected headboats; and (3) 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). In all three cases, previously voluntary reporting programs are made mandatory. The public reporting burdens for these revised collections of information are estimated to average 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, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see ADDRESSES).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12812.

#### List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 26, 1991.

Samuel W. McKee,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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

#### PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

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

Authority: 16 U.S.C. 1901 *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—Ehipptidae", and species are added, and in the listing of "Jacks—Carangidae", two species are added in alphabetical order by genus and species; 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, stone 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 furthest tip of the tail (caudal fin), excluding any caudal filament. (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 fish for wreckfish in the EEZ, land 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 60 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)(9) 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 of \$23 will be charged for each permit issued under this section and a fee of \$1 will be charged for each fish trap identification tag required under § 646.6(d). The appropriate fees are specified on each application form and must accompany each permit application or request for fish trap identification tags.

(e) **Issuance.** (1) The Regional Director will issue a permit at any time to an applicant if:

(i) The application is complete;

(ii) The applicant has complied with all applicable reporting requirements of § 646.8;

(iii) The applicant meets the earned income requirement specified in paragraph (b)(2)(ix) of this section.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all

applicable reporting requirements of § 646.5, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's 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 on the application form, must accompany each request for a replacement permit.

4. In § 646.5, Figure 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 landed 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 are 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 landings, purchases, barter, 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 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 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 (50.8 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

hass 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) Falsify information specified in § 646.4(b)(2) on an application for a vessel permit.
- (b) Fail to display a permit, as specified in § 646.4(h).
- (c) Falsify or fail to maintain or provide information required to be submitted or reported, as specified in § 646.5 (a) through (d).
- (d) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as specified in § 646.5(e)(1).
- (e) Fail to make available records of landings, purchases, barter, or sales of wreckfish, as specified in § 646.5(e)(2).
- (f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 646.6 (a) through (e).
- (g) Possess a fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(1).
- (h) Sell, purchase, trade, barter, or to attempt any of the foregoing, of fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(2).
- (i) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).
- (j) 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).
- (k) Possess wreckfish in or from the EEZ in excess of the trip limit, as specified in § 646.21(d)(1).
- (l) Transfer wreckfish at sea, as specified in § 646.21(d)(2).
- (m) Off-load a wreckfish at a time not authorized or without prior notification, as specified in § 646.21(d)(4).
- (n) 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).
- (o) During the wreckfish spawning-season closure or after a wreckfish quota closure, harvest or possess wreckfish in or from the EEZ, or purchase, barter, trade, offer for sale, or

- sell wreckfish taken from the EEZ, as specified in § 646.21(g) and § 646.24(b).
- (p) During the greater amberjack and mutton snapper spawning-seasons, exceed the bag limits for those species, as specified in § 646.21 (h) and (i).
- (q) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).
- (r) 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).
- (s) 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).
- (t) 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).
- (u) Pull or tend another person's sea bass trap except as specified in § 646.22(c)(5).
- (v) Aboard a vessel that possesses or uses a crustacean trap in the EEZ, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d).
- (w) 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).
- (x) 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).
- (y) 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).
- (z) 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 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 on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(g)(1).
- (aa) 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).

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

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

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

(ee) 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 vermillion snapper possessed aboard a vessel for which a permit has been issued under § 646.4—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—8 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 of this part.)

(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 vermillion 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 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 landing. Such fish may be eviscerated but must otherwise be maintained in a whole condition.

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

(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: fish for wreckfish in the EEZ; land wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. These prohibitions do not apply to trade in wreckfish that were harvested, landed, and bartered, traded, purchased, or sold 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 1 is redesignated as Figure 3 of this part and placed at the end of this part; paragraphs (b) and (d) are revised; paragraph (c) is redesignated as paragraph (e); and new paragraphs (c), (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 specified in § 646.4 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 (2.54-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 (3.8 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 specified in § 646.4 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 specified in § 646.4 that uses or possesses a crustacean trap in the EEZ, or aboard a vessel that has on board a permit specified in § 646.4 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 (e), 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 specified in § 646.4 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 specified in § 646.4 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 (f)(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 (f)(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 specified in § 646.4; 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 person 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 or 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 person 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. 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.

10. 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.

11. A new Figure 1 is added as Figure 1 of this part as follows:

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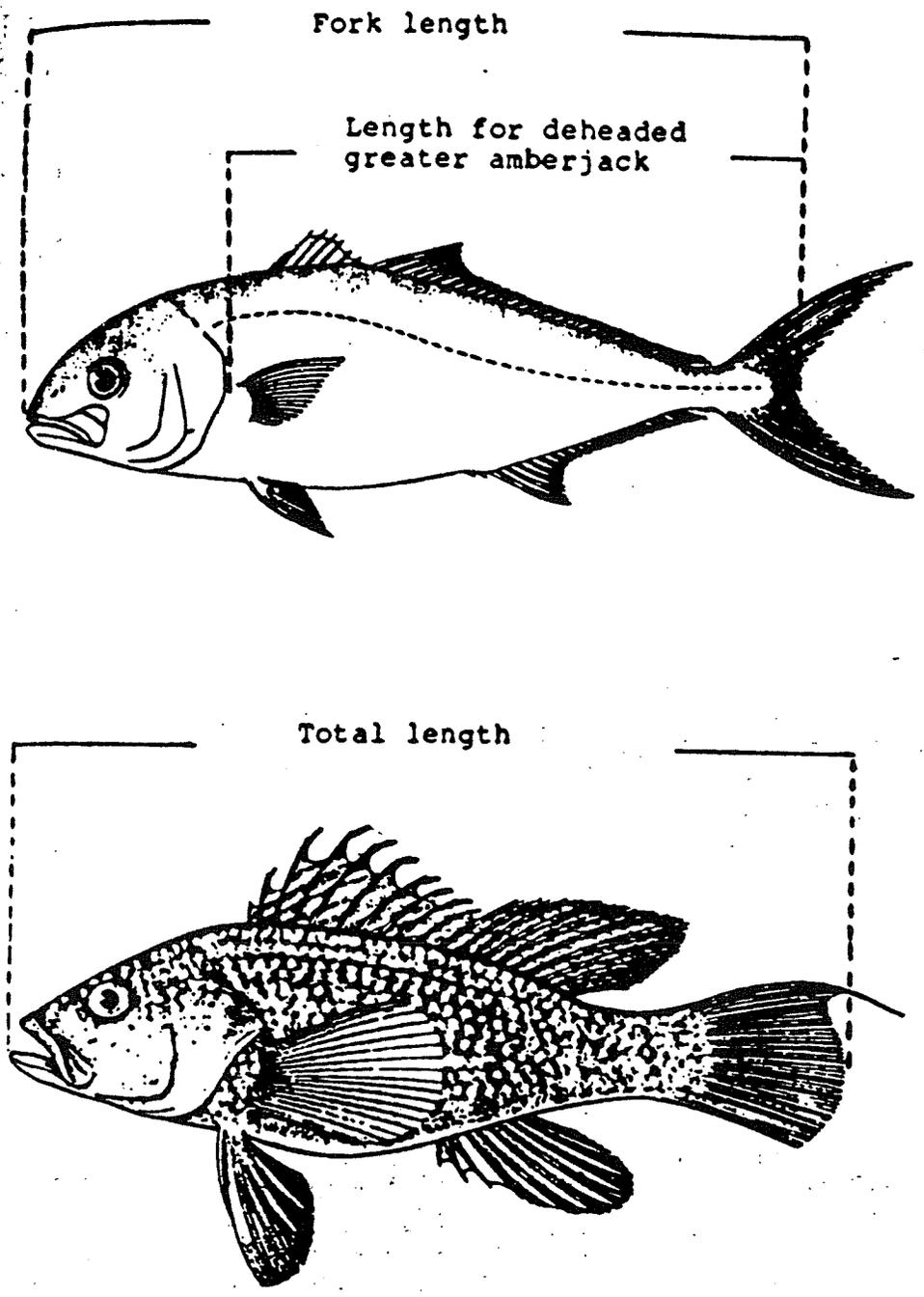


Figure 1. Illustrations of length measurements.