Appendix D. Initial Regulatory Flexibility Analysis

1. Introduction

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

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

Additional information on the description of affected entities was presented in **Chapter 3.3,** and additional information on the expected economic impacts of the proposed action was presented in **Chapter 4.2** and **Chapter 5.2**.

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

The purpose and need, issues, problems, and objectives of the proposed rule are presented in **Chapter 1.0**. The purpose of this amendment is to reduce the spatial and temporal coverage of the regulations proposed in Amendment 17A based on the most recent scientific information concerning the red snapper stock in the South Atlantic. This amendment addresses the need to end overfishing and rebuild the red snapper stock while minimizing, to the extent practicable,

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

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

No duplicative, overlapping, or conflicting Federal rules have been identified. Previous amendments, whether already implemented or in the process of being implemented, have been considered in designing the various actions in this amendment.

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

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

From 2007-2009, an average of 895 vessels per year had valid permits to operate in the commercial snapper grouper fishery. Of these vessels, 751 held transferable permits and 144 held non-transferable permits. On average, 797 vessels landed snapper grouper species, generating dockside revenues of approximately $14.514 million (2008 dollars). Each vessel, therefore, generated an average of approximately $18,000 in gross revenues from snapper grouper. Gross dockside revenues by area are distributed as follows: $4.054 million in North Carolina, $2.563 million in South Carolina, $1.738 million in Georgia/Northeast Florida, $3.461 million in central and southeast Florida, and $2.695 million in the Florida Keys. Vessels that operate in the snapper grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

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

From 2007-2009, an average of 1,797 vessels had valid permits to operate in the snapper grouper for-hire fishery, of which 82 are estimated to have operated as headboats. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue is estimated to range from approximately $62,000-$84,000 for Florida vessels, $73,000-$89,000 for North Carolina vessels, $68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South

Carolina vessels. For headboats, the corresponding estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states.

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

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

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

The proposed action would not introduce any changes to reporting, record-keeping, and other compliance requirements which are currently required, particularly under Amendment 17A.

6. **Substantial Number of Small Entities Criterion**

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

7. **Significant Economic Impact Criterion**

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

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

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

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

The economic analysis done for the proposed action estimated the changes in net operating revenues to commercial and for-hire vessels. For the current purpose, net operating revenue is equated to profit.

The proposed action to eliminate the area closure which was adopted in Amendment 17A is estimated to have a non-uniform change in the short-term profits of commercial vessels operating in the South Atlantic snapper-grouper fishery. Annual profits would increase approximately by $358,000 for vessels in northeast Florida and Georgia and by $103,000 for vessels in southeast Florida. On the other hand, annual profits would decrease approximately by $241,000 for vessels in North Carolina, by $129,000 in South Carolina, and by $2,000 for vessels in the Florida Keys. The net effect of the proposed action on commercial vessels as a whole would be an average increase in annual profits of approximately $88,000. Vessels fishing with vertical line gear are the ones most affected by the proposed action.

The differential effects of the proposed action on commercial vessels in various geographic areas in the South Atlantic are mainly conditioned by the manner quotas for certain snapper-grouper species are met. Although the proposed action would open up very specific areas off the coasts of Georgia and northeast Florida, commercial vessels operating in other areas would also be affected via the possible quota closures of some snapper-grouper species. Opening the areas closed under Amendment 17A would allow commercial vessels from southeast Florida, northeast Florida, and Georgia to harvest more snapper-grouper species, such as vermilion snapper, gag, and red grouper, and this would tend to increase their profits. Such an increase in harvest, however, would lead to reaching certain snapper-grouper quotas sooner, resulting in lower harvest by vessels in North Carolina, South Carolina, and the Florida Keys. These vessels would then experience reductions in their profits. The more constraining quotas are those for vermilion snapper and gag. The quota for gag is especially important, since it would trigger closure for all shallow-water groupers.

For-hire vessels operating in northeast Florida and Georgia are expected to be the only for-hire vessels affected by the proposed action. This is based on the extent of for-hire vessel fishing activities in the subject three statistical areas considered for closure under Amendment 17A. As a result of the proposed action, annual profits are expected to increase by $300,000 for charterboats and $1,000,000 for headboats.

8. Description of Significant Alternatives

One of the management measures adopted in Amendment 17A is a year-round closure, i.e., prohibition of harvest, retention, and possession of any species in the snapper-grouper fishery management unit, of an area corresponding to commercial logbook grids (cells) 2880, 2980, and 3080 for depths from 98 ft to 240 ft. The proposed action would eliminate this closure.

Eleven alternatives, including the proposed action, were considered for the area closure. The first alternative to the proposed action is the no action alternative. Among the alternatives, this would result in the largest negative economic effects on small entities. The second alternative to the proposed action is a May-October closure of cells 2880 and 2980 in depths from 98 ft to 240 ft. This alternative would result in lower profit increases for both the commercial and for-hire vessels than the proposed action. The third alternative to the proposed action is a May-August closure of cells 2880, 2980, and 3080 in depths from 98 ft to 240 ft. This alternative would result in a lower profit increases to the for-hire vessels and a slightly higher profit increase to commercial vessels. The fourth alternative to the proposed action is a July-December closure of cells 2880, 2980, and 3080 in depths from 98 ft to 240 ft. This alternative would result in lower

profit increases to the for-hire and commercial vessels than the proposed action. The fifth alternative to the proposed action is a May-December closure of cells 2880, 2980, and 3080 in depths from 98 ft to 240 ft. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The sixth alternative to the proposed action is a May-December closure of cells 2880, 2980, and 3080 in depths from 66 ft to 240 ft for the first year and a May-October closure of cells 2880 and 2980 in depths from 98 ft to 240 ft for the second year and onwards. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The seventh alternative to the proposed action is a May-October closure of cells 2880 and 2980 in depths from 98 ft to 240 ft for the first year and a June-July closure of cell 2980 in depths from 98 ft to 240 ft for the second year and onwards. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The eighth alternative to the proposed action is a May-October closure of cells 2880 and 2980 in depths from 98 ft to 240 ft for the first year and a July closure of cells 2880 and 2980 in depths from 98 ft to 240 ft for the second year and onwards. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The ninth alternative to the proposed action is a July-December closure of cells 2880, 2980, and 3080 in depths from 98 ft to 240 ft for the first year and a January-April closure of cells 2880 and 2980 in depths from 98 ft to 240 ft for the second year and onwards. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action. The tenth alternative to the proposed action is a May-December closure of cells 2880, 2980, and 3080 in depths from 98 ft to 240 ft for the first year and a January-April closure of cells 2880 and 2980 in depths from 98 ft to 240 ft for the second year and onwards. This alternative would result in lower profit increases to the for-hire and commercial vessels than the proposed action.

The various alternatives have an important feature that applies to commercial vessels but not to for-hire vessels. With the exception of the no action alternative, all alternatives would result in profit increases to commercial vessels in northeast Florida and Georgia and southeast Florida but profit decreases to commercial vessels in North Carolina, South Carolina, and the Florida Keys. For-hire vessels would experience profit increases under all the alternatives, except the no action alternative.