

Snapper-Grouper Fishery of the South Atlantic Region

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Oculina Comment Periods Open.

NMFS issues this proposed rule to implement Amendment 13A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. This rule would extend the current prohibitions on fishing for South Atlantic snapper-grouper in the experimental closed area and on retaining such species in or from the area. The experimental closed area constitutes a portion of the Oculina Bank Habitat Area of Particular Concern, which is in the exclusive economic zone (EEZ) in the Atlantic Ocean off Ft. Pierce, FL. DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on January 9, 2004.

ADDRESSES: Written comments on the proposed rule should be sent to Julie Weeder, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to (727) 570-5583. Comments will not be accepted if submitted via e-mail or Internet.

NMFS, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

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Petersburg, FL 33702. Comments also may be sent via fax to 727 570-5583. Comments will not be accepted if submitted via e-mail or Internet.

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FOR FURTHER INFORMATION CONTACT: Julie

Weeder, telephone: 727 570-5753, fax:

727 570-5583, e-mail:

Julie.Weeder@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens

snapper-grouper by providing an area where deepwater snapper-grouper species could grow and reproduce without being subjected to fishing mortality. They were based on the Council's concern that traditional fishery management measures, such as minimum size limits and quotas, might not be sufficient to protect fully the snapper-grouper resources. The Council believed the measures would provide protection for overfished species in the management unit while minimizing adverse impacts upon user groups. Based on limited information, there appear to be some encouraging signs of positive biological impacts from the initial year prohibition of fishing for snapper grouper species within the experimental closed area since it was established in 1994. A study conducted in 2001 found that, in the few areas where habitat remained intact, there were more and larger groupers than observed in a 1995 study, and male gag and scamp were also common. The observation of male gag and scamp is particularly of interest because size, age, and proportion of males of these species have declined both in the Gulf of Mexico and South Atlantic regions. Other encouraging signs include the observation of juvenile speckled hind, which is a candidate species for listing under the Endangered Species Act. However, species in the management unit remain overfished and continued protection is required.

Proposed Actions

Amendment 13A proposes to continue the current measures applicable to the experimental closed area indefinitely. Those measures at 50 CFR 622(c)(2) read as follows:

Experimental closed area. Within the Oculina Bank HAPC, the experimental closed

area is bounded on the north by 27° 53' N. lat., on the south by 27° 30' N. lat., on the east by 79° 56' W. long., and on the west by 80° 00' W. long.

No person may fish for South

Atlantic snapper-grouper in the experimental closed area, and no person may retain South Atlantic snapper-grouper in or from the area.

In the experimental closed area, any South Atlantic snapper-grouper taken incidentally

by hook-and-line gear must be released immediately by cutting the line without

removing the fish from the water.

The Council would review the

configuration and size of the experimental closed area within 3 years

of the publication date of the final rule that would implement Amendment 13A

and would re-evaluate all measures applicable to the area after 10 years. The

Council believes these actions provide the most biological, social, and

economic benefits while allowing for adaptive management. Extending the

prohibition on fishing for snapper-grouper species in the experimental

closed area for an indefinite period will continue to protect snapper-grouper

populations and protect *Oculina* coral and associated habitat. Such extension

will also provide a hedge against the high degree of scientific uncertainty

associated with the status of snapper-grouper species and reduce the

possibility that these populations may fall below sustainable levels.

Economically it is expected that the

long-term benefits, such as increased insurance against the uncertainty of stock

assessments and the non-use benefits of extending the prohibitions on snapper-grouper

fishing in the closed area,

outweigh the short-term benefits of

opening the area to harvest. These measures are also expected to provide the most long-term positive social impacts because they allow for adaptive management which can be seen as an assurance to the public that the area will be monitored and reviewed. Should the Council find after the 3-year review on size and configuration that the boundaries of the area are not appropriate, they can be changed at that time. In addition, the 10-year reevaluation period will assure the public that the area will not be closed and forgotten.

Availability of Amendment 13A
Additional background and rationale for the measures discussed above are contained in Amendment 13A. The availability of Amendment 13A was announced in the Federal Register on November 4, 2003, (68 FR 62422). Written comments on Amendment 13A must be received by January 5, 2004. All comments received on Amendment 13A or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that Amendment 13A is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 13A.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared, and NMFS supplemented, an IRFA, based on the RIR, that describes the economic impacts that this proposed rule, if adopted, would have on small business

entities. A summary of the IRFA follows:

Amendment 6 to the Snapper-Grouper Fishery Management Plan, implemented in May 1994, established a harvest prohibition for snapper-grouper species in the Oculina Experimental Closed Area. This prohibition is scheduled to sunset in June 2004. The proposed rule would extend the prohibition for an indefinite period of time for the purpose of providing continued protection of snapper-grouper species, thereby reducing the possibility that these populations may fall below sustainable levels. Further, by restricting the ability to harvest fish from the area, the proposed rule is also expected to provide protection to the Oculina coral in the area. The Magnuson-Stevens Act, as amended, provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. The proposed rule does not impose any reporting or record keeping requirements.

There are two general classes of small entities that would be directly affected by the proposed rule, commercial fishing vessels and for-hire fishing vessels. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$3.5 million per year. The revenue benchmark for a small business that engages in for-hire fishing is a firm that has annual receipts up to \$6.0 million per year. There were 1,174 commercial vessels that participated in the snapper-grouper fishery in the South Atlantic during 2002. Of these vessels, 120 were homeported in the area of interest,

where the

area of interest is defined as those home port locations on the Florida Atlantic coast from Cape Canaveral south to West Palm Beach and are in the closest geographic proximity to the area covered by the proposed rule. Commercial vessels operating in the snapper-grouper fishery in this area are estimated to have average annual gross and net incomes of approximately \$39,745 and \$12,388, respectively. Based on this income profile, it is assumed that all commercial fishing entities that would be affected by the proposed rule are small entities.

For the for-hire sector, 1,221 snappergrouper for-hire permits were issued to vessels in the southern Atlantic states in 2002. Of this total, 94 permits were issued to for-hire vessels in the area of interest. These vessels comprise two types of business operations, charterboats, which are smaller vessels (6 or fewer passengers) that book trips on a vessel basis, and headboats, which are larger vessels that book passage on an individual angler basis. The average gross and net revenues in 1997 for charterboats operating off the Atlantic coast of Florida are estimated at \$57,000 and \$15,000 (2001 dollars), while that of headboats are estimated at \$155,000 and \$69,000 (2001 dollars). Based on these gross revenue profiles, all for-hire vessels that would be affected by the proposed rule are assumed to be small entities.

The number of commercial and for-hire vessels that would fish in the closed area should the area reopen after sunset of the current rule is not known. However, all entities in the area of

interest have the potential to enter the area. Since all such entities would be covered by the proposed rule and all said entities are small entities, it is concluded that a substantial number of small entities would be affected by the proposed rule. An IRFA was prepared to analyze the expected impacts on small entities. The proposed rule extending harvest prohibition for an indefinite period would not alter present fishing practices. Therefore, it would not affect the profitability of identified vessels. However, if there are any speculative decisions about the sunset of the existing rule in June 2004, there could be some reduction in future speculative earnings. The public is invited to comment and to provide any information that would enable NMFS to identify and assess any future potential economic impacts that could result from the proposed rule.

Five alternatives to the proposed rule were considered. One alternative differs from the proposed rule only in that it lacks a specific schedule for reevaluation of the rule. Three alternatives also lack a re-evaluation schedule and differ from the proposed rule in the duration of the prohibition. No impacts have been identified associated with the presence or absence of a prescribed reevaluation schedule. These four alternatives, therefore, are expected to have the same effect on the affected entities as the proposed rule, and none would adversely affect current profitability but would, instead, eliminate potential increased short-term profits that might be derived from fishing activity directed into the Oculina area, should sunset occur. The fifth alternative, the no-action alternative, would allow for sunset of the prohibition and fishing in the area to

occur. This alternative would, therefore, allow these potential short-term increases in profits to occur. However, if snapper-grouper populations become depleted as a result of directed effort inside the area, the short-term gains would dissipate. Further, these potential short-term profits are not believed to be greater than the benefits that would accrue to continued protection of the resource and area. These benefits are expected to exceed potential short-term profits no matter how long the prohibition continues. The proposed rule, therefore, would best suit management needs and meet the Council's intent.

Changes to Regulatory Text

If approved, the measures in Amendment 13A would continue in effect in the current regulations. Accordingly, this proposed rule contains no changes to regulatory text. If Amendment 13A is disapproved, the regulatory text at 50 CFR 622.35(c)(2) would be removed effective June 27, 2004.

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

Dated: November 19, 2003.

Rebecca Lent,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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