

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 30810-154]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic. Currently, a number of the major species in the fishery are being harvested at less than optimal sizes, and certain harvest techniques have resulted in controversy among user groups. This rule establishes (1) minimum sizes for certain species and (2) limitations on the use of certain gear including poisons, explosives, fish traps, and trawls for the taking of fish in the snapper-grouper fishery. The intended effect of this rule is to prevent overfishing, restore to the optimum level those species that are overfished, and promote orderly utilization of the resource.

EFFECTIVE DATE: September 28, 1983.

ADDRESSES: A copy of the combined final regulatory flexibility analysis/regulatory impact review may be obtained from Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) was prepared by the South Atlantic Fishery Management Council (Council). The Regional Director, Southeast Region, National Marine Fisheries Service (Regional Director) approved the FMP, with the exception of the management measure prohibiting the spearing of jewfish, on July 28, 1983, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This final rule implements the FMP.

The disapproval of the measure prohibiting the spearing of jewfish was based on the finding that it was inconsistent with National Standards 2 and 4 and Section 303(a)(1)(A) of the Magnuson Act. This action required disapproval of the related specifications of optimum yield and expected domestic annual harvest. The Regional Director has advised the Council of this partial

disapproval and provided recommendations to the Council that would conform the measure to the requirements of applicable law. The Council's reconsideration of the measure and action on the Regional Director's recommendations may result in amendment to this final rule.

A proposed rulemaking was published on June 10, 1983, (48 FR 26483), initiating a 45-day comment period which ended July 25, 1983. The proposed rulemaking contained information on the snapper-grouper fishery, its economic value, and its relative importance to the recreational and commercial sectors. The major problems in the fishery (i.e., harvesting of fish at less than the optimal sizes, user-group conflicts, and limited fishery data) and the management measures to resolve them were also discussed in detail.

In the proposed rulemaking, § 646.5, Gear identification, was reserved. This section is also being reserved in this final rule, pending development of a region-wide identification system.

Comments and Responses

Fourteen comments were received on the proposed rule, addressing 17 issues. Responses are grouped by general categories.

Prevention of overfishing

Several commenters stated that the regulations would not prevent overfishing. According to the FMP, there is no evidence that any species in the fishery is currently experiencing recruitment overfishing (i.e., insufficient spawning to maintain the stock). A number of species are experiencing growth overfishing (i.e., harvesting of a stock to the point that the harvest is less than the maximum possible). These regulations prevent growth overfishing by imposing minimum size limits. However, several commenters expressed concerns that the size limits would not be effective, because traps are not size selective and released fish would not survive. The procedures in the FMP for evaluating minimum sizes incorporate consideration of survival rates of released fish. The analyses of all size limits imposed indicated that long-term yield would increase for each species, despite the mortality of some released fish. This demonstrates that the regulations will be effective in preventing overfishing of most of the regulated species. The FMP does acknowledge, however, that size limits may not be effective for some species with extremely low survival rates. Data collection and analysis specified in the FMP will aid in evaluating other strategies (i.e., time/area closures and

quotas) which could be used to protect these species. Such measures, if necessary, would be incorporated by amending the FMP.

Fish Traps

Numerous commenters, including a state marine fishery agency, two sport fishing organizations, two conservation organizations, a diving club, and several individuals recommended that the use of fish traps be prohibited to avoid overfishing and other adverse impacts on the fishery. Although fish traps are an efficient gear, NOAA believes that the restrictions imposed by this final rule (e.g., area restrictions, size limits, degradable panels, minimum mesh size) are sufficient to prevent overfishing and to mitigate potential adverse impacts associated with use of fish traps. Best available scientific information was not sufficient to justify a total prohibition, and a total prohibition would not result in a fair and equitable allocation of fishing privileges. A prohibition on the use of fish traps, therefore, would be inconsistent with National Standards 2 and 4 and Section 303 (a)(1)(A) of the Magnuson Act.

Several commenters suggested that if fish traps were allowed, they should be allowed only beyond certain geographic boundaries. Proposals included allowing traps outside the 200-foot contour, outside the 50-fathom contour south of Cape Canaveral, and prohibiting traps within a 10-nautical mile buffer zone adjacent to state waters north of Cape Canaveral. During public hearings on this FMP, many additional boundaries were recommended. In preparing the FMP, the Council recognized the necessity of mediating the social conflicts associated with the use of fish traps, particularly along the narrow continental shelf area of south Florida. After carefully considering all proposals and the associated impacts on all user groups, the Council concluded that prohibiting traps inside the 100-foot contour south of Fowey Rocks Light (Miami, Florida) would be the most fair and equitable resolution. NOAA concurs with this decision.

A representative of a conservation organization suggested that the minimum mesh size for traps should be greater than 2 × 2 inches to be consistent with the best scientific evidence and the size limits imposed in the FMP. Another commenter proposed a 4-inch trap mesh size. The FMP states that the trap mesh size is not directly correlated to the minimum size limits. The minimum size limits are the primary management tool for controlling the size of fish harvested and preventing

overfishing. The Council has, however, listed studies on the effect of mesh size on size and species composition as a high research priority and will assess the need to modify the mesh size in the near future.

One commenter suggested that the regulations require that the opening (degradable panel) be located on the sides or top of the trap. Most traps are designed with the funnel on one side and the access panel (which frequently will be attached with degradable hinges) on the opposite side, thus achieving the commenters desired result. NOAA believes further regulation is unnecessary.

One commenter recommended that use of steel cables as trap marker lines be prohibited because of the hazard to navigation. The vast majority of buoy lines are not constructed of steel cable. However, buoy lines are a necessary component of the trap fishery. The material used for the line (i.e., rope versus cable) would not significantly alter the extent of the hazard to navigation, and therefore, does not warrant additional regulation.

One commenter suggested that the boundary for the restriction of pulling traps at night should be south of 28°30' rather than south of 28°24.5' to protect fish havens from traps. This measure merely prohibits pulling traps at night in the specified area. Extending the area to 28°30' would have no significant effect on protection of fish; therefore, the recommendation is not adopted.

As is apparent from the substance and intensity of public reaction to the subject, fish traps are a highly controversial fishing gear. In the preparation of the FMP, the Council considered all the arguments pro and con regarding fish traps and concluded that, within the limitations of its authority under the Magnuson Act, the management regime as proposed was proper. However, the Council likewise recognized that further study is desirable on this gear type and its ecological, economic, and social impact. Further study will be undertaken, and if warranted, modification of the management response to fish traps will be considered.

Powerheads

A number of commenters, including representatives of a state marine fishery agency, a sportfishing club, and a scuba club, and two concerned citizens recommended that the use of powerheads be prohibited. Two commenters suggested that the use of powerheads to take any fish (including jewfish) should be allowed. There is no conclusive scientific information to

indicate that the use of powerheads in the regulated area has resulted in any adverse impact on any species that would warrant a total prohibition on use of this gear. Further, the management measure prohibiting the spearing of jewfish has been disapproved because (1) there is insufficient scientific information available to support the measure; (2) it does not result in a fair and equitable allocation of fishing privileges (National Standard 4); and (3) it is devoid of scientific rationale demonstrating its necessity and propriety (Magnuson Act § 303(a)(1)(A)). Therefore, the regulation prohibiting the spearing of jewfish has been deleted from this final rule.

Roller Trawls

A representative of a conservation organization objected to the use of roller trawls along Florida's continental shelf because of potential damage to the fisheries and reef areas. A prohibition on the use of roller trawls was considered but rejected, because less burdensome measures (i.e., minimum mesh size, and size limits) were adopted to mitigate adverse impacts on the fishery, and available evidence of significant habitat damage was inconclusive. Evaluation of the impacts of bottom trawling is identified in the FMP as one of the highest priority research needs. The consideration of prohibiting roller trawls in specific coral reef areas was deferred to the Fishery Management Plan for Coral and Coral Reefs.

Size Limits

Several commenters recommended that minimum size limits be imposed on additional species (i.e., gag grouper and jewfish), and one commenter suggested that the minimum sizes be increased to provide additional protection to the spawning stock. The FMP contains detailed procedures and criteria for evaluating minimum size limits; however, certain basic fishery data such as growth, mortality, and survival rates are essential. Minimum size limits were imposed on all species for which (1) adequate data were available to perform the necessary analysis; and (2) the analysis indicated size limits were warranted based upon the biological, economic, and social criteria in the FMP. The required data were not available to allow evaluation of size limits for jewfish. A minimum size limit for gag grouper was considered but was rejected because the survival rate (after catch and release) was unknown but suspected to be quite low. Survival rates are critical in determining the effectiveness of size limits.

The FMP incorporates a mechanism for timely implementation of additional size limits when data supporting the need for such limits become available. Currently, there is no indication that any species in this fishery is experiencing problems because of insufficient spawning (i.e., recruitment overfishing). The establishment of minimum size limits will control growth overfishing and is expected to ensure adequate spawning.

Enforcement

The United States Coast Guard submitted proposed language to modify paragraphs (a) and (b) of § 646.7, Facilitation of enforcement. The suggested language reflects minor modifications in the procedures the Coast Guard will use in communicating with operators of fishing vessels. This final rule has been revised accordingly. The Coast Guard also noted that since the language in § 646.6 (d), (e), and (f) and § 646.21 prohibits possession or harvesting of undersized fish, any person merely catching an undersized fish would be in technical violation. It was suggested that these sections be revised to prohibit retention of undersized fish. After carefully considering the proposed revisions, NOAA elected to retain the original language and to rely on enforcement agents to distinguish among excusable technical violations and those warranting sanctions under these regulations.

Coastal Zone Consistency

The Florida Department of Natural Resources (FDNR), a sportfishing organization, and a conservation organization questioned the consistency of the regulations with Florida's Coastal Management Program (CMP) to the extent that they allow the use of fish traps and powerheads, and do not impose size limits on black grouper, gag grouper, or jewfish. State law, incorporated into Florida's CMP, prohibits the use and possession of fish traps (with certain exceptions) (Florida Statutes § 370.1105); prohibits the use of explosives or firearms for the taking of foodfish [Florida Statutes section 370.08 (5) and (10)]; and establishes size limits for gag grouper, black grouper, jewfish, red grouper, and Nassau grouper [Florida Statutes section 370.11(2)(a)(8)].

The claim of inconsistency is without legal foundation. Though Federal and State regulations are not identical, identity is not required by the Coastal Zone Management Act (CZMA). The statutory requirement of consistency is qualified. Consistency is required only

to the "maximum extent practicable" [CZMA section 307(c)(1)]. This qualified requirement of consistency requires that Federal activities be fully consistent with State coastal zone programs "unless compliance is prohibited based on the requirements of existing law applicable to the Federal agency's operations" [15 CFR 930.32(a)]. In this instance, NOAA is constrained by the Magnuson Act. The coastal zone consistency determination for this FMP, which was submitted to Florida's Office of Coastal Zone Management on April 27, 1983, clearly indicated that the prohibition of fish traps and powerheads and the implementation of size limits on gag grouper, black grouper, and jewfish would violate several of the national standards as well as section 303(a)(1)(A) of the Magnuson Act. Therefore, to the maximum extent practicable, this final rule is consistent with Florida's CMP. The Administrator of NOAA has considered and rejected Florida's request to delay implementation of the FMP.

Specific State Concerns

The FDNR noted that this FMP and the Fishery Management Plan for the Gulf of Mexico Reef Fish Fishery manage essentially the same species but contain dissimilar management measures which cannot both be appropriate. The FDNR suggested that this situation would complicate enforcement, particularly in the Florida Keys. NOAA acknowledges the differences in the two plans but believes that both management approaches are proper. It is reasonable to expect some variation in the two plans as a result of geographical (i.e., latitude and physical configuration of continental shelf areas) and socio-economic differences between the two areas. NOAA agrees that the differing management measures may complicate enforcement in the Florida Keys and anticipates the need for additional at sea enforcement in that area.

The FDNR also commented that these proposed rules would authorize the use and possession of fish traps, without limitation on the number of traps per vessel nor the number of vessels employing traps, and that such regulation will supersede the application of Florida's trap law with respect to fishing beyond Florida's seaward boundary. This is correct. The FDNR further asserts that NOAA's perceived effect of the proposed rules is to nullify Florida's ban on the possession of traps within Florida's boundaries. This is incorrect. It is NOAA's position that Florida's ban on possession of fish traps in state waters is nullified only to the

extent that it would interfere with the exercise of a fisherman's right to utilize fish traps in the FCZ (i.e., Florida's ban may not be used to prohibit the transport of fish traps through state waters to and from the FCZ).

The FDNR further asserts that the provisions of § 646.6(g) and § 646.21(c) constitute further restraint on fishing activities occurring within state boundaries. This position is incorrect. The provisions of these regulations establish permissible activities within the FCZ and with regard to fish harvested from the FCZ. The restraints imposed on the landing of fish within state boundaries applies only to those fish harvested from the FCZ. Those fish harvested from the waters within the jurisdiction of Florida will not be affected by the requirements of §§ 646.6(g) and 646.21(c).

In addition, FDNR contends that allowing fish traps in the FCZ will create an enforcement impossibility for Florida within Florida's boundaries and will decimate Florida's prohibition on the possession of fish traps. NOAA agrees that authorizing the use of fish traps in the FCZ will have a substantial impact upon the ability of Florida to enforce its trap prohibition within state waters. NOAA will work with Florida to minimize this impact.

FDNR asserts further that these conflicts (§§ 646.6(g), 646.21(c) and disparate fish trap regulation) between State and Federal law require resolution under section 306 of the Magnuson Act. However, section 306 of the Magnuson Act was not formulated for resolving regulatory conflicts created by Federal supersession. Rather, section 306 addresses the situation where the Federal government concludes that the regulation of fisheries within State waters is not accomplished in such a fashion as to be in furtherance of effective implementation of federal regulations within the FCZ. In this instance, NOAA does not take issue with the manner in which Florida is regulating its fisheries within state waters. As a result, the preemption provisions of section 306 are not applicable.

FDNR urges that the proposed rules be rejected as inimical to the resources that they were designed to protect. NOAA disagrees. The matters set forth in opposition to implementation of the FMP by FDNR are not persuasive. The Council, with NOAA's agreement, has concluded that the approach proposed in the FMP is the proper approach to management of the subject fishery.

Finally, FDNR requested that an administrative hearing, in accordance

with Title 5, U.S.C. 553, be held and that the proposed rules be stayed pending the resolution of the issues raised by FDNR. NOAA declines either to grant such a hearing or to delay the effective date of the proposed rules. To grant a further hearing on these rules would serve no useful purpose and would otherwise delay their implementation. Such delay would result in a violation of the provision of section 304(b)(1) of the Act. Furthermore, the matters brought to issue by FDNR, and its comments on the proposed rules, are more properly resolved in the context of Council deliberation for future modification of the FMP.

General Comments

Several commenters, including two conservation organizations and a state marine fishery agency, have stated that the FMP, or various portions of it, are not based on sufficient scientific information. One of the commenters noted that fundamental fishery data were lacking for all but 17 of the 69 species included in the FMP. This data deficiency is acknowledged in the FMP as a major problem in the fishery. Species for which adequate data were not available are not regulated, except for the purpose of data collection. The data collection procedure specified in the FMP is designed to obtain these essential data and, therefore, provide the basis for more definitive management of the additional species.

One commenter suggested that the proposed data collection system was inadequate to meet the requirements of the Magnuson Act. One advantage of the yield per recruit methodology employed in the FMP is that it requires relatively little fishery data. The collection of basic biological data from a sample of commercial and recreational landings will provide sufficient information. Additional fishery data will be obtained from the traditional voluntary landings data. NOAA concludes that this data system satisfies the requirements of the Magnuson Act.

One commenter stated that the yield per recruit model used in the FMP does not adequately address the effects of an intense localized fishery and should be considered an interim solution. It is acknowledged in the FMP that other management strategies (e.g., time or area closures and quotas) may be required in the future; however, under constraints of existing fishery data, the yield per recruit approach was deemed the most appropriate to resolve overfishing of individual species. Data collection and analysis specified in the FMP will aid in evaluating the feasibility

and necessity of additional management strategies.

One commenter suggested that the fishing year be changed to September 1–August 31 to avoid potential adverse impacts that would result if quotas were reached and the fishery was closed. There are no quotas established for this fishery; therefore, no change in the fishing year is necessary.

One commenter suggested that spearfishing be listed as a major method for harvesting fish if future quotas are imposed. If quotas are established in the future, the spearfishing sector of the fishery will be considered appropriately in any allocation of quotas.

Changes From the Proposed Rule

For the reasons discussed above, the final rule differs from the proposed rule as follows:

Section 646.6

Paragraph (i) was deleted as a result of NOAA's disapproval of the Management measure prohibiting the spearing of jewfish.

The old paragraphs (j) through (q) are redesignated (i) through (p).

Section 646.7

Paragraphs (a) and (b) were revised to reflect recent changes in the Coast Guard's procedures for communication with operators of fishing vessels.

Section 646.22

Paragraph (a)(3) was deleted as a result of NOAA's disapproval of the management measure prohibiting the spearing of jewfish.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), after considering all comments received on the FMP and the proposed regulations, has determined that the FMP and this rule are necessary for the conservation and management of the fishery and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared a final environmental impact statement for this FMP; a notice of availability was published on August 19, 1983 (48 FR 37702).

The NOAA Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review (RIR) which concludes that this rule will result in benefits to the fishermen and to the economy that are greater than the associated Federal Costs to manage the fishery on

continuing basis. Benefits that will accrue from implementing the proposed measures come from the minimum sizes on red snapper, vermilion snapper, yellowtail snapper, black sea bass, red grouper, and Nassau grouper. The benefit/cost analysis was performed utilizing a 20-year planning horizon. The benefit/cost ratio is defined as present value benefits divided by present value costs. There are alternative benefit/costs ratios depending on the assumed per pound value of the fish to commercial and recreational fishermen:

Assumed per pound value	Benefit/cost ratio
\$0.75.....	\$15,539,462/\$4,085,128=3.80
1.00.....	20,719,283/\$4,085,128=5.07
1.25.....	25,899,104/\$4,085,128=6.34
1.50.....	31,078,925/\$4,085,128=7.61

The conclusion is that the return for government investment, in implementing minimum size restrictions for the six fish species, ranges from \$3.80 to \$7.61 for each dollar invested. Copies of the RIR are available (see ADDRESSES).

The Council prepared a regulatory flexibility analysis (RFA) in conjunction with the RIR, as provided by Section 605(a) of the Regulatory Flexibility Act; this analysis is summarized above. On the basis of this RIR/RFA, the NOAA Administrator determined that this rule will have a significant economic impact on a substantial number of small entities. Copies of the RIR/RFA are available (see ADDRESSES).

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, South Carolina, and North Carolina. (The State of Georgia does not have an approved program.) This determination was submitted for review to the responsible State agencies under § 307 of the Coastal Zone Management Act. North Carolina responded and indicated its agreement with the conclusion of the consistency determination. South Carolina did not respond within 45 days, hence its agreement with the Council's consistency determination is presumed under 15 CFR 930.41(a). Florida requested and received a 15-day extension of its comment period and, subsequently, disagreed with the Council's determination. Florida's comments are discussed above. NOAA has concluded that, to the maximum extent practicable, the FMP is consistent with the applicable coastal zone management programs.

List of Subjects in 50 CFR Part 646

Fish, Fisheries, Fishing.
William G. Gordon,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR is amended by adding a new Part 646 to read as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

Subpart A—General Provisions

- Sec.
- 646.1 Purpose and scope.
- 646.2 Definitions.
- 646.3 Relationship to other laws.
- 646.4 Catch monitoring.
- 646.5 Gear identification. [Reserved]
- 646.6 Prohibitions.
- 646.7 Facilitation of enforcement.
- 646.8 Penalties.

Subpart B—Management Measures

- 646.20 Harvest limitations.
- 646.21 Size limitations.
- 646.22 Gear limitations.
- 646.23 Specifically authorized activities.

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

Subpart A—General Provisions

§ 646.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic prepared by the South Atlantic Fishery Management Council under the Magnuson Act.

(b) This part regulates fishing for fish in the snapper-grouper fishery by fishing vessels within the South Atlantic portion of the fishery conservation zone (FCZ).

§ 646.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part shall have the following meaning:

Authorized officers means:

- (a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (b) Any certified enforcement officer of special agent of the National Marine Fisheries Service (NMFS);
- (c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or
- (d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Authorized statistical reporting agent means:

(a) Any person so designated by the Center Director; or

(b) Any person so designated by the head of any Federal or State agency which has entered into an agreement with the Secretary to collect fishery data.

Center Director means the Center Director or a designee, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305-361-5761.

Commercial fisherman means a person who sells, trades, or barter any part of his or her catch of fish.

Dealer means the person who first receives by way of purchase, barter, or trade fish from a commercial fisherman.

Fish in the snapper-grouper species means the following species;

Snappers Lutjanidae

Black snapper—*Apsilus dentatus*
Queen snapper—*Etelis oculatus*
Mutton snapper—*Lutjanus analis*
Schoolmaster—*Lutjanus apodus*
Blackfin snapper—*Lutjanus buccanella*
Red snapper—*Lutjanus campechanus*
Cubera snapper—*Lutjanus cyanopterus*
Gray snapper—*Lutjanus griseus*
Mahogan snapper—*Lutjanus mahogoni*
Dog snapper—*Lutjanus jocu*
Lane snapper—*Lutjanus synagris*
Silk snapper—*Lutjanus vivanus*
Yellowtail snapper—*Ocyurus chrysurus*
Vermilion snapper—*Rhomboplites aurubens*

Sea Basses—Serranidae

Bank sea bass—*Centropristis ocyurus*
Rock sea bass—*Centropristis philadelphia*
Black sea bass—*Centropristis striata*

Grouper—Serranidae

Rock hind—*Epinephelus adscensionis*
Graysby—*Epinephelus cruentatus*
Speckled hind—*Epinephelus drummondhayi*
Yellowedge grouper—*Epinephelus flavolimbatus*
Coney—*Epinephelus fulvus*
Red hind—*Epinephelus guttatus*
Jewfish—*Epinephelus itajara*
Red grouper—*Epinephelus morio*
Misty grouper—*Epinephelus mystacinus*
Warsaw grouper—*Epinephelus nigritus*
Snowy grouper—*Epinephelus niveatus*
Nassau grouper—*Epinephelus striatus*
Black grouper—*Mycteroperca bonaci*
Yellowmouth grouper—*Mycteroperca interstitialis*
Gag—*Mycteroperca microlepis*
Scamp—*Mycteroperca phenax*
Tiger grouper—*Mycteroperca tigris*
Yellowfin grouper—*Mycteroperca venenosa*

Porgies—Sparidae

Sheepshead—*Archosargus probatocephalus*
Grass porgy—*Calamus arctifrons*
Jolthead porgy—*Calamus bajonado*
Saucereye porgy—*Calamus calamus*
Whitebone porgy—*Calamus leucosteus*
Knobbed porgy—*Calamus nodosus*
Red porgy—*Pagrus pagrus*
Longspine porgy—*Stenotomus caprinus*

Scup—*Stenotomus chrysops*

Grunts—Haemulidae

Black margate—*Anisotremus surinamensis*
Porkfish—*Anisotremus virginicus*
Margate—*Haemulon album*
Tomtate—*Haemulon aurolineatum*
Smallmouth grunt—*Haemulon chrysargyreum*
French grunt—*Haemulon flavolineatum*
Spanish grunt—*Haemulon macrostomum*
Cottonwick—*Haemulon melanurum*
Sailors choice—*Haemulon parrai*
White grunt—*Haemulon plumieri*
Blue stripe grunt—*Haemulon sciurus*

Tilefishes—Malacanthidae

Blueline tilefish—*Caulolatilus microps*
Tilefish (Golden)—*Lopholatilus chamaeleonticeps*
Sand tilefish—*Malacanthus plumieri*

Triggerfishes—Balistidae

Gray triggerfish—*Balistes capriscus*
Queen triggerfish—*Balistes vetula*
Ocean triggerfish—*Canthidermis sufflamen*

Wrasses—Labridae

Hogfish—*Lachnolaimus maximus*
Puddingwife—*Halichoeres radiatus*

Jacks—Carangidae

Yellow jack—*Caranx bartholomaei*
Blue runner—*Caranx crysos*
Crevalle jack—*Caranx hippos*
Bar Jack—*Caranx ruber*
Greater amber jack—*Seriola dumerili*
Almaco jack—*Seriola rivoliana*

Fish trap means any trap and the component parts thereof used for or capable of taking finfish, regardless of the construction material, except those traps historically used in the directed fisheries for crustaceans (blue crab, stone crab, and spiny lobster). Fish trap further means those traps used to fish for black sea bass.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, which fires a projectile upon contact.

Regional Director means the Regional Director, or a designee, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Secretary means the Secretary of Commerce, or a designee.

South Atlantic means that portion of the FCZ along the Atlantic coastal states south of the Virginia/North Carolina border to the boundary between the Gulf of Mexico and the Atlantic Ocean. The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83°00' W. longitude, proceeds north to 24°35' N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

Total length means distance from the tip of the head (snout) to the furthestmost tip of the tail (caudal fin).

U.S. fish processors means facilities located within the United States for, and vessels of the United States, used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means:

- (a) Any vessel documented under the laws of the United States;
- (b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or
- (c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 646.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations are intended to apply within the FCZ portion of the following National Marine Sanctuaries and National Park unless regulations establishing such Sanctuaries or Park prohibit their application.

(1) Looe Key National Marine Sanctuary (15 CFR Part 937);

(2) Key Largo Coral Reef Marine Sanctuary (15 CFR Part 929);

(3) Biscayne National Park (Title 16 U.S.C. 410gg);

(4) Gray's Reef National Marine Sanctuary (15 CFR Part 938); and

(5) Monitor Marine Sanctuary (15 CFR Part 924).

§ 646.4 Catch monitoring.

Data will be collected by authorized statistical reporting agents from a sample of commercial and recreational catch for YPR analysis. Those fishermen and dealers selected by the Center Director must make their fish available for inspection by those agents.

§ 646.5 Gear identification. [Reserved]

§ 646.6 Prohibitions.

It is unlawful for any person to:

(a) Refuse to make fish available for inspection when requested to do so by

an authorized statistical reporting agent, as specified in § 646.4;

(b) Pull or tend fish traps except during the hours specified in § 646.20;

(c) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 646.20(b);

(d) Possess in or harvest from the FCZ red snapper, yellowtail snapper, red grouper, or Nassau grouper under the minimum size specified in § 646.21(a);

(e) Possess in or harvest from that portion of the FCZ south of 35°15' N. latitude (Cape Hatteras, North Carolina) black sea bass under the minimum size specified in § 646.21(b);

(f) Possess in the FCZ any fish in the snapper-grouper fishery without the heads and fins intact as specified in § 646.21(c);

(g) Land any fish in the snapper-grouper fishery, taken from the FCZ, without the heads and fins intact as specified in § 646.21(c);

(h) Fish for fish in the snapper-grouper fishery with explosives or poisons except as provided in § 646.22(a)(1) and (2);

(i) Fish for fish in the snapper-grouper fishery in the FCZ with trawl nets and fish traps except as specified in §§ 646.20 (a) and (b) or 646.22(b);

(j) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, export any fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulations or any permit issued to a foreign vessel under the Magnuson Act;

(k) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(l) Forcibly to assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (k) of this section;

(m) Resist a lawful arrest for any act prohibited by this part;

(n) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(o) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel, while such foreign vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under

section 204 of the Magnuson Act which authorized the receipt by such vessel of the U.S.-harvested fish of the species concerned; or

(p) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

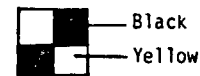
§ 646.7 Facilitation of enforcement.

(a) *General.* The operator of any fishing vessel subject to this part must immediately comply with instructions or signals by an authorized officer to stop his vessel and instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) When the sizes of the vessels and the wind, sea, and visibility conditions permit, loudhailer is the preferred method for communicating between vessels. When use of a loudhailer is not practicable and for communications with an aircraft, VHF-FM or high frequency radiotelephone should be employed. Hand signals or placards may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If verbal communications are not practicable, the visual signal "L" meaning "you should stop your vessel instantly," may be transmitted by flashing light directed at the vessel signaled. If the enforcement vessel is equipped with signal flags, the flashing light signal "L" consists of short and long flashes as follows: short-long-short-short (· — · ·); and the code flag "L" is a square yellow and black flag shown as follows:



(4) Failure of a vessel's operator to stop his vessel when directed by loudhailer, radiotelephone, or flashing light signal "L" shall constitute *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and accompanying party to come aboard;

(3) When necessary, to facilitate the boarding and/or when requested by an authorized officer provide a safe ladder, man rope safety line, and ladder illumination for the authorized officer and the boarding party; and

(4) Take such other actions as necessary to ensure the safety of the authorized officer and accompanying party and facilitate the boarding.

(d) *Additional Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by a vessel of the U.S. Coast Guard when conditions do not permit communications by loudhailer or radiotelephone.

Knowledge of these additional signals by vessel operators is not required. However, knowledge of these additional signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and necessity for the vessel to stop instantly. The operator of a vessel who does not understand a signal from a vessel of the U.S. Coast Guard and who is unable to obtain clarification by loudhailer or radiotelephone should consider the signal to be "L."

(1) "AA AA AA etc." (— — — — —) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel identification required by § 658.6 or other law.

(2) "RY-CY" (— — — — —) meaning "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions permit an enforcement boarding without the necessity of the vessel being boarded coming to a

complete stop or, in some cases, without retrieval of fishing gear which may be in the water.

§ 646.8 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and to 50 CFR Part 620 (Citations), 50 CFR Part 621, and 15 CFR Part 904 (Civil Procedures), the other applicable Federal law.

Subpart B—Management Measures

§ 646.20 Harvest limitations.

(a) Fish traps may be pulled or tended only during the period beginning one hour before official sunrise to one hour after official sunset in the South Atlantic portion of the FCZ south of 28°24.5' N. Latitude (Cape Canaveral, Florida).

(b) Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner.

§ 646.21 Size limitations.

(a) The minimum size limit for the harvest or possession in the FCZ of red snapper, yellowtail snapper, red grouper, and Nassau grouper is 12 inches total length.

(b) The minimum size for the harvest or possession in the FCZ of black sea bass south of Cape Hatteras, North Carolina is 8 inches total length.

(c) All fish in the snapper-grouper fishery subject to minimum size limits specified in this section may be possessed in the FCZ or landed, if harvested from the FCZ, only with the head and fins intact.

§ 646.22 Gear limitations.

(a) (1) Explosives (except explosives in powerheads) may not be used to fish for fish in the snapper-grouper fishery.

(2) Poisons may not be used to fish for fish in the snapper-grouper fishery except as authorized by permit under State or Federal law.

(b) (1) Fish traps must have a degradable panel or a door attached with degradable fasteners or material such as jute or sisal twines which normally deteriorate within 42 days. The opening must be at least as large as the entry ports.

(2) Effective [insert date—1 year after effective date of final rule], fish traps must have a minimum mesh size of 1 x 2 inches or 1.5-inch hexagonal (the distance between parallel sides).

(3) Effective September 28, 1984, trawl nets targeting fish in the snapper-grouper fishery (25 percent or more of the fish on board by weight are fish in the snapper-grouper fishery) must have a minimum stretched mesh size of 4 inches. Shrimp trawls, calico scallop trawls, and rock shrimp trawls are specifically exempt from this requirement.

(4) Fish traps may not be placed shoreward of the 100-foot contour in that portion of the South Atlantic FCZ south of 25°35.5' N. latitude (Fowey Rocks Light, Florida). Fish traps so deployed will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer).

§ 646.23 Specifically authorized activities.

The Secretary may authorize for, the acquisition of information and data, activities which are otherwise prohibited by these regulations.

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