

Dated: January 30, 1989.

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Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-4617 Filed 2-27-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 80624-8266]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Final rule.

SUMMARY: NOAA designates two artificial reefs (ARs) off Ft. Pierce, Florida, as special management zones (SMZs) in which specific fishing gear and harvest limitations apply. The intended effect is to promote orderly use of the fishery resources on the ARs, to reduce potential user-group conflicts, and to maintain the intended socioeconomic benefits of the ARs to the maximum extent practicable.

EFFECTIVE DATE: March 30, 1989.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for designation of ARs and fish attraction devices (FADs) as SMZs, in which specific gear and harvest limitations would apply.

An AR or FAD creates fishing opportunities that would not otherwise exist and an AR may increase biological production. The cost of their construction and maintenance can be substantial and their intended socioeconomic benefits (e.g., recreational fishing or tournaments) can be reduced or eliminated if highly efficient fishing gear and fishing practices are not restrained. Therefore, designation of an AR or FAD as a SMZ acts as an incentive for construction.

The Ft. Pierce Sportfishing Club (Club) requested the Council to establish SMZs around two ARs located in the Exclusive Economic Zone off the southeast coast

of Florida for which it holds a Corps of Engineers permit authorizing their construction. FADs are utilized with each AR. The Club requested that the following limitations be applied in these SMZs: (1) Prohibit use of fish traps; (2) prohibit use of bottom longlines; (3) prohibit use of hydraulic and electric reels to fish for fish in the snapper-grouper fishery unless the reels are mounted on hand-held (including rod holder) fishing rods; (4) prohibit spearfishing on the inshore reef; and (5) prohibit harvest or possession of jewfish.

In accordance with the FMP, the Monitoring Team appointed by the Council issued a report evaluating the Club's request, in the context of the FMP's criteria of (1) fairness and equity, (2) promotion of conservation, and (3) prevention of excessive shares. The report also considered possible conflicts among fishermen and impacts on historical uses. A discussion of these criteria was contained in the proposed rule (53 FR 32412, August 25, 1988) and is not repeated here.

After reviewing the Monitoring Team's report, supporting data, comments during public hearings, and other relevant information, the Council recommended and the Director, Southeast Region, NMFS, concurred with the establishment of the SMZs with the requested limitations. This final rule designates the two ARs as SMZs and, in order to (1) promote orderly use of the resource; (2) reduce potential user group conflicts; (3) maintain the intended socioeconomic benefits of the ARs and thereby maintain incentives for the creation of ARs and FADs; (4) optimize the use of the biological production; and (5) create fishing opportunities that would not exist otherwise, imposes the requested restrictions on fishing gear and fishing practices in the SMZs.

Comments and Responses

NOAA received 13 written comments supporting the proposed rule from sportfishing clubs and organizations, a marina operator, a charter boat operator, and individuals. These commentators expressed the need for restrictions on "highly efficient" fishing gear to ensure that the intended benefits of these artificial reefs are maintained. The Ft. Pierce Sportfishing Club also submitted additional rationale and information in support of the proposed SMZs.

Two letters from a commercial fishermen's organization and one from an individual objected to the proposed rule. Those commentators opposing the proposed rule raised a number of issues regarding artificial reefs and the

proposed SMZs. One commenter stated that there is no documentation that the SMZs would promote conservation by optimizing social and economic benefits. The proposed rule did not present quantitative economic analysis but did present qualitative descriptions of social and economic benefits. Studies of artificial reefs in South Carolina and south Florida have produced estimates of economic benefits for those reefs and have documented social benefits in terms of increased fishing opportunities and participation rates. During the comment period, the Club provided additional qualitative descriptions of the social and economic benefits for each restriction proposed for the SMZs. Further, few, if any, historical users will be adversely impacted by the proposed action. NOAA believes there is an adequate basis to conclude benefits will exceed costs.

Two commenters suggested that artificial reefs only aggregate fish from surrounding areas, and one stated that this may increase catchability and fishing mortality. The issue of whether artificial reefs actually increase fish production or simply attract fish from adjacent areas has not been resolved conclusively. There is some scientific evidence supporting each position. However, the two functions are not mutually exclusive. It appears that there may be a number of factors influencing the relative importance of production versus aggregation, including: Availability of natural habitat, degree of the fish's dependence on reef habitat, exploitation rates, and the mechanism of natural population limitation (e.g., recruitment versus habitat). Although artificial reefs may increase catchability, the proposed gear restrictions within the SMZs will reduce potential fishing mortality. Minimum size limits applicable to all participants in the fishery will also limit fishing mortality.

One commenter stated that there has been no record of conflict or evidence that any of the prohibited gears has caused a problem. NOAA agrees; however, there is some evidence that these gear types, especially fish traps, have the potential to deplete fish populations from localized areas, including artificial reefs. The proposed restrictions are intended to prevent such problems from occurring. Because there has been no significant use of the prohibited gear at the proposed sites and, therefore, will be no impact on historical uses, NOAA believes that the proposed action is justifiable.

The difficulties of enforcing restrictions in these small geographic areas was also raised as an issue.

NOAA acknowledges that enforcement may be difficult but concludes that the combined enforcement capabilities of the NMFS, U.S. Coast Guard, and Florida, in addition to anticipated cooperation from users of the SMZs, should provide a reasonable level of enforcement.

One commenter representing some of the shrimping industry in northeast Florida claimed that the SMZs would hinder access to their traditional fishing grounds. The two artificial reef sites were permitted by the Corps of Engineers in 1984, and placement of reef materials began in 1985. It is possible that construction of the artificial reefs may have affected access to fishing grounds, but this proposed action, establishing SMZs on these permitted sites, would not have any additional effect on access. Trawling in the SMZs, though probably impractical, is not prohibited.

All commenters objecting to the proposed rule expressed a general concern about the potential proliferation of SMZs. One suggested that no SMZs be approved until it is determined whether artificial reefs and fish attracting devices contribute to overfishing. Although the number of artificial reefs is increasing rapidly, especially in Florida, the procedure in the FMP for establishing SMZs provides for thorough evaluation of each request. Requests are reviewed on a case-by-case basis; criteria for evaluation include fairness and equity, consideration of effects on natural habitat and historical uses, and other factors; and thorough public review is afforded through public hearings and public comment periods. NOAA believes that this process will result in rational development of SMZs. However, NOAA and the Council agree that additional consideration of the impacts of artificial reefs and SMZs would be beneficial. The Council will proceed with a reevaluation of the SMZ concept in the near future.

Changes from the Proposed Rule

In the proposed rule, in § 646.24(a)(21), the latitude and longitude specifications for point B were incorrect. The last two digits, showing hundredths of minutes of latitude and longitude, were inverted. This final rule corrects the non-substantive error.

Additional Change

In § 646.24(a)(1), the coordinates for the Little River Reef SMZ are listed in incorrect order. This rule corrects the error and revises for clarity the format for showing the points designating the SMZ.

Classification

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10. These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

The Under Secretary determined that this rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. This rule 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Council prepared a regulatory impact review for this rule. A summary of the economic effects was included in the proposed rule and is not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this determination was included in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not prepared.

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

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Florida, the only state involved, agreed with this determination.

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

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated: February 22, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

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

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

2. In § 646.6, paragraph (n) is removed, paragraphs (o) and (p) are redesignated as paragraphs (n) and (o), and paragraphs (l) and (m) are revised to read as follows:

§ 646.6 Prohibitions.

* * * * *

(l) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.24(b)(2) and (c).

(m) Harvest or fail to release a jewfish within a special management zone, or possess a jewfish taken from a special management zone, as specified in § 646.24(b)(1).

3. In § 646.24, paragraph (a)(1) is revised, new paragraphs (a)(20) and (21) are added, paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

§ 646.24 Area limitations.

(a) * * *

(1) *Little River Reef*: The area is bounded by straight lines connecting the following points in the order listed:

Point	Latitude	Longitude
A.....	33°49.60' N.....	78°30.51' W.
B.....	33°48.95' N.....	78°31.30' W.
C.....	33°48.40' N.....	78°30.50' W.
D.....	33°48.92' N.....	78°29.72' W.
A.....	33°49.60' N.....	78°30.51' W.

* * * * *

(20) *Ft. Pierce Inshore Reef*: The area is bounded on the north by 27°26.8' N. latitude; on the south by 27°25.8' N. latitude; on the east by 80°09.24' W. longitude; and on the west by 80°10.36' W. longitude.

(21) *Ft. Pierce Offshore Reef*: The area is bounded by straight lines connecting the following points in the order listed:

Point	Latitude	Longitude
A.....	27°23.68' N.....	80°03.95' W.
B.....	27°22.80' N.....	80°03.60' W.
C.....	27°23.94' N.....	80°00.02' W.
D.....	27°24.85' N.....	80°00.33' W.

Point	Latitude	Longitude
A.....	27°23.68' N.....	80°03.95' W.

(b) The following restrictions apply within all of the SMZs specified in paragraph (a) of this section.

(1) Jewfish may not be harvested by any type of gear. Jewfish taken incidentally by hook-and-line gear must be released immediately by cutting the

line without removing the fish from the water.

(2) The use of fish traps and bottom longlines is prohibited.

(c) The following additional restrictions apply in the indicated SMZs.

(1) In SMZs specified in paragraphs (a) (1) through (19) of this section,

(i) The use of gill nets and trawls is prohibited; and

(ii) Fishing may be conducted only with hand-held hook-and-line gear (including manual, electric, or hydraulic

rod and reel) and spearfishing gear (including powerheads).

(2) In SMZs specified in paragraphs (a) (20) and (21) of this section hydraulic and electric reels that are permanently affixed to the vessel are prohibited when fishing for fish in the snapper-grouper fishery.

(3) In the SMZ specified in paragraph (a)(20) of this section, the use of spearfishing gear is prohibited.

[FR. Doc 89-4596 Filed 2-27-89; 8:45 am]

BILLING CODE 3510-22-M