this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.d.t. on July 18, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, a hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one persons requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES". A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 29, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90-15798 Filed 7-6-90; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50571A; FRL-3773-9]

Certain Aromatic Ether Diamines; Proposed Significant New Uses of Chemical Substances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: In response to a request by an interested party, EPA is extending the comment period for the proposed significant new use rule (SNUR) on certain aromatic ether diamines, published in the Federal Register of May 30, 1990, issued under section 5(a)(2) of the Toxic Substances Control Act (TSCA).

DATES: Written comments on the proposed rule must be submitted to EPA by July 30, 1990.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50571. Nonconfidential comments on the proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit XI of the preamble of the proposed rule contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 30, 1990 (55 FR 21887), EPA proposed a SNUR on certain substances generically referred to as aromatic ether diamines. In the proposed SNUR, a 30-day comment period was provided for. In response to a request by an interested party, EPA is extending the comment period by 30 days. Comments will be accepted until July 30, 1990.

Dated: June 28, 1990.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc 90-15804 Filed 7-6-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 90-194]

Hearing Reform

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes revised rules to expedite its comparative hearing process for new applicants in order to speed service to the public.

DATES: Comments are due on or before August 27, 1990, and reply comments are due on or before September 26, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted May 10, 1990. FCC 90-194. The full text of this Commission Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this Notice of Proposed Rule Making may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037, (202) 857-3800.

TITLE: PROPOSALS TO REFORM THE COMMISSION'S COMPARATIVE HEARING PROCESS TO EXPEDITE THE RESOLUTION OF CASES

Summary of Policy Statement and Order

1. During the process by which the Commission selects among mutually exclusive applicants for new broadcast facilities the public is deprived of a valued service and the ultimate licensee is deprived on the opportunity to provide that service. Thus, delay in that process greatly disserves the public. Our review of recent hearing cases indicates that the average case prosecuted from designation for hearing (HDO), through a hearing, an Initial Decision (ID), a Review Board Decision, and a

Commission decision takes almost three years to complete. We believe that there are a number of procedural and organizational strategies that will reduce the amount of time consumed by this process, perhaps as much as two-thirds.

Encouraging Settlements

2. Settlements are a significant factor in expediting the hearing process. When a case is settled, service to the public is expedited, and Government resources that would have been devoted to the resolution of that case can be turned to the resolution of those cases that remain. Currently, the overwhelming majority of cases are settled before going through the entire hearing process. Our obvious objective should be to encourage even more cases to settle and to do so as early in the process as possible.

3. Of the cases disposed of by the ALJs in FY 1989, approximately 20% involved settlements that were approved within three months of assignment of the case to a judge. Practitioners consistently point to the hearing fee as a primary reason for early settlements.[1] Under current rules, the fee must be paid with an applicant's notice of appearance, filed 20 days after the mailing of the designation order, but that fee is waived where the applicants file a full settlement by the notice of appearance deadline. 47 CFR 1.221, 1.1111(c). We believe that requiring payment of the hearing fee prior to the issuance of the HDO would be preferable. To this end, we propose to amend 47 CFR 1.221 to require the filing of the notice of appearance and fee before the release of the HDO. Under this procedure, the staff would notify applicants (approximately 30, 60, or more days before the HDO is to be issued) of the date for filing notices of appearance and the hearing fee. The applicants would have at least 30 days to assess their position and conclude any pre-designation settlements before the fee was due. If a full settlement is reached prior to designation, no fee would be due, but, where a full settlement is not reached and filed on or before the notice of appearance deadline, any applicants that fail to pay the fee would be dismissed prior to designation.

4. That same pre-designation notice or a separate notification from a "settlement advocate" could also be used to encourage applicants to settle the case before the HDO. The settlement advocate could also encourage applicants to consider mergers by which the need for a comparative hearing could be eliminated, or, the number of applicants could be reduced. We also propose that amendments reflecting mergers between pending mutually exclusive broadcast applications would be filed as a matter of right under 47 CFR 73.3522. Even where the merger involves less than all the mutually exclusive applicants, it would reduce the number of applications designated for hearing, and thereby simplify the ultimate resolution of the case. To encourage mergers, we will consider proposals to modify that policy to permit the merged applicant to enjoy the comparative advantages achieved by virtue of the merger. Commenters should also address whether the pre-designation settlement process would be enhanced by requiring all pending applicants that have not supplied the additional information on financing and integration proposals now required by FCC Form 301 to provide that information in an amendment to their applications.[2]

5. We also seek comment on means to encourage more settlements after designation but before trial. Although ALJs commonly use pre-hearing conferences as a vehicle to explore settlements, we believe that the efficacy of ALJ-aided settlement discussions would be significantly improved if such conferences occurred just before trial, a time when the parties naturally consider the possibility of an amicable resolution of the case. Moreover, such settlement conferences may be more efficacious if they were conducted "off the record" before a "settlement judge." *See* Joseph and Gilbert, *Breaking the Settlement Ice: The Use of Settlement Judges in Administrative Proceedings*, 24–26 (1988). We also propose to add monetary incentives to the settlement judge process. The question of how much an applicant should be paid in a settlement is being addressed in *Amendment of § 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits*, 5 FCC Rcd. ___ (adopted April 12, 1990). In this proceeding, we propose to provide added impetus to post-designation settlements, by amending 47 CFR 1.1111(c) to permit a settlement judge to recommend a refund of up to half the hearing fee in cases that are settled in this manner.

6. In *Ruarch Associates*, 103 FCC 2d 1178 (1986), the applicant had committed itself to divest a co-owned station to avoid a comparative demerit. In approving the settlement, the Commission relieved the applicant of that commitment. Since then, *Ruarch* has stood for the policy that settlements extinguish the continuing validity of integration, as well as divestiture commitments that had been made during the comparative hearing process. *See WCVQ, Inc.*, 4 FCC Rcd. 4079 (Rev. Bd. 1989) *application for review pending.* We invite comment on possibly reversing *Ruarch Associates* and its progeny. We also seek comment on appropriate means to ensure the future adherence to promises made in applications for purposes of enhancing an applicant's comparative standing under diversity and integration criteria.

Expediting the Hearing Process

7. Generally, discovery does not begin until the filing of notices of appearance (20 days after mailing the HDO), and, in many cases, little is accomplished between the HDO and the first pre-hearing conference. We believe that this "dead time" can be put to productive use. Our proposal to require the filing of the notice of appearance and hearing fee before issuance of the HDO will permit the commencement of discovery immediately upon the release of the HDO, and, under the proposal, we propose to use the HDO to establish the immediate commencement of discover and a firm date for its conclusion. We also propose to use the HDO to set out a schedule for the early phases of the hearing, including the assignment of the presiding ALJ and the establishment of firm dates for the exchange of direct written cases. In this regard, we propose to revisit the issue of whether to accept certain 1979 proposals to strictly limit discovery and shorten the time during which discovery can take place.[3] Specifically, we believe that it would be reasonable to conclude the discovery portion of comparative cases within 60 days after issuance of the HDO. In the alternative, appropriate amendments to Part 1 of the Commission's rules could establish these procedural dates by rule. We also seek comment on whether we should limit the discovery tools available to the parties.

[1] With the implementation of the 1989 amendment to 47 U.S.C. 158, Public Law No. 101–239, 103 Stat. 2106 (December 19, 1989), the hearing fee will be increased to $6,760.

[2] The earlier provision of that information may also expedite the discovery portion of the case.

[3] *See Amendment of Part I, Rules of Practice and Procedure to Provide for Certain Changes in the Commission's Discovery Procedures in Adjudicatory Hearings*, 52 RR 2d 913 (1982); Paglin, Report on Evaluation of the Federal Communications Commission's Discovery Procedures in Adjudicatory Hearings (1980).

8. In *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), the Commission allowed applicants to exclude limited partners (and the owners of non-voting stock) from the calculus by which it determines the comparative credit for integration of ownership and management (as well as for diversity). *Anax* was not specifically designed to foster female and minority ownership, but it has had that effect by enabling these individuals to use the financial backing of others without detracting from the applicant's comparative status. We recognize that the *Anax* policy serves to increase the number of financially qualified applicants before the Commission, but it has also spawned considerable litigation over the *bona fides* of such applications. This litigation in turn often significantly delays the issuance of final decisions and the institution of service to the public. Thus, we propose to overturn the policy and treat all ownership interests equally for purposes of determining the comparative standing of applicants. We also seek comment on alternatives by which the litigation spawned by the *Anax* doctrine could be avoided while still preserving some of the comparative benefits achieved by applicants using the active/passive ownership structure.

9. We also proposed to require the use of written cases except in the most unusual circumstances. In considering applications for initial licenses, the Administrative Procedure Act permits the Commission to adopt procedures for the submission of all or part of the evidence in written form "when a party will not be prejudiced thereby. . . ." [4] In expedited major market cellular comparative cases, the Commission required both written direct and written rebuttal cases, and it required a specific showing to the presiding judge before parties could present oral testimony. In those cases, oral testimony was virtually eliminated, and the hearings were concluded in substantially less time than broadcast comparative proceedings.[5] Moreover, other agencies have experienced a considerable degree of success in shortening the duration of the administrative process by strictly limiting oral testimony at hearings. *See* Idles, *The ICC Hearing Process: a Cost-Benefit Approach to Administrative Agency Alternative Dispute Resolution*, 16 Transportation Law Journal 99 (1987). Therefore, practical experience indicates that the use of strictly written procedures can expedite the hearing process, and we propose to require the submission of written direct and rebuttal cases. Based on these proposals and the major market cellular experience, our goal is the resolution of routine comparative cases by ID within seven months of the HDO.

Expediting Review

10. As a companion to our proposal to resolve comparative hearing cases in seven months, we propose to resolve any appeals of those cases within six months of the ID. Currently, an A&J's initial decision can go through essentially two levels of extensive review, one by the Review Board and one by the Commission. We propose procedures and/or changes in the Commission's organizational structure intended to reduce substantially the time during which a case is pending on appeal within the Commission. Earlier proposals to eliminate the Review Board have been rejected because, although eliminating the Board would shorten the "adjudicatory chain," its continued presence frees the Commissioners to spend more time on policy-related matters, and approximately half of the Board's decisions are never appealed to the Commission. Nevertheless, we invite comment on the elimination of the intermediate level of review.

11. In the alternative, the internal appellate procedures could be reorganized while maintaining the two-tiered review system. The Review Board and its staff could be consolidated with the staff that prepares adjudicatory decisions for the Commission. Such a consolidation of functions would achieve important time savings without counterbalancing sacrifices by allowing the FCC to assign one staff member to handle a case from the release of the ALJ's initial decision all the way through to a Commission decision. In addition to the proposed relocation of the Board as it is presently constituted, we will also consider disbandment of the present Board and assigning the intermediate review function to employees in the Office of General Counsel.

12. Regardless of whether we retain a two-tier system of review, we propose to limit oral argument before the Review Board and the Commission to cases involving extraordinary circumstances. We believe that elimination of oral argument in most hearing cases would significantly expedite the review process. The Commission's rules currently require the Review Board to adopt a decision within 180 days after release of an ID. We propose to adopt internal guidelines establishing a goal of issuing final agency decisions in these comparative cases within six months of the IDs.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 CFR 1.1206 *et seq.* The Sunshine Agenda period commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) Releases the text of a decision or order in the matter, (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda, or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 CFR 1.1203.

14. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) If written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

15. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the

[4] 5 U.S.C. 556(d). *See also* 47 CFR 1.248; *Amendments of Parts 0 and 1 of the Commission's Rules with Respect to Adjudicatory Re-Regulation Proposals*, 58 FCC 2d 865 (1976).

[5] In the cellular cases, the average time from HDO to ID was 11 months as compared with 17 months in broadcast comparative cases.

Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation, § 1.1206.

16. Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 27, 1990 and reply comments on or before September 26, 1990. Extensions of these time periods are not contemplated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

17. The rules proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to impose no new or modified requirements or burdens on the public.

18. Initial Regulatory Flexibility Analysis

I. Reason for the Action

To consider proposals to expedite the resolution of comparative hearings involving applicants for new broadcast facilities.

II. Objective of this Action

To expedite the resolution of comparative hearings involving applicants for new broadcast facilities.

III. Legal Basis

This proceeding is initiated under sections 5(b), 5(c) and 309 of the Communications Act of 1934, as amended.

IV. Number and Type of Small Entities Affected by the Proposed Rule

Applicants for available new broadcast facilities are, for the most part small entities. Presently, the Commission has pending approximately 3,000 such applications that may, upon designation for hearing, come under the rules proposed herein.

V. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule

None.

VI. Federal Rules Which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With the Stated Objective of the Action

Because the proposal would expedite the resolution of comparative broadcast hearings for new applicants, it will generally permit the successful applicant to commence operation of the new station at an earlier date. Thus, the applicants, generally small entities, will be benefited by the proposal. The Commission is also open to any other suggestions to fulfill its goal of expediting the comparative hearing process with a minimum of cost or inconvenience to applicants.

19. *It is ordered* that a copy of this Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

20. This action is taken pursuant to authority contained in sections 5(b), 5(c) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 155(b), 155(c) and 309.

For further information concerning this proceeding, contact Martin Blumenthal, Office of General Counsel (202) 254–6530.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting and Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–15841 Filed 7–6–90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900643–0143]

RIN 0648–AC97

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NOAA proposes to establish a special management zone (SMZ), covering 2 square nautical miles (6.86 km^2), around an artificial reef (AR) at Key Biscayne Artificial Reef Site (Site H), which is located in the exclusive economic zone (EEZ) off Dade County, Florida (County). Within the SMZ, fish trapping, bottom longlining, spearfishing, and all harvesting of jewfish would be prohibited. The intended effect is to promote orderly use of the fishery resources on and around the AR, to reduce potential user-group conflicts, to maintain the intended socioeconomic benefits of the AR to the maximum extent practicable, and to maintain and promote conservation.

DATES: Comments on the proposed rule must be received on or before August 8, 1990.

ADDRESSES: Comments on the proposed rule and requests for copies of the draft regulatory impact review should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

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

SUPPLEMENTARY INFORMATION:

Background

Snapper-grouper species of the South Atlantic coast of the United States 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 authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 10.17 of the FMP provides for designation of ARs as SMZs following Council recommendation to the Director, Southeast Region, NMFS (Regional Director).

An AR creates fishing opportunities that would not otherwise exist, and may

increase biological production. The cost of constructing and maintaining an AR can be substantial, and its intended socioeconomic benefits (*e.g.*, recreational fishing, tournaments, or sport diving) can be reduced or eliminated if highly efficient fishing gear and fishing practices are not restrained. Therefore, the possibility of establishing an SMZ around an AR can act as an incentive for the consturction of the AR.

Site H is located in the EEZ off Miami and covers an area of 2 square nautical miles (6.86 km²). The County holds a Corps of Engineers permit for the site and has managed it since 1977. The County expressed concerns about the use of fish traps and bottom longlines in the area surrounding the site and about diver safety problems resulting from spearfishing, and, pursuant to § 10.17 of the FMP, requested the Council to recommend to the Director, Southeast Region, NMFS, that an SMZ be designated around the site, in which the use of fish traps, bottom longlines, and power-assisted spearguns and power-heads would be prohibited. The Council subsequently recommended designation of an SMZ, but recommended a broader prohibition, including all types of spearfishing and all harvesting or possession of jewfish. Considering the large number of sport divers using the site, the Council concluded that any spearfishing would jeopardize diver safety and that spearfishing would reduce significantly the number of large predator fish (*e.g.*, snappers and groupers) available to other users.

The recommendation to prohibit any harvest of jewfish was based on the fact that jewfish are unique, rather rare, but important inhabitant of ARs. The Council determined that protecting jewfish for the continuing aesthetic enjoyment by the large number of sport divers using Site H would be more beneficial than allowing harvest by only a few individuals. The County concurred with the Council's expansion of the prohibitions.

Because of concern about jewfish mortality, all harvest or possession of jewfish in or from the EEZ off the South Atlantic states has been prohibited through emergency regulations published on May 7, 1990 (55 FR 18893); the emergency regulations are effective through July 31, 1990, and may be extended for another 90 days. The Council is also working on Amendment 2 to the FMP, which would prohibit the harvest or possession of jewfish in the EEZ.

Evaluation of SMZ Status

In accordance with § 10.17 of the FMP, a monitoring team appointed by the Council issued a report evaluating the County's request, with the expanded prohibitions, in consideration of the following criteria: (1) Fairness and equity; (2) promotion of conservation; and (3) prevention of excessive shares. The report also considered (1) Consistency with the objectives of the FMP, the Magnuson Act, and other applicable law, (2) the natural bottom in and surrounding the proposed SMZ, and (3) impacts on historical uses. The Council's evaluation of those criteria as they apply to this SMZ request follows.

Fairness and Equity. Approximately five commercial fish trap boats from the Ft. Lauderdale, Florida, area fish within the general area surrounding Site H. One boat generates 100 percent of its annual income from fish trappng in the general area, which consists of 28 square nautical miles (96.04 km²) around and including Site H; the other four boats use fish traps on a part-time basis in that area. Approximately 440 traps are fished in the general area. Catch records supplied by trap fishermen for the years 1978 through 1985 resulted in an estimated average annual commercial catch of 167,331 pounds (75,901 kg). No official information exists on the number of bottom longlines used in this area.

Recreational usage data, based on a 1985 survey, indicate that 19,281 fishing days and 14,028 diving days occurred at Site H during that year. The 1985 survey also collected some information about catches, but did not provide species-specific estimates, nor did it differentiate between fish caught and kept, versus those caught and released. This information was used by Council staff to estimate a recreational catch (including all species) from Site H of between 333,176 and 444,234 pounds (151,129 and 201,505 kg).

The Council thinks it fair that those who pay a major portion of expenses for construction and maintenance of ARs should have some say as to how the ARs are used, especially if one assumes that fish populations around the ARs would not have existed without the ARs. This latter assumption has not been scientifically validated, however. Fairness could also be achieved by allowing gear types prohibited at certain SMZs to be used around other ARs, or perhaps by building new ARs designated only for use of those gears, as has been done in Japan.

The use of fish traps in the snapper-grouper fishery is subject to a number of existing restrictions. The FMP prohibits fish trapping inside the 100-foot (30.5–m) contour south of Fowey Rocks Light off Miami. Fish trapping and bottom longlining are also prohibited in waters under Florida's jurisdiction and in Biscayne National Monument and John Pennekamp Coral Reef State Park in southeastern Florida. The Council concluded that prohibiting fish traps within Site H would not have a significant negative impact on the affected fishermen, because Site H represents only about 3 percent of the remaining area available for fish trapping. Because most species that inhabit the site probably depart the site at some point in their life history, designaing Site H as an SMZ would not necessarily preclude trap fishermen fishing outside the boundaries of the SMZ from access to the same stocks fished by recreational fishermen inside the SMZ.

Although there is only limited information indicating that any of the prohibited gear types has created a problem, it is known that these gear types can create problems around ARs. The Council determined that designating Site H as an SMZ is consistent with the FMP objective to "promote orderly use of the resource."

Promotion of Conservation. SMZs around ARs may promote conservation of fish stocks by allowing a refuge from trap fishing and bottom longlines. These areas could promote growth and spawning of stocks, assuming that hook-and-line fishing is not as effective at harvesting snappers and groupers as are fish traps and bottom longlines. However, if they substantially concentrate fish, ARs may increase exploitation of fish stocks.

Given the paucity of information available, it is difficult to address conservation in the biological sense, but the national standard guidelines indicate that this criterion can also be met by "encouraging a rational, more easily managed use of the resource" or by "optimizing yield in terms of . . . economics or social benefits of the product." The Council determined that establishment of an SMZ at Site H would meet these criteria.

Prevention of Excessive Shares. The Council concluded that fish-trap and bottom-longline fishermen have the potential to remove more than their fair share of the snapper-grouper stocks and that designating Site H as an SMZ would alleviate this inequity. Further, the Council concluded that prohibiting these gear types and spearfishing would not result in the allocation of an excessive share to users of non-prohibited gear. As noted above, Site H represents only about 3 percent of the area available for fish trapping.

Consistency With objectives of the FMP, the Magnuson Act, and Other

Applicable Law. The Council concluded that this request, as modified, is consistent with the objectives of the FMP, the Magnuson Act and other applicable law.

Natural Bottom in and Surrounding the Area. Site H is located on a relatively narrow continental shelf and includes natural hard-bottom areas within the permitted site. The Council recognizes this and concluded that the SMZ should be approved, even though natural hard bottom is included within the SMZ area.

Historical Uses. Commercial fishing has been conducted off the shelf waters of southern Florida since at least the late 1800's. Although small numbers of fish traps have been fished off southern Florida since at least 1919, the number of traps fished increased substantially only after 1976, when U.S. fishermen could no longer fish Bahamian waters. Significant commercial use of wire fish traps and bottom longlines in Florida has been a more recent activity, beginning in the mid 1970's and late 1970's, respectively. Available information indicates that one fish trapper began fishing in this general area in 1946, and another began in 1978. According to the County, work on AR Site H began in 1971.

After consideration of all relevant information, including the evaluation criteria, supporting data, and comments received during public hearings, committee meetings, and Council meetings, the Council approved the County's SMZ request with modifications to prohibit all spearfishing (power-assisted spearguns, power heads, Hawaiian sling, spear, pole-spear, etc.) and to prohibit the possession of jewfish or harvest of jewfish by any type of gear. The Regional Director concurs with this decision.

Request for Comments

Because establishment of this SMZ would prohibit certain gear and activities within the proposed boundaries, thus altering usage of approximately 2.0 square nautical miles (6.86 km^2) of ocean bottom, the public is asked to pay particular attention to possible impacts of the proposed action on historical users of the area and to the potential changes in fishing opportunities for recreational and commercial fishermen and divers within the proposed SMZ.

Classification

At this time, the Secretary of Commerce (Secretary) has not determined that the proposed action 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.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This 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 draft regulatory impact review (RIR) for this action. According to the RIR, Site H currently has a total recreational value to boaters of more than $75,000. If Site H is designated an SMZ, the hook-and-line fishermen who use the site will have gains from the exclusion of other users from the site. The excluded users and seafood consumers will experience losses. The Council has concluded that the sum of the gains and losses will result in increased value of Site H, if designated an SMZ. Copies of the draft RIR are available (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities because its impact would be limited to the few individuals who use gear proposed to be prohibited on Site H. Best available information indicates that five boats, four of which are part-time, fish with traps in the general area of Site H and there are unverified reports of a few individuals using bottom longlines on a part-time basis near the site. The affected individuals comprise an insignificant proportion of the small business entities in the snapper-grouper fishery. Further, the SMZ constitutes an extremely small portion (about 3 percent) of the available fishing grounds.

These measures are part of a Federal action for which an environmental impact statement (EIS) was prepaed. 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 Council determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program. A letter was sent to Florida, the only state involved, advising of this detetrmination.

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

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

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 2, 1990.

James E. Douglas, Jr.,

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

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

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

2. In § 646.24, a new paragraph (a)(22) is added and paragraph (c)(3) is revised to read as follows:

§ 646.24 Area limitations.

(a) * * *

(22) *Key Biscayne/Artificial Reef—H.* The area is bounded on the north by 25°42.82′ N. latitude; on the south by 25°41.32′ N. latitude; on the east by 80°04.22′ W. longitude; and on the west by 80°05.53′ W. longitude.

* * * * *

(c) * * *

(3) In the SMZs specified in paragraphs (a)(20) and (a)(22) of this section, the use of spearfishing gear is prohibited.

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